



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

DRAFT REPORT INTO THE BROADCASTING SERVICES ACT 1992

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

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON THURSDAY, 9 DECEMBER 1999, AT 9.07 AM

Continued from 8/12/99

PROF SNAPE: We welcome you to this, the fourth day of the hearings in Sydney on the draft report of the Productivity Commission on broadcasting. Copies of the draft report have been available since 22 October. If anyone present has not received a copy and would like to have one, they should contact members of the commission staff who are present. The commission wishes to thank those people and organisations who have responded to the draft report, either in further submissions or in arranging to appear at the hearings. Submissions are available here today for viewing and are on the Web site of the commission. These submissions and comments will help us to improve the report, which will be submitted to the treasurer early in March. The timing of the release of the final report is under the control of the government.

As in the case of the earlier hearings, transcripts of these hearings will be made and should be available on the commission's Web site within three days of the relevant hearing. A hard copy will be sent to the relevant participants. At the end of the scheduled hearings today, I shall invite any persons present to make oral presentations should they wish to do so. And now I turn to the first participating organisation today, the Screen Producers Association of Australia, and we would ask the representatives to each identify themselves individually for the transcript.

MR HERD: Thank you, Prof Snape. My name is Nick Herd. I'm the executive director of the Screen Producers Association of Australia.

MS PECOTIC: My name is Adrienne Pecotic. I'm the television councillor, one of the two television councillors for the Screen Producers Association. I'm also general manager of Grundy Television.

MS LARSON: My name is Susanna Larson and I'm the policy manager for the Screen Producers Association.

PROF SNAPE: Thank you very much. I think you're expecting a fourth member and when they come we'll ask them to identify themselves too.

MR HERD: That's right.

PROF SNAPE: Mr Herd, are you to speak to the submission?

MR HERD: Yes, I will briefly speak to the submission. First of all I think we want to congratulate the commission on recognising the importance of the cultural and social significance of broadcasting and also taking up some of the recommendations that we made to the commission in our initial submission and appearance before it earlier in the year. I think what we want to say is that we believe it is important to think of this as a cultural industry that is unlike any other industry in this country and that because it is a cultural industry it not only contributes economically but also to the cultural health of the nation.

We'd also like to emphasise that we are a forward looking industry, we're looking to the future, that we are open to the global marketplace and that we are efficient and competitive by any world standard. However, because of the particular significance of our industry to the cultural health of the nation, we continue to believe that a regulatory environment is necessary because the market on its own will not deliver the cultural outcomes desired by the government and by the nation. We also want to emphasise that we are not afraid of change, we embrace change and look at the opportunities that change can bring to our business.

However, I think what in essence we are saying in relation to the regulatory environment is that the response of the government and the parliament to that change has to be evolutionary rather than revolutionary. We are as an industry looking to new media and the opportunities that that will bring as an important part of our business and that business is basically the production of programs that provide entertainment and information to the Australian populace and internationally.

Given that the focus of this inquiry is on broadcasting and our particular interest in television, despite the opening up of new media, what we see in terms of television is that remaining for a significant part of the future, the primary form of mass entertainment, and because of that and because of the significant role that television will continue to play in the Australian nation, we believe that the regulatory environment needs to remain substantially as it is and to change as the new media begin to take a role as being a form of mass entertainment.

What we are trying to do also as producers of film and television programs is to build a business based on the creation of intellectual property owned by Australians. For that reason, the presence of offshore production of film and television programs in our industry is important. It provides employment to performers, to crew. It provides opportunities for our members to service that offshore production. But the heart of our business and the heart of our future has to be based on the creation of intellectual property in Australia that's owned by Australians and that is exploited by Australians, and therefore we argue that the continued partnership that has been built up over the last two to three decades between this industry and the government in terms of direct assistance and an appropriate regulatory environment is one which has delivered important outcomes in terms of economic growth and the cultural health of the nation, and that is basically what we want to emphasise in our second submission, and we open it now for your questions and comments.

PROF SNAPE: Thank you very much for the submission and also for that introduction. I'd just like to comment on one point I think that's been a misunderstanding that is in here and that has also been in one or two other submissions, and it's on page 13, where it says:

SPAA also questions where the call to change the creative elements test come from.

I should refer to the terms of reference which of course we have to follow, and in the terms of reference it specifies that, "Any legislation" - and that means any regulation as well as legislation -

which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives can only be met through restricting competition.

In other words, the onus always has to be on arguing for the retention of particular regulations, and so it's not a matter of saying unless someone says something should go, it should stay. It's the other way round. And so (indistinct) there has been in two or three places a comment, "We don't know who's calling for such-and-such" is not relevant because any restrictions, any regulations - the retention of them has to be justified, not in fact the onus on any change to them. So that's just a comment on the way that sentence was phrased and, as I say, it's occurred in two or three other places as well, where I think people haven't been quite conscious of the way that the onus is put in the terms of reference and which we have to follow. That's just a comment.

MS PECOTIC: Can I possibly just speak to that because I understand exactly what you're saying and that makes sense to me and I believe that the commission has produced a very thorough and interesting analysis of the tensions in the legislation and in fact the parliament's aim at trying to provide a broadcasting environment on the one hand that is efficient and competitive and on the other hand delivers certain cultural objectives. I think perhaps part of where that kind of comment in our submission is coming from is more to the thought that where the commission has made certain recommendations of changing some of the regulation, we do not agree that that particular proposed change - and certainly we think some of the proposed changes you have made would deliver those objectives - some of the other proposed changes, including the creative elements test, will undermine the cultural objectives of the legislation in a way that effectively would defeat their purpose.

And I think what we would try to speak to - if I can sort of put my Grundy hat on - certainly speaking corporately, we have always looked to and tried to follow a market-driven way of delivering culture, and we're concerned that some of the changes that are proposed by the commission, for the reasons that you're obviously mandated to, are going to derive culture in this country to being more a subsidy-driven model, and that's one which I think would not benefit the public good, although I can understand where you're coming from in trying to rationalise those tensions, and where we see currently the market supporting the delivery of culture to the Australian public, we see if some of the mechanisms that you have proposed to change are changed, what will end up being the result is that the government will have to subsidise culture in a way that is not currently necessary and hasn't been necessary in Australia for a long time, because the underpinning regulation has forced the market to drive the cultural imperatives.

PROF SNAPE: Thank you. I don't want to make a big deal about that point of the terms of reference I just pointed out, but I might say, just following up on your comment, that there are overt subsidies and there are covert subsidies, and of course any regulation that requires a market to perform other than those in the market would be choosing to do is in fact providing some sort of assistance for the activity which would not otherwise be undertaken and is imposing therefore a penalty on the firm or on the consumers, which may be justified of course because of other aspects, but the fact that there's no direct payment does not mean it's not in fact a form of assistance.

MS PECOTIC: Yes. I think what we would be looking to emphasise there is how is that assistance delivered, why is it necessary to deliver it? The government in putting forward the cultural objectives that it has identified a reason for wishing to deliver that result. We're looking at the relative efficiencies of how that can be done, and I accept what you say, that, overall, assistance is required or has been deemed to be required and you've provided a very thorough analysis of, for example, the restrictions on entry to broadcasting, the market power that that results in, how that market power then affects both the advertising industry and the content producing industry and so forth.

Whether you call it overt subsidy or covert, my point is that if the actual commercial enterprise is supporting the industry as opposed to direct government subsidy through the public purse, you have already stated in several points in your report that the pockets of the commercial enterprise are there, are able to afford this particular enterprise, are able to afford to support the cultural objective. I don't really understand, if you have concluded that the broadcasting industry in this particular instance can afford to support the objective that the government has outlined, why you would look to dismantle some of the regulation that underpins that, the effect of which would be to take away that incentive and put the incentive back on the government to have to directly subsidise through taxpayers' funds or FFC or whatever. That's more what I'm trying to understand in terms of your - - -

PROF SNAPE: I think we might leave that.

MR SIMSON: Clearly we understand the thrust of where you're coming from. If you look at the way we drafted the draft report it was clear that we found it easier to put our hands around the subquotas in terms of their link to the cultural and social objectives than we did on some other areas, such as some elements of the creative elements test. With regard to that, which is the point where this issue just arose, we've been told variously that those elements contribute to the critical mass of the industry, if you like, at one level, and at another level people say that they make a direct contribution and we are actually misinformed as to the extent to which some of those creative elements that we have cast a question about are really creative, they are part of the creative process. So there are a number of levels of argument for them being in there.

But what we haven't had, what we didn't have in the contributions to the draft report, which we need or we'd look forward to receiving from you, is something more

specific on this. I mean, basically we are told that support staff or support crew or a supporting act, or in the post-production business, for example, are directly part of the creative process by some people. By others we're told, "Well, whether or not that's the case, they still contribute to critical mass," and that's not good enough for us in the terms of reference that Prof Snape read out. And in your submission today, and perhaps in your written submission today, there's not a lot of drill-down on this particular issue, and if you can help us with that, either verbally today or later, we'd appreciate it, because in the context of the terms of reference that Prof Snape read, you have to justify to us that those elements of the creative test that we have put a question mark against in the draft report really do - - -

MS PECOTIC: Deliver the objectives, yes.

MR SIMSON: - - - deliver the objectives and really do deliver on the social - and when we talk about the objectives, the social and cultural objectives of our terms of reference, because, look, you could argue that somebody who changes a light bulb on a set arguably contributes to the critical mass of your industry. Any industry can rock and roll along to the Productivity Commission and put up a critical mass argument, and basically they go right up and down the vertical structure of an industry and basically on that argument would say that anybody who works in an industry contributes to critical mass, therefore they should continue to be part of a particular regulatory regime that we have been asked to investigate.

MS PECOTIC: Yes.

MR SIMSON: You can see the issue?

MS PECOTIC: Yes, absolutely.

MR SIMSON: That's why we are up with our hands around the subquota stuff, whereas we were not able to put our hands around - and at this point we are going to need - - -

MS PECOTIC: You need specific information, yes.

PROF SNAPE: Yes, where does the culture come from? In that the culture doesn't come from changing a light globe, where does the Australian culture, the social elements, from which - we of course recognise, as you point out - we're recognising it. Where do they come from and where does one draw a line in this industry between what is in fact generating those general benefits to the community, rather than generating employment in the industry, which of course could be said about any industry.

MS PECOTIC: Yes.

MR SIMSON: You need to be able to justify that to us much more than in the generality.

MS PECOTIC: Yes.

MR HERD: If I could just comment on that in terms of the creative elements test in the ABA standard, as you're aware, the creative elements test doesn't go down to the level of specificity about who's involved in - to use your term - changing the light globe. I mean, it talks about the people involved in the creation of a program. It names the producers, it names writers, it names directors, and it names people involved in production and post-production. If I could speak to the issue of those people who are involved in production, roles such as cinematography, production design and so on are important creative elements of producing a film or television program. The editor of the program, the composer of the music for the program, they are all making important creative contributions. We will, as you have invited us to do, go on and enumerate in more detail - - -

MR SIMSON: Thanks.

MR HERD: - - - how the process of production involves all of those roles.

MR SIMSON: That would be excellent.

MR HERD: We can give you a lot of detail about that.

MR SIMSON: Yes. Good.

PROF SNAPE: We have been given some detail on that in another submission today - the Media Alliance submission - but in that one I might say it does appear, in the pages in which they're giving - I'll make this comment later on their submission - that it moves from the sort of culture, the social one, through to the industry as a whole, and it's really talking about, you know, "You need the whole industry but you're going to get part of it." Now, it's not clear why, for example, international co-productions don't generate the size of the industry. They may or may not contribute directly to the culture and the social objectives, but they do contribute to maintaining a critical mass in the industry which, in turn, can generate those social and cultural ones. And we've got those subquotas which are focusing on the social and cultural things. So it's making a distinction in that there, in that way. We would be very grateful if you could.

MR HERD: Okay. If I could just comment on that reference you were making about co-production contributing to critical mass, yes, it's true - as I said in my opening remarks - that offshore production here and co-production - and I guess I'm specifically referring to offshore production of the kind that has expanded in the last number of years, and thinking in particular about American feature films and television production that is occurring here through facilities such as the studio up in Queensland and at Fox Studios here in Sydney - that is providing employment for crew, for technicians; it's providing employment for performers. What we are not seeing is a huge benefit in terms of use of post-production facilities.

As we have outlined in our submission on page 12, we did a survey of our membership who were involved in that sector of the industry, and you can see from the figures that we've put there that in terms of their turnover, offshore production is a very small part of the activity that they are engaged in. That's because at the present time offshore production comes here to use the locations and the physical infrastructure and the crew, and then takes post-production back home, whether it be to America or Europe, so that the benefits of offshore production and the contribution to critical mass are appearing at the moment in one sector of the industry rather than the total industry.

That is why we continue to argue for the importance - as our membership is indicating - that the throughput from domestically originated television drama and documentary, and domestically originated television commercial production is crucial to contributing towards that critical mass.

PROF SNAPE: Yes. On page 12 you refer, at the top of the page - where is it? I had it before.

MR SIMSON: Just while Prof Snape is finding the spot, can I just take you to page 6 of your submission.

MR HERD: Yes.

MR SIMSON: I think this is an interesting elaboration that you've made on your original submission in terms of helping in putting forward your view of where the global industry is heading, and you later in your submission today draw conclusions from this in terms of how a particular change in regulation may actually be, in your view - your view - counterproductive to what we might think might be the outcome. Could you just talk a little bit more about the structure of the industry, this vertical integration to which you refer on page 6, where you say:

Rather than promoting an open global market there is a growing trend towards vertical integration and market concentration, rather than greater diversity -

and therefore the implications for your industry of that.

MR HERD: Yes, I think what we're trying to elaborate on there in using the information that we present in our submission is that for a long time, for most of this century, in terms of film and television production, the US studios have been dominant. There has been expansion in terms of out of Europe, which we're seeing, and we've elaborated there on what we are calling, and the AFC and the FFC in their report are calling the "big seven" players in the international film and television and in fact multimedia business. Those companies are highly vertically integrated. They are involved in film and television, in publishing, in broadcasting, and the businesses which our members are involved in are very small by comparison to those large multinational corporations.

We are competing in the international marketplace with those corporations. The product that we create and produce here we have to sell not only domestically but internationally. And if I could take an example of the challenges that our members face in the area of television production, in the 90s we have seen an expansion in Europe of broadcasting outlets. From the late 1980s, as many European countries began to dismantle state-owned broadcasters, to introduce new services into those markets, that created new opportunities for Australian television producers, and we have been very successful in selling into the European market, directly in terms of producing programs here and selling them into that market, or going into - as Grundy Television did - the European market and producing for that market specifically.

But, as I said, it is a very competitive international market. What we are dealing with now is that that expansion of the European market has slowed. We are competing with these major international, multinational producers who are able to offer to broadcasters in Europe significant output deals which we are not in a position to offer because we don't have the scale or the libraries to be able to do that. So we're competing in terms of trying to find the holes that we can go into.

At the same time, in the domestic market - as we say in our submission - the domestic broadcasters have not continued to contribute to the same level in terms of what they are willing to pay for the product that we are producing. So we have, during the last decade, benefited from the European market in terms of that being able to finance production, and we're facing a squeeze in terms of what the domestic market is willing to pay, and an increasingly competitive European domestic market where you've got output deals and an increase in local production squeezing our ability to produce drama that not only serves the needs of the Australian market but also can sell internationally at an effective rate to make this a business which continues to be worthwhile to be involved in.

PROF SNAPE: I would have thought, then, that you might have welcomed the sort of arrangements that you describe on the top of page 10 in that framework. You refer to it as a leakage where you're saying in fact:

Producers witness the leakage of Australian content quota to vertically foreign integrated companies. Local network joint venture deals with companies such as Hallmark, Fox, New World and now Granada -

which we'd be particularly interested in hearing about -

are affecting prices and timeslots -

etcetera, putting content on - and pressure for the Australian content standard.

Well, it may be that that will in fact make pressure for things coming in, but it also - those deals surely give you great opportunities for in fact exporting from - Australian productions to the rest of the world. Those linkages with Granada - Seven to

Granada, for example - the new arrangements, as I understand them, I would have thought would have been regarded as a great opportunity for Australian producers - the people whom you represent - rather than a leakage.

MS PECOTIC: I'm not sure where the opportunity is being described here. I think what the submission is concentrating on is the vertical integration and where that excludes the independent producers, if you like, is because a company - just take Granada for example - and I'm no expert on Granada, but in terms of its vertical integration it is a company that is a broadcaster, a significant broadcaster in the United Kingdom, and seeks to control all aspects of the business from production to broadcasting to distribution of the product chain, which is not dissimilar to many other vertically integrated companies if there is an efficiency perceived to be involved in being across all of those particular market sectors.

For an independent producer - ie, one that is not vertically integrated or does not have any ownership position in a broadcaster or in a distributor - in order to market their particular product they have to approach a broadcaster or a distributor in order to sell their - you know, seek interest in their particular program in order to sell it. If you are looking to approach a company that is vertically integrated, the sense if you like for that vertically integrated company is to develop its own product, produce in-house its own product, then broadcast to that product and then distribute that product elsewhere. There is not so much the interest in that particular vertically integrated company in sourcing outside programs. The market becomes more closed to those outside programs because the company is seeking to control the whole food chain, if you like.

I think that is what we were trying to explain by the limiting of opportunities for independent producers that is caused by a proliferation of large vertically integrated companies.

PROF SNAPE: Did you say independent producers here? I would have thought that you would have been interested in producers in general whether they were working for a large company or whether they were independent. They are still Australian producers if they work in Australia for Granada, or if they work for some other company. Are you now making a distinction between Australian producers who work in Australia on Australian content, but in fact work for Granada, from Australian producers, etcetera, work in Australia, generating Australian content, employing other Australians, using Australian literature, etcetera, who work for someone else? I mean, that's a very - - -

MS PECOTIC: That's an interesting point to raise. From the point of view of the association's submission and, in particular, these comments on vertical integration, would have been made from the point of view of the association representing Australian producers who effectively operate their own business. 80 per cent of the membership of the association are either self-employed or employ five people or less.

PROF SNAPE: From our perspective I think we would have to be shown somehow that one group of producers who are Australian and doing exactly the same thing as another group of producers who are also Australian - that one of those when they're doing exactly the same thing is contributing more to Australian culture and the social objectives than the other.

MS PECOTIC: I think it's an interesting question for you to ask. As I understand it in Australia at the moment there are only two foreign-owned - depending on whether you include Fox as a foreign company or an Australian company, which I guess depends which way you want to define the ultimate ownership - but leaving aside Fox there are only two companies that have come into the Australian market and operated as producers in the Australian market at this point in time, and it's a very recent development.

Grundy Television was acquired by Pearson Television, which is a wholly-owned subsidiary of an English public company Pearson PLC in 1995. Therefore you could describe Pearson PLC as being a foreign vertically integrated company to an extent, although it is not significantly a broadcaster, but it is a distributor and producer internationally. It now employs, if you like, Australian producers, myself included.

The other company which has entered the market as recently as last year in the purchase of Artist Services, which is an Australian production company, is Granada. Granada is a vertically integrated broadcast, distribution and production company that also operates internationally. So from the point of view of the analysis of how culturally will the introduction of those companies very recently into Australia affect Australian culture and Australian producers, it has been a topic of some very hot debate within the Screen Production Association itself and the impact of foreign ownership, if you like, of television producers as opposed to foreign ownership of broadcasters on the market on Australian content rules and regulations.

It is not something that has been specifically addressed in our submission to the Productivity Commission because it's such a recent change. As I say there are only those two companies in Australia who are actually - you know, where producers, if you like, are employed by foreign-owned production companies. If you wish us to focus on that particular issue and make a submission to you on the relative benefits or the tensions, if you like, within foreign-owned companies for Australian producers attempting to produce Australian content, there is certainly anecdotal evidence that could probably be collected, but from those producers operating in Grundy Television, and from those now operating in Artists Services are a very recent development and I'm not sure to what extent it would be indicative of the potential benefits or threats to Australian culture by the entry of foreign producers into the country.

We've been looking much more from the point of view which is the majority market position at the moment of Australian producers operating their own businesses. The Australian producers obviously that work for the broadcasters in-

house, who are the other employed producers if you like in Australia, are also not operating under foreign ownership at the moment because those companies are restricted from having foreign ownership at this stage. So we haven't turned our minds to that.

PROF SNAPE: Correct me if I'm wrong, but in the definition of what is an Australian television program, it makes no reference to the ownership of the company.

MS PECOTIC: No, it does not. That is correct.

MR HERD: That is correct.

MS PECOTIC: And it has been not relevant at all in the marketplace as recently as - as I say, only one company since 1995 has been foreign owned in Australia.

PROF SNAPE: I think we have to think about rules, etcetera, which will apply in a generality and not be in fact just a product of something which happens and may be transient in the marketplace. We need to accommodate changes in ownership and what have you. I can well understand that there might be divisions of opinion on this matter, but I find it surprising that you would be contributing any less to Australian culture today than you were perhaps six months ago.

MR SIMSON: Or since 1995 in your particular case.

MS PECOTIC: Sure. Can I highlight the concerns? As I say, this is an issue that has been debated quite extensively within the industry itself because of the concerns about culture and the preservation of culture and how foreign ownership will affect that in a production context. I think what the analysis has come down to is very much an issue of control and creative control and copyright - not so much copyright ownership but generation of ideas, origination of ideas.

That is where the industry itself has focused and said, "If you are looking at an Australian program and you happen to be working for a foreign-owned company and the foreign-owned company dictates to the Australian producer - or the Australian arm dictates what programs can be produced, what programs can be financed, who is allowed to creatively control the production of those programs" - for example, inserts an executive producer above the producer to dictate the casting, to dictate the selection of script, to dictate those cultural and creative aspects of film production that we were saying before are reflected in the creative elements test, that is where the threat to Australian culture, if you like, comes from foreign ownership.

Should the company not exercise that kind of control, should the ownership - and it's not dissimilar from what you looked at in a broadcasting context - if the ownership is not involved in the creative aspects of the business endeavour then it should not affect the cultural virtue or purity or Australianness, if you like, of the product that is disseminated.

MR SIMSON: But you are in a unique position because of who you work with.

MS PECOTIC: Sure.

MR SIMSON: From your personal experience since 1995, has that come to pass?

MS PECOTIC: In my personal experience we have - - -

MR SIMSON: Of your company which is owned by Pearson?

MS PECOTIC: Sure, yes, our company is owned by Pearson. Pearson's corporate policy is not to interfere in the domestic creation of product or the management of - in other words its policy is for local management and control as a policy. That's what it does. It supports the Australian business in that sense. Not all companies would have to do that.

MR SIMSON: But isn't that a fairly logical position to take? I mean, for Pearson - the alternative for that would be for Pearsons to actually second-guess from London - in the case of Pearson - what's best for the Australian market. Isn't it a fairly logical - isn't it a fairly sound business principle that has been operating with Grundy and Pearson in this case?

MS PECOTIC: From the point of view of the management and control of the local business you would say so.

MR SIMSON: Yes.

MS PECOTIC: The tensions arise where you look at the global business, in particular its distribution business, and the product that is supplied up through that business. Fortunately with Pearson we operate quite independently - the production division operates quite independently from the distribution division. This is not necessarily the case in all vertically integrated companies. Where the tensions arise is where you have an Australian program that requires deficit funding. In a normal situation with any Australian producer, including vertically integrated ones, you've got to go out from the Australian market, because the Australian market doesn't pay the full cost of production. You have to find a sale overseas.

When you are looking at a large international distribution company and you're looking at it from the point of view of the economics that work for that large independent distribution company - whether they're independent or vertically integrated - the product that sells most easily throughout the entire world with very little effort and with great commercial success is American product.

If that vertically integrated company has a source of American programming as well as a source of programming from Australia and Germany and Greece and wherever else, the commercial interest of the distributor arm of that company is - in

sourcing the product that for it will be the most easily distributed - where the tensions arise, if you like, potentially between the local Australian company or the local Greek company or whatever is that production arm, in trying to further its economic advantage in an environment where, say, a global distributor - if that global distributor was in control, which in our instance it is not, but in others it may be - if that global distributor was going to dictate to us, "Well, sorry, there's no point you providing to us the next Australian drama for the 6 o'clock slot on whatever channel, because we can't sell that anywhere. So we're not prepared to give you the money or to deficit finance that as a distributor. Go talk to another distributor."

If you're not free as a producer because you're bound into that corporate structure and you don't have a Pearson policy operation, you cannot sell that program. You cannot make that program and effectively the foreign ownership of your company and the vertical integration of your company would prevent you from funding that particular project. From the point of view of the independent industry they may say, "Well, that's fine, provided that product isn't going to be a product aimed at the American market that qualifies as Australian content, all of us others can go off and try and find our own programming."

But from the point of view of whether the foreign ownership has an effect potentially on the Australian producer and on the employee, yes, it can if the foreign owner exercises creative control or management control on what product you are allowed to produce locally.

PROF SNAPE: I think ultimately you're trying to work to a look and feel test.

MS PECOTIC: Certainly not. No, actually were not looking at a look and feel test for very good reasons. What we have actually focused on is: who is the person that is making the decision? Who is the person that is having the creative idea? Is it the Australian employee? If we're talking of the foreign-owned company scenario is it the Australian producer that is coming up with an idea to produce Sea Change for the ABC? Is that an idea that they have generated? If it is an idea that they have generated that Australians then develop, that Australian writers write, that Australian directors direct, that Australian cinematographers and designers envisage, then it is an Australian cultural product.

PROF SNAPE: What if they are copying a format that was abroad?

MS PECOTIC: I can give you a direct example of that. Grundy Television has for many, many years copied formats from abroad - licensed formats from abroad - I should use the technical term because copying is not permitted and is not done. But if you - - -

PROF SNAPE: Let me be more careful in what I say. What if the idea was generated by a program abroad, so "copy" was used very loosely in that term and I wasn't referring to any infringement - - -

MS PECOTIC: That's okay.

PROF SNAPE: In any way that would infringe legal intellectual property.

MS PECOTIC: I can give you an - sure.

PROF SNAPE: So the real idea was generated from abroad and they did an Australian version, is that Australian - pass?

MS PECOTIC: If it is the local producer that selects what they want to produce here - for example, Family Feud is a format. It's originally an American designed format, it was an American game show. Now, there is high and low culture and you can argue the respective benefits of that, but if we leave that aside and we look at simply how will an Australian audience perceive culturally a particular program, if we broadcast the American version of Family Feud in Australia, what you will have is an American cultural product in other words, and then you then - side by side - look at the Australian version of Family Feud, whereby we take the basic format elements and Grundy Television selected to do this long before it was foreign owned - selected to look at what was a successful format in other territory and say, "Right, the basic bones of this show are really good. How can we make that really good for Australians?"

What we then did - Australian producers sat down and looked at the basic bones and redesigned it, if you like, for an Australian audience, used Australian creative energies in selecting the questions, in selecting the talent, in going through the contestants, filmed it with Australians participating and made an Australian program out of what was an American basic format. Grundy Television did then exactly the same thing to make the highest rating program on Indonesian television with Family Feud.

Grundy Television did that by sending an Australian over to Indonesia that happened to know the basic format, employed all Indonesian cast, contestant coordinators, host, audience, question writers, everything else, taught them how to do it and said, "Looks, this is the basic bones of this format. Make something that works for Indonesian people. Make something that's culturally Indonesian" and that was successful.

PROF SNAPE: So you would have regarded that as Indonesian. If you were running the Indonesian content regulations, you would have regarded it as Indonesian.

MS PECOTIC: Yes, certainly. That has been traditionally the case here. The programs, if you looked at them, are very different.

MR SIMSON: And you would see, if you like, the Australian "McDonalds" version of Family Feud as contributing to social and cultural objectives.

MS PECOTIC: As I said, there is high culture and low culture, and who are we to say what the audience want to watch and what they are going to perceive. But I can certainly say - - -

MR SIMSON: No, that's not what we are coming at. What we are coming at is the extent to which that content contributes to the social and cultural objectives that we are focusing on.

MS PECOTIC: Yes, I believe it does.

MR SIMSON: There is a fundamental difference between having a bunch of Americans doing a Family Feud as opposed to a bunch of Australians. You could argue that even if they're the same families feuding in the same way, say potentially the same script - - -

MS PECOTIC: Well, it's not scripted, that's part of where the culture comes through.

MR SIMSON: Well, the same plots - I mean, I'm sure you set the plots up, the same family feuding plots - - -

MS PECOTIC: I think the point is actually that they're not the same.

MR SIMSON: - - - that there is a fundamental difference in that, that there is a fundamental contribution - - -

MS PECOTIC: I think there are three things. One is that through an Australian version of Family Feud Australians see themselves reflected. That's why an American version doesn't rate in the sense that Australians want to see themselves, their viewpoints and what their families look like and what their families want to say and what their opinions are. That's the reason why an Australian version of Family Feud works and why it reflects culture.

PROF SNAPE: How much does it cost an episode?

MS PECOTIC: We're not producing it at the moment so I can't tell you, but it is substantially less than an Australian drama.

PROF SNAPE: So what would it be? 50,000 an episode?

MS PECOTIC: I'm sorry, I really can't say.

MR SIMSON: Just before Mr Herd comes in, could I just pursue you on that point?

MS PECOTIC: Sure, yes.

MR SIMSON: What is that fairly terrible legal show that's on in America?

PROF SNAPE: Judge Judy.

MS PECOTIC: Judge Judy.

MR SIMSON: Judge Judy, right. That rates pretty highly here - Judge Judy, right?

MS PECOTIC: Sure.

MR SIMSON: That's American content, there's no doubt about that.

MS PECOTIC: Sure, yes.

MR SIMSON: Why would you say that an American version would not have had the same audience appeal, when Judge Judy has the same audience appeal here without there being an Australian Judge Judy?

MS PECOTIC: Yes. Unfortunately without there being an Australian Judge Judy, the fact of our marketplace is Australians will watch the American Judge Judy. What our experience - particularly at Grundy Television - has been is when you offer the choice - which means you have to pay the money for the Australian Judge Judy, and I have to say we've looked at that many, many times in the past but the Australian legal system doesn't permit it in Australia, there would have been Australian version of People's Court. I joined the company in 1985 and the first thing I was asked to look at - "Have a look at this format and see can we do it in Australia." It wasn't possible. However, that's the significance. The underlying significance of the whole analysis is that Australians are happy to watch foreign programming. Foreign programming rates. When they are given the choice - and there is a huge financial cost involved because foreign programming is very inexpensive, it is a secondary market - to pay for an American version of Family Feud might be - and let's assume it was \$A50,000 to make it in Australia and I don't know what it would be now, but to licence it - - -

PROF SNAPE: Well, you understand why I asked the question.

MS PECOTIC: Yes, but to licence it from America would be \$1000 an episode.

PROF SNAPE: Okay.

MS PECOTIC: And if the Australians were going to view the American one because they couldn't see the Australian one, well, there's the economics for you.

PROF SNAPE: As you have said, in many cases you have to seek an overseas audience, an international market to make things pay, to what extent does that imperative dilute the Australian content?

MS PECOTIC: I think that is one of the great tensions that is facing the industry at the moment, and the thing of single most concern to us in the financial market attrition, if you like, that has occurred over the last 10 years is the fact that the local industry no longer pays for the local product. When Neighbours was first made 15 years ago, it was completely locally financed; it was a program made solely for an Australian audience. As the program progresses and as the local broadcaster pays less for that program and as the program must rely on its international audience, eventually there will come a time where the producer is going to have to say, "Who are we making this program for?" That is when the cultural tension will become really significant.

MR SIMSON: What happens then? Do they then take that program to a lower cost destination?

MS PECOTIC: Australian production is very efficient. We can't really make the program any less than we can make it for.

MR SIMSON: I'm not suggesting you're inefficient but do they then compromise within the local content, within the boundaries of the local content regulation in Australia - the Australian content regulation? Do they then compromise that and do parts of it offshore?

MS PECOTIC: I think speaking about the Australian content regulation and speaking from a commercial point of view, as a producer of Australian television, if we had a product such as Neighbours and we got to the point where the local market did not pay for it and it still had a very significant UK market, which is the particular success of Neighbours, and the Australian content regulation did not underpin the Australian cultural imperative, eventually there's not a choice that one would want to make but economically you would be forced to make it. If your business relied on producing Neighbours and selling it to the UK, eventually the significance of its Australian elements - apart from the fact that that's partly what makes it successful in the UK, you would start to be listening to what the UK audience was demanding of that program and you would be starting to say, "Well, sorry, the Australian market isn't paying for this. I can no longer sustain the business of producing this program unless it's subsidised in some way."

That's the line I came in on. I think that would be a great tragedy, to have gone from having a commercial imperative in producing a program for an Australian market to a situation where we couldn't produce it unless somebody paid us a subsidy.

MR HERD: As Adrienne has indicated, I think it all comes back to the fact that in terms of the tension that needing to sell into the international market place demands, if you look at what has been successful internationally it hasn't generally been those attempts to make something that appeals to many international markets, it has been that product which has a very particular cultural specificity. Shows like Neighbours, like Water Rats, which are selling very well around the world in many successful and international markets, haven't needed to compromise in terms of their specificity to

Australian culture, because what makes them attractive to international audiences is that they have a particular Australian character to them, just in the same way, I guess, Australian audiences react to an American or English product, because they have a very specific American or UK character to them, and the stories and performances come out of those cultures and that's what is appealing.

What we're trying to do is make shows that come out of the Australian culture, come out of the Australian character, that are speaking to Australian audiences but at the same time have enough about them that is universal to appeal to an international audience.

PROF SNAPE: This is making it very specific, and I must confess not to have watched *Water Rats* very often, but can you tell me what is specifically Australian in contributing to Australian culture or identity in say *Water Rats* other than it is on Sydney Harbour and there are Australian accents?

MS PECOTIC: That is a very interesting philosophical question which you could ask many people to try and define. The way that we have always understood it, is it's about Australian telling their stories through their eyes, in their way. What is uniquely Australian about *Water Rats* is the fact that it is written by Australians, it is directed by Australian directors, it is produced in such a way by Australians that makes it a flavour of Australia in the same way as if you sat and watched a Scottish program you wouldn't be able to necessarily pinpoint what is it about this show that seems Scottish, what is it about this show that seems New Zealand or what is it about this show that seems whatever? It is very difficult to split that.

PROF SNAPE: What I am trying to identify in this case is what is distinct from saying it could be in Miami other than the Sydney Harbour and the Australian accents?

MR HERD: It's more than the locale and the accents as Adrienne was saying. It goes back to what the Australian content standard is trying to achieve. It didn't go down the path of what is, I think, implicit in what you are suggesting as look and feel - I mean, it looks and feels Australian because it is set in Sydney Harbour and there are Australian accents. Anybody can come here and do it on Sydney Harbour and it is possible for foreign actors to do an Australian accent. The point is that the people who created that show are all Australian. It's an Australian production company, Australian writers, directors, performers, crew, and they're creating a show which has been first and foremost successful in the Australian market. It rates well here, people watch it. They respond to it because it has about it a very complicated and often subtle mix of performance, of direction and so on and so forth, which makes it distinctly Australian and which appeals to an audience here and which has been able to make an appeal internationally and stand out amongst a lot of other shows which are about police and crime.

MS LARSON: Sorry, can I break in here one sec. I would also just like to say that as an American resident in Australia now for 10 years, one of the things is simply the

writing. Some things - I still don't get the joke, and there is a different morality that Australians have that's reflected on the screen in, for example, a cop show.

MS PECOTIC: I was going to use a very trite example. I have a five-year-old daughter and one of her most favourite books is *Hairy McLary* - I don't know if you have ever heard of this. But I spent some parts of my holidays as a child in New Zealand because I had New Zealand relatives and when I picked up this book and read it - it's a book about dogs and cats in a suburban environment - the turn of the phrase, the picture of the wooden paling fence and the characterisation of the house, these things immediately spoke to me that this was a New Zealand children's book, even though nothing on the cover said this is a New Zealand book. It's very subtle.

MR SIMSON: Thank you. Could I just move on to page 15 of your submission relating to the conditions on which you say you could support a fourth channel. In a situation - and you say there would need to be certain actions taken to support a fourth channel, but if a fourth channel were introduced into a situation where hypothetically the existing content regulatory regime were retained in all its forms, the 80 per cent on advertising, the 55 per cent transmission quota, the subquotas, the children's quotas, the lot, what is the problem for your industry? Why would you then need to have them tightened in addition to that? You would have a fourth station that had to live by the rules.

MS PECOTIC: We're being fairly specific here about, for example, the drama quota. The drama quota at the moment is there, and we are supplying drama to the three commercial networks that are currently under the obligation of that quota. However, we are doing so at some considerable cost because those broadcasters are not paying the cost of providing that drama to them. It is being subsidised by overseas sales which, as you've heard evidence probably from various sources, is drying up.

MR SIMSON: Yes, sure, but that's not going to change.

MS PECOTIC: No. So part of the problem is that if you introduce an extended quota by having a quota that applies to either a fourth network or extending the quota on the additional - - -

MR SIMSON: You've got a third more work.

MS PECOTIC: - - - on the existing, you've got more, if you like, deficit to finance. Yes, you have more - - -

PROF SNAPE: I'm sorry, I don't like the term "deficit finance" because you have to sell it abroad. If any industry is selling a product and selling some of it in Australia and some of it abroad and the foreign sales are required for survival, then that is not a subsidy, it is not deficit finance, it's simply that they're selling into two markets. So okay, you're selling into two markets.

MS PECOTIC: Or else we're not selling.

PROF SNAPE: Well, many, many manufacturers, many producers, depend upon foreign sales as well as domestic sales. That's a fact of life, it's nothing special. So I don't like the term of it's a subsidy or it's a deficit or something like that.

MS PECOTIC: Yes. I will just explain why we say it that way.

MR HERD: The term "deficit financing" we're using because it's a common way of describing that in the industry, both here in Australia and - - -

PROF SNAPE: Well, it's an unfortunate way of describing that industry because it puts you into a frame of mind. Instead of thinking, "I think this is an industry which is selling to the world and getting different prices on different markets," which is a perfectly normal commercial activity, it's put into a mindset that that's a deficit over there that has to be made up.

MS PECOTIC: No, can I explain it?

PROF SNAPE: That's just normal commercial activity.

MS PECOTIC: That's not what the deficit is referring to. What we're referring to is there is a program - program X, telemovie, that we wish to produce. Telemovie budget, \$3 million. Local market will only pay \$450,000. So the deficit on the budget is the balance between 450,000 and 3 million that the producer has to find. That's where the term comes from.

PROF SNAPE: I wonder if the producers of other commodities these days look at it the same way. The producers of wheat don't say, "Okay, we can only sell 50,000 tonnes on the Australian market at price X, so therefore we have a deficit that we have to make up on the foreign market." They go out and look at the world as the market. They look at the world and it's not a matter of say, "There is a deficit that we have to make up." Their whole approach to it is world marketing. It's a different mind-set.

MR HERD: But I think what we're saying is that we have the same approach of looking at the world as the market. The point is that if you're going to produce a television program, and in order to do it there is a certain cost, the difference between what you can generate out of the domestic market in terms of licence fees, and what you need to actually finance it, requires you to go to the international marketplace. Now, some producers, some of the larger producers here, are in a position where they can finance production themselves from their own financial resources, and then seek to recoup that investment through international sales.

Other producers are in the position where they have to go to an international sales agent or distributor and get them to advance the money to actually physically produce the program before it can be sold not only to the domestic broadcaster but

internationally. That's what we're referring to when we talk about the deficit between what is able to be generated in the domestic market and what is able to be generated from international sales.

PROF SNAPE: I've made the point, so let's continue on with your argument - - -

MS PECOTIC: I think part of that mind-set, if you like, is that what we're dealing with is a uniquely domestic product insofar as it's Australian cultural content. We're coming from the point of view, all of us, where we are producing a program for Australia, an Australian program for Australia. For example, when Grundy Television produces an Indonesian program in Indonesia it's not thinking of that in the same way, just to characterise it a bit further. But I think that's where the concern, if you like, of the screen production industry, in whether the demands of that broadcaster can be met, whether it would make a difference to the market power; dichotomy which is, if you like, affecting some of the terms of trade including price and including other aspects at the moment, where we have concerns to say, "We don't believe automatically that introduction of one additional competitor would so change the balance of power and so affect the market." Even if the quotas and everything were retained, although of course that's going to be quite a different paradigm than if the quotas were removed - - -

PROF SNAPE: We have suggested amending the quotas, as you know, but not the subquotas.

MS PECOTIC: Yes.

PROF SNAPE: In the context of suggesting that it should be opened up to new broadcasters, we have not even hinted that the quotas might be changed because of that. Insofar as at one point here I think you've suggested we might have, or at least you're making an argument that they might be, it wasn't even in our consciousness that they would be changed if there were to be more entrants. We said, "These are what should be," and leave them. So that's the context. I find it very difficult that with those things fixed in the way that we had, in our draft recommendations, suggested they be, that you wouldn't be delighted - - -

MS PECOTIC: It's two issues - - -

PROF SNAPE: - - - to have more entrants. As I've said before, I think it's the only industry that I've ever heard that would not welcome additional demand on the same conditions.

MS PECOTIC: The two issues are how do we finance the product that we're supplying? By removing the 55 per cent quota you are effectively - I mean the Family Feud example, as an example - - -

PROF SNAPE: Look, can we leave the quotas aside and say that we have kept those quotas there. We're not changing the quota - - -

MS PECOTIC: But you haven't kept all of the quota. You haven't kept the overall 55 per cent quota.

PROF SNAPE: I'm sorry, we are saying that in the scenario with the new quotas that we have suggested, the subquotas - - -

MS PECOTIC: Yes, which does not include 55 per cent - - -

PROF SNAPE: Take that as given. We now compare a situation in which you have the three networks at the moment, and that generates a certain amount of business, or you have a situation in which you have more demanders because you've opened it up to more networks or more television stations. How is it that there is not, with the same conditions on, additional demand that will benefit your members?

MR SIMSON: Just assume for a moment, so we're not at cross-purposes with Prof Snape - just assume for a moment that our recommendation was not accepted if this travels - - -

MS PECOTIC: So the existing total thing remains the same?

MR SIMSON: If this travels through to the final - just assume that it's not accepted that there's any change to transmission quotas, no change to advertising quota.

MS PECOTIC: Yes.

MR SIMSON: Just assume that and respond to the question.

MR HERD: And that there was a fourth commercial network in - - -

MR SIMSON: Yes - - -

PROF SNAPE: We've never used the word "fourth" incidentally in our draft report. We've said that it would be opened up.

MR SIMSON: How could that not be good for your industry?

MR HERD: If I can just say - I mean I don't think, if you look at our submission, that we're actually opposing that on those conditions - - -

MR SIMSON: You are, because you want the drama quota raised. You want the creative elements test tightened. You actually want things tightened and the quote on drama increased before you would count them as a fourth network. That's what you say on page 15.

MR HERD: I think, again, probably there's a misunderstanding there. I mean we have concerns about the standard as it currently is, in terms of how effective it is, and that's one issue. In terms of what you've asked us, whether we would support the introduction of an additional service, call it what you will, if, as you've put it to us - - -

MS PECOTIC: Status quo remains - - -

MR HERD: Yes, that - - -

PROF SNAPE: On unchanged terms.

MR HERD: On unchanged terms.

PROF SNAPE: We've made this point again and again. We made it in the first round of hearings and there you said, "No, we wouldn't want a fourth." I just cannot understand it.

MR HERD: I think what we're reacting to, Prof Snape, is that I hear what you're saying about what you're recommending, but as you're aware there are other players in this debate and we are reacting to the arguments that particularly are coming from some of the other significant players who want to see additional services and no regulation.

PROF SNAPE: I mean if you've got subplots going on and you're worried about other things there, it would be nice to have those made explicit, because as the argument stands, as we've trying to put it and get a response. The response frankly sounds bizarre in that we have set a certain amount of conditions, we've got those conditions locked in. We now say there's an additional demander for your product and you're not prepared to say, "That would be great for us."

MS PECOTIC: From the point of view of if the quota remained exactly the same and additional broadcasters entered the market, that would appear to be of no objection. Personally I'd go, "Okay, that seems to make sense." Where SPAA's concerns, I think, are coming from are their experiences in other markets, their concern that we've only got a population of 17 million in order to support, you know, an increase in the number of free-to-air broadcasters. The population of itself then dictates the amount of advertising revenue that would support those broadcasters, and therefore we are unsure of how that would impact on the existing businesses and the onflow effect, therefore, to our business.

For example, the introduction in the small New Zealand market, with no content regulation I have to say, of additional services in that market, did not have a marked impact on the onflow to producers of more money, more product. In fact it had the opposite effect - - -

PROF SNAPE: But as you say, there was no content regulation.

MS PECOTIC: There was no content regulation.

PROF SNAPE: That's not what we're positing.

MS PECOTIC: Yes, that's what I'm saying. Our concerns are - why we don't appear to be throwing ourselves wholeheartedly at the idea is we're not sure what the results would be because of these other factors. It sounds in theory like, yes, it would work, but we're concerned about the financing, the cost of the broadcasters paying for production of product which we know intrinsically is much more expensive to them than the cheaper version of programming that they can access. That's where our concerns are.

PROF SNAPE: Yes, okay.

MS PECOTIC: Our reservations are there, not in other places, if you know what I mean.

PROF SNAPE: Okay. Well, we get that point. I'm not quite sure how it's planned to play it. Susanne Larson, you're also appearing for the Federation of Film and Television Associations.

MS LARSON: I'm not actually, that has been changed.

PROF SNAPE: I see. So there is going to be a distinct break?

MS LARSON: Yes.

PROF SNAPE: It's not as if you're all - - -

MS LARSON: No.

PROF SNAPE: In that case I think we should perhaps thank you very much for your presentations this morning, and also for your help. We did ask one or two questions on the way that you might like to think about and respond to again, and we thank you for your earlier submissions and today.

MS PECOTIC: Thank you for your time.

MR HERD: Thank you.

PROF SNAPE: Now we'll turn to the Australian Federation of Film and Television Associations. To resume, we welcome the Australian Federation of Film and Television Associations. I think you've been seeing how the game is played, and we would ask you to identify yourselves separately for the transcription services, please. I should also mention that the microphones are not amplification, but are simply for the transcription service.

MR SMITH: Thanks, professor. My name is Stephen R. Smith. I'm here with the Australian Federation of Film and Television Associations. I'm a committee member. I'm also the president of the Australian Screen Sound Guild as one of the members of AFTA.

MR JEFFREY: My name is Tom Jeffrey. I'm also here in my capacity as a committee member of the Australian Federation of Film and Television Associations. I'm on that committee in my capacity as president of the Screen Producers Association.

PROF SNAPE: Thank you very much. We have your submission, for which we thank you. Who will speak to it first?

MR JEFFREY: If you like, I'll kick off. Can I first make the remark that you asked a question of the previous witnesses about Water Rats and what makes it distinctly Australian, what elements in it. I was reflecting on the fact that quite recently I was up at Catherine Hill Bay, I don't know whether you know the little village up the coast, I was wandering around and I saw these house names and one of them was "Didyoubringthegroalong," all one word. I thought that that was so typically Australian. You know, you just couldn't see that anywhere else in the world. Another house name was "Duz-us," does us, you know. It's, again, so Australian. I remembered that, and I think that's reflected to a certain extent, perhaps not quite so obviously, in Water Rats as well. It's a program, we believe, that you could only make - the style and the way in which you identify it, its Australianness.

PROF SNAPE: Thank you, good.

MR JEFFREY: You've had an opportunity, I dare say, to look at our submission, professor?

PROF SNAPE: Yes, we have.

MR JEFFREY: As you will see, we concentrate mainly on the issues relating to Australian content, and we do address the overall transmission quota, and of course we support and welcome the recommendations that you made in respect of the subquotas. I think that perhaps it might be easier if you were to ask us some questions about our submission. It might help just move the proceedings along.

PROF SNAPE: Okay. You did hear the previous discussion, so if there are matters that we discussed there that you would, on reflection, wish to amplify in your own - either now or later on - - -

MR JEFFREY: Thank you, professor, there is one. I came in late because of the terrible traffic that we have to suffer here, coming across the bridge, but in respect of the non-creative elements test in Australian content - the definition of Australian program - it's our point 2.2. You may be interested to know another hat that I wear is I sit on the board of Create Australia. Now, Create Australia is the industry training advisory body for the creative industries and it covers a whole range of heritage writing, film and television libraries, museums, and so on and so forth. We're just completing the competencies for the music industry and also the film, television, radio and multimedia industries from which will be developed training packages and so forth.

PROF SNAPE: Did you say the competencies?

MR JEFFREY: Yes, competency standards.

PROF SNAPE: What does that mean?

MR JEFFREY: It means identifying the skills required for each task in those industries and at what level competency you need to acquire in order to do the different classifications of work.

PROF SNAPE: This is classification for awards and so on.

MR JEFFREY: It will lead to qualifications, yes.

PROF SNAPE: Okay, now I'm right.

MR JEFFREY: But the thing that may be of interest to you - in both those, for the music industry and for the film, television, radio and multimedia industry - at all levels we are endeavouring to embed creativity into the learning and training processes, even from entry level. You may wish to ask me, "What do you mean by creativity?" and of course that's an interesting question which I won't wish to take you off down that track except to say that very very broadly, creativity can include the exploration of innovation, the exploration of ideas, problem-solving, lateral thinking - which relates to problem-solving, conceptualising, the interpretation of scripts, visualisation skills, the uniqueness of different types of work, storytelling techniques, collaborative work practices.

That's not an exclusive list. It's not meant to be inclusive, but it's an indication, if I may, to you that we perceive that everybody, right from the word go, needs to have a creative instinct or have their creativity developed within them in order that they may do their work more effectively within the industry.

PROF SNAPE: I understand that but if one was switching through an industry which I know a little bit more about, and that is the university industry. Also if I was going in gradations and so on I would want everyone in the university to be having a creative element, including my personal assistant.

MR JEFFREY: Yes.

PROF SNAPE: Particularly my personal assistant. We would want everyone to be able to be exercising some creativity in the sort of way that you would be describing and one would be encouraging that from the gardeners right through to the vice-chancellor of the university. If I now say, "But which of those are in fact contributing to the real essence of the university as I would understand a traditional university - who is contributing to that university and to the things that we want to come out of the university?" then I'm afraid I'd have to say the gardener doesn't qualify and I'd have to say that my personal assistant doesn't qualify. I would say that the lecturers and the academic staff would qualify, the vice-chancellor might get in but most of the university administration would not, because they have skills which were equally applicable to other industries. That's the university.

We are in fact in this trying to seek out the activities in this industry which are in fact contributing to Australian culture and identity, and equally I'm afraid the gardener, etcetera, would not get into that. So creativity - even though they are being creative in another form - is not what we're looking for.

MR JEFFREY: Okay, except to say, professor, if I may, that whilst the outcome for the university is to produce a whole lot of people who have acquired certain levels of learning and scholarship, at the same time I believe that you can't take the gardener out of that mix because that gardener, in his or her own way, is creating a creative environment and using their own skills, knowledge, expertise and ideas to create an environment in which that learning and scholarship can best flourish.

PROF SNAPE: Well, it might be helping to create an environment but part of my early training was at the London School of Economics, which in fact was a far more creative environment than most of the universities in Australia, and the garden there consisted of a pot plant on a rooftop.

MR JEFFREY: I can't comment because I haven't had the experience of that institution.

PROF SNAPE: I cannot see that the gardener is an essential component to the creative element of a university.

MR SMITH: What I've heard this morning is that we're looking at what makes up the creative team in these projects, both film and television, and what actually contributes to the culture and the social elements of the program. I think there are some very easily identifiable positions that you've mentioned already - as in director and writers - and I think most people who view programs understand that. I note that

it seems to be difficult to understand how post-production and some other areas perhaps contribute to the cultural and social areas.

Because my background is sound production and I represent the sound industry, we fight very hard to try and get an awareness in the broad industry of what we actually contribute. It's not just a bunch of technicians pushing buttons to put something on a soundtrack. We feel very much a part of any project that we do and we like to get involved from the beginning, work through and see what we can contribute to this final project - just simple things that go through. Obviously music is a very obvious part - that there is an Australian interpretation of story through music which can be heard very easily and very clearly.

We get into areas that are much harder to define but I think really add to the overall fabric of the feeling and storytelling of projects - just simple things like a bird track which will have magpies and currawongs in the background, things that are more subliminal but the sound designer has said, "How can we make this an Australian story? How can we say that this is in Sydney or in Melbourne, Surry Hills or out in the Outback? We look at ways of trying to interpret what the performance is and how we can get that feeling and that story across.

I think we all know the American style of drama where there's the classic tyre screech and it's always the same - always in the same spot and always the same way. We'll hear a soundtrack and I think most people can probably close their eyes and identify an American soundtrack, even if you pull out the voices. There's a very specific pattern in the way that they do it. Similarly, Australians work on our stories in our way and it's much broader sort of brush strokes and things but they're very hard things to define as you go through specific projects and point out these elements.

If we get on to television, quite often a lot of the work in sound would be technical and that is fair enough; they are the people that are simply turning on a microphone and that goes out. But in many other areas of sound that's not the case. Simply in comedy, the laugh track is something which will again identify an Australian program. I worked on programs like Hey Dad, which were I guess very strong Australian cultural stories or at least a social comment at the time. We compare it to American sitcoms - not just the timing of the laughs, the timing of the jokes, but the way it's done. We've looked at implementing various laugh track boxes and devices in Australia, and there are companies in America that do that specifically. They go around and do all of the sitcoms. We've investigated doing that here but decided it won't work in Australia because it doesn't react the way that Australians react to the stories.

These are, I guess, subtle areas that when looking at the broad picture are very hard to identify but when you get into all of these areas - of course I'm just talking about sound production and sound post-production. We cover editing. Again they have a huge impact on the way the story is told, once it's shot and the director and the editor work together in a collaborative form to really tell this story in a way that they want to tell it. Quite often performances may not be the way that you want them to

be. The editor and director will work together to really tell the story, to move things around, to perhaps reshoot things, to go to sound and say, "We need to revoice this; we need to change the words, change the performance." The whole way through it is a collaborative process to tell this story.

MR SIMSON: That's actually useful background. Thanks very much. In fact that's one of the tightest anecdotes, if I could use that term, that we've had of actually helping describe what people mean by the creative in the context of creative tests, and we were discussing that with the previous participants. On page - actually your submission is not paged, so we'll have to go back to paragraph 2.1.1, then go over the page. Then go down to the paragraph which says, fourth or fifth from the top:

However, in 1998-99 there were dramatic shifts in other program types not covered by subquota but included within the overall transmission quota.

I just raise the issue here that we've been told by a number of participants that the problem with our recommendation in doing away with the 55 per cent transmission quota is that there is other, what they call Australian content outside the quota that's not included in the existing subquotas. Wouldn't it be preferable, if there are groups of genre emerging, that instead of just lumping them into the 55-plus packet, that you argued for other subquotas. At least you would have something that was better defined, just as you have a drama subquota and a documentary subquota and a kids' subquota.

If, for example - and I'm not saying this is the case but just hypothetically - if, for example, infotainment is a genre that's emerging that's highly popular, that you'd argue does contribute to Australia's cultural and social objectives - it's not included clearly in any specific subquota at the moment. Wouldn't it be preferable to try and identify new subquotas rather than having this catch-all 55-plus that to a greater or in some cases substantially lesser degree contributes to Australian cultural and social objectives. We can then have a better chance of being able to evaluate particular genre or particular content against something more specific.

MR JEFFREY: Yes, it may be possible to do that. I think I'm correct when I remember back to the Vincent report, 1962. I think in the recommendations there he attempted to address that question and made recommendations about having quotas - a number of hours for arts programs, a number of hours for everything you could name - you know, music and variety, the whole lot - and I think that when the initial quotas came in in the mid to late 60s it was as a general quota and allowed the networks themselves some flexibility in terms of their own programming schedules and choice and what they might purchase to fill those quotas and so on.

In a sense it comes down to balance. The subquotas came in later on of course in the early 70s when we realised that it wasn't working and we needed to be able to favour drama, documentary and so on. That's how those other - - -

MR SIMSON: Sure, but the 55 - - -

MR JEFFREY: But I think - - -

MR SIMSON: Sorry, go on.

MR JEFFREY: Just to finish off, and Stephen may wish to add to this, is that on the one hand you have the network saying, "We want more flexibility in the way in which we program and apply the quotas." At the same time we're saying, "Okay, that's fine. You can do that within the broad underpinning quota, the 55 per cent, but we want some specific - you know, three areas: children's, documentary and drama."

MR SIMSON: It's just that 55 per cent is so imprecise. There seems to be no size behind it - and if there is, please tell me. 55 per cent could be the right figure, 80 per cent could be the right figure, 25 per cent could be the right figure.

MR JEFFREY: If you're talking about that, I believe - and I have believed all my working life, which is about 40 years now - that we shouldn't be talking about Australian quota at all. What we've been fighting for all that time is to put the word "Australian" into Australian television. We should really be talking, like they do in other countries, about what component of the programming should be foreign. You could turn it all around on its head. We don't have that.

MR SIMSON: Please, can we just address the question I raised.

MR JEFFREY: Yes.

MR SIMSON: The question I was raising was this figure of 55 per cent - I mean, whether it should be 55 per cent or whether it should be 35 per cent or 25 or 60 or 70. Where's the science behind this 55 per cent?

MR SMITH: I think, just addressing the previous question of whether to go to subquotas to do things like infotainment shows, one of the difficulties that may occur - I know you're looking at the broader future of this - is that the terms like "infotainment" to me are actually a fairly new sort of genre. They've only been effectively around for a few years.

MR SIMSON: Sure.

MR SMITH: In a few more years' time the program-makers may come up with new styles of programs that fall outside of that subquota, again that have cultural and social significance, things like obviously the sitcom; we've got various documentary-style series on television now that may come under entertainment, may come under lifestyle and may come under documentaries. There's not a clear line on those. I personally would think it might be a little hard to define what all those subquotas are all the way into the future.

PROF SNAPE: Could I refer to the same page that we were just on, the bottom of it, the last two paragraphs. It seems to be that there is a concern of in-house versus out-of-house production and I think that in the UK actually, part of the regulations there require certain proportions to be out of house, and the concern there seems to be that it shouldn't all be in-house. Here you seem to be putting it the other way round and you are having concerns about it being out of house, which seems to me to be slightly - you would rather it be in-house, as I understand. As I read this paragraph you're suggesting that if it is done out of house, then that increases their likelihood that they will use foreign programming rather than Australian programming.

MR JEFFREY: Do we demonstrate a preference?

PROF SNAPE: You say, "Once in-house production is shed the networks are free to acquire what programming they desire from the market and that market is international." I read that to say that once they move it out of their own studio, they are no longer bearing the fixed costs, etcetera, that you refer to there; that in fact their options are opened up and therefore they're more likely to take stuff from the international market than to have it produced in Australia. That's the way I read that paragraph.

MR JEFFREY: That's correct, and my interpretation of that, if I may, is generally they will therefore purchase the cheaper product in the international market which won't be Australian.

PROF SNAPE: In other words what I said was correct, that you are worried about production being shifted from in-house to out of house because - - -

MR JEFFREY: No, unless there is an underpinning, the 55 per cent quota which will underpin the ability for the out-of-house productions to continue to both produce and sell to the local network.

PROF SNAPE: I see. So it should be read in the context of that 545 per cent.

MR JEFFREY: Yes, correct.

MR SMITH: Yes, we certainly wouldn't be saying that it should stay within the network production house because I think that is something that is changing quite rapidly at the moment, and many of the people that we are representing here today are of course out-of-house people and practitioners. I think where our concerns are that if the quota isn't there, programs like the entertainment and lifestyle shows like - again if we look at a program like Changing Rooms which I believe is a British idea which has been remade with an Australian flavour and took about six months to actually find its feet with an Australian audience - those sort of programs are made at obviously considerable cost here to produce, get on air and get an audience. Those sort of programs are done essentially outside of the network; they will have network components and perhaps the network overseeing producer but they will employ other people outside.

I think one of our concerns is that if this quota has gone, how the networks will view making programs like Changing Rooms which reflects our lifestyle and our sort of homes environment - whether they would then say, "Well, obviously the licence fee for the British one is a lot cheaper. We may package it and put an Australian presenter on the head and say, "This is in our series of Changing Rooms from international areas." We may look at the British series, we may look at the American series and maybe the New Zealand series. I don't know whether the incentive would be to in fact continue making the Australian series. Maybe just a small section; maybe just one out of four would be Australian.

PROF SNAPE: I see the point now. You can perhaps see as you read it, "Called me - - -"

MR JEFFREY: Yes, I apologise for that. We could have made it clearer.

PROF SNAPE: Yes. I wonder if we could go to paragraph 6 which is a very short paragraph. I think that we in our draft recommendations were agreeing with the thrust of what you've got there but what we were saying is that - well there were two things we said. First of all, there are some unintended consequences because it applies to the small as much as it applies to the large, and it's knocking out some mergers that everyone might be quite happy with but nevertheless it's going to knock - the current rules, knock those out, and indeed inhibit the small to grow to take on the large because of that, and that was point that we had. But secondly, we saw that it was anchored in the old media, and the very rules are attached to the old media and not looking forward to the new media. So we endorsed the spirit of those rules but said, "Let us be looking forward" and recast them and made some suggestions, as you can see, as to what should be done. Only after a number of things were done, then we said they were no longer the old cross-media rules

You don't endorse that approach which means that you are stuck with the existing cross-media rules reflecting the old media and with the problems of the inhibitions on the growth of the small players that it entails.

MR JEFFREY: We wouldn't claim, Stephen and I, to be experts in this area. But I think that if your provisos were able to be put in place, the recommendations that you're making prior to the change in the cross-media rules, I think we would be prepared to accept them. The whole media area, particularly in the electronic media, is changing so rapidly, and for mere mortals like us to keep up with it, we have got to admit to the fact that we're probably not as au fait with it as perhaps we should be.

PROF SNAPE: I think that if in fact one is looking to the future and one reads what we have got in that chapter, in that analysis, as being very much in the spirit of the existing cross-media rules but moving it into the new framework - well, to be fairly blunt, I suppose it's not very helpful for moving to that when we have a paragraph like that which says, "Stay where you are."

MR SMITH: We're not saying we oppose it 100 per cent, I think we're saying we're unconvinced at this stage because we're not sure where it's going, and I think the spirit is the correct thing to be looking at of what is trying to be protected here.

PROF SNAPE: Yes. You could see that we would be grateful if that paragraph had been rephrased in that other manner.

MR JEFFREY: Would you like us to rephrase it?

MR SIMSON: 2.3, please, pay television. You refer to what you say is double dipping. Then you say in the last sentence there - sorry, I had better read the whole previous sentence:

The legislation allows for double dipping, the programming to count on both free-to-air and pay TV. This effectively simply lowers the licence fees paid by commercial television rather than increase levels of Australian content.

Could you just elaborate on that?

MR JEFFREY: Well, we don't get any benefit in terms of increased hours of production and output.

MR SIMSON: Because that counts towards the 10 per cent on pay.

MR JEFFREY: Yes, and indeed to the standard on free-to-air, and yet they may both be contributing towards the cost of production.

MR SIMSON: And yet those films may not have been made, or that content may not have been made in the absence of there being two markets for it to be distributed on.

MR JEFFREY: That's possible. It's unlikely because the producers may have well found another way to find the finance.

MR SIMSON: Well, that's not what it says.

MR JEFFREY: Yes, I know, it's not saying that. The proportion of the contribution from the pay TV operator would be much less than what is generally offered in terms of licence fee by the networks.

MR SIMSON: Can I just point out on another matter - and this was also an issue in the SPAA submission earlier which we ran out of time on, but I will just refer to it in any event. That in terms of the figures that are contained on page 8 of the SPAA submission and the figures that are contained in your submission 2.1.1, referring to the recent joint AFC-FFC report, we noted earlier this week that in fact the basis on which that survey is being prepared this year is different to the way it has been prepared in previous years because it does not include in the drama element the

co-production content. The co-production content was included in the base in the previous years. When you actually compare like with like, there has actually been an increase of 11 per cent in drama content this year compared with previous years. Not a reduction as was released by in fact the AFC and the FFC when they made their report, and so we believe that the way that has been presented this year is misleading because the basis upon which the data has been prepared is different. The question that we then had of the AFC-FFC earlier this week, and we will throw to you, is what is wrong with co-produced content? Doesn't that contribute to what you people talk about; the critical mass of the industry and so on.

MR JEFFREY: It certainly helps, yes; there's no denying that. I wasn't aware that there was an 11 per cent increase.

MR SIMSON: When you include the co-produced drama which was excluded from the calculation this year when the AFC-FFC released its report, and they acknowledged that when we challenged them on that earlier this week.

MS LARSON: Can I rejoin this discussion because I was originally on it?

PROF SNAPE: You had better re-identify yourself.

MS LARSON: Susanna Larson, policy manager from the Screen Producers Association. I think one of the problems with the figures as we've gone through them with the AFC and so on, is that in this year because there was such concern about the state of the television industry, the AFC made a specific attempt when they redid their statistics to break down those figures as much as they can into Australian content, Australian productions, co-productions and foreign productions completely offshore. One of the reasons I believe that they did not use the co-productions as a separate category very often in the past is that they were a negligible amount of the total, and one of the reasons they wanted to separate it out this year was to show exactly what we've said, that even though you're showing an overall increase in production that production is coming from co-productions, not from Australian production which is going down.

As to the worth of it, I would say co-production treaties were made country to country for specific economic and job-sharing, to increase what we're talking about, about jobs. They were not necessarily made as cultural goals in mind. With the co-productions, it was an idea, for example Kings in Grass Castles - an Irish co-production - or other films where you could make things with bigger budgets that would not be affordable by either one country on its own or they had some creative synergies together. What is happening now, we're finding through the co-productions, is that they are seeming to infringe on Australian content that is showing on TV and as they were made as an industry mechanism, as I said, to make programs that might not have been made by one country alone, the concern is more about Australian content.

MR SIMSON: You use the word "infringe". A co-production, by definition, has a bunch of Australian people from your industry and a bunch of people from the same industry from another country. What we fail to see is why that is not necessarily beneficial to the industry; arguably it could even be beneficial to cultural and social objectives. How is that an infringement? What is it infringing on?

MR JEFFREY: We use the word "displace" in our submission, which is different to the word "infringe".

PROF SNAPE: "Displace" is even stronger, because that means that had that co-production not existed, it implies that it would have been done all by Australians; perhaps the more likely scenario is it wouldn't have occurred at all so, far from displacing, it may have in fact created - - -

MR JEFFREY: Yes, but as Susanna has just said, there is no cultural driver behind the co-productions in the same way as there is between wholly locally-produced programs. The driver, essentially, is that one of two entities coming together from two territories under the co-production treaty in order to get a program made.

MR SIMSON: That's fair enough. Sorry to interrupt - and you can interrupt me, if you like, but I'm having difficulty with this because what was actually the driver? I mean, how it came about and who cut the cheque is, I think, not relevant. What was relevant here was, number 1, this piece of activity - if we could call it a "piece of activity" that's occurring - may not have occurred otherwise; may, but may not have occurred otherwise, so it could well be incremental to activity in your industry. Second, by the nature of a co-production, it is involving some creative elements, is it not, from your industry? We've just had long discussions with SPAA and with the other people from your industry this week about why our recommendation with regard to elements of the creative elements test - we've had discussions with people who have challenged our recommendation on that.

I don't think you can have it both ways. Either the creative elements that go into these co-productions are contributing to your industry what you people call "collaboration", what you people call "critical mass" or they're not. It's like the discussion that was had earlier this morning with regard to so-called vertically-integrated businesses and whether they're good or bad. Now we're being told the co-production activities are not as good. There seems to be a lot of cake and eating it too in this.

MS LARSON: No, I think where the confusion is, is that we have no problem whatsoever with co-productions. They were always made as an industry measure to stimulate production and stimulate employment and that's fine. We're very pro co-productions for the critical mass arguments and the opportunities for employment and training, working on bigger budget pictures and so on. What has happened is within the definition of the creative elements test, some of these co-productions, through various contractual ways - this is where these words "subverting" and "displacing" - an example would be for example, Moby Dick, which was a telemovie.

Was it a miniseries or a telemovie? A miniseries. That was a UK-Australian co-production done under their treaty.

However, it was financed more or less completely by the US with an American star and it was orientated to the US market. This is where we're saying we need to either tighten the rules on co-productions so that they do not automatically qualify for Australian content.

PROF SNAPE: It qualified for Australian content?

MR JEFFREY: Yes.

MS LARSON: Yes, and that's the problem. Another example - I mean, we're not trying to point fingers here, these are just examples of things that are happening - is a series called Beastmaster, which is an Australian-Canadian co-production.

PROF SNAPE: This seems to come up all the time.

MS LARSON: I know, poor Beastmaster. These are also producer members that are members of SPAA, so we're not - as Adrienne said - you know, she's a member of a foreign-owned company. We embrace all producers; there is conflict within the industry. But with Beastmaster again, as a co-production, it's a Canadian-Australian co-production, it will qualify for Australian content under the current creative elements test and it will take a lot of hours that could be spent on something that is not a series with all the actors speaking in American accents.

MR SIMSON: But those people could have been unemployed.

MS LARSON: We don't mind that they're employed, we mind that that is seen as an Australian show.

PROF SNAPE: I think the distinction is between contributing to the critical mass, which you agree to - and we had, I think, a bit of discussion about that the other day and certainly it is increasing and therefore in fact contributing to that critical mass and helping to support it and so we have a little bit of worry that she expressed the other day when people were saying, "Well, the advertising, if that would go, the critical mass would collapse," whereas at the same time, we've got these co-productions going up which are helping the critical mass and one half seem to be forgotten in that argument the other day. But leaving that on one side, the distinction here is between the contribution to the critical mass and the contribution to Australian cultural identity.

MS LARSON: Exactly, and that's why within SPAA and within AFTA, we talk about tightening the creative elements test and what Adrienne Pecotic was talking about earlier - about the idea of Australian control and Australian stories - because we're not saying you can't say for example, do a fantasy show, but it would have

helped if it was an Australian-originated idea with Australian actors speaking in Australian accents.

MR SMITH: Again, with that example, all of the post-production of that goes back to Canada and the full flavour of post-production. As I was saying before, where a lot of the interpretation of the story and the whole final sound and feel of the overall product is all done in Canada and will have that North American flavour.

MR SIMSON: Excuse my ignorance on this, but are there not reverse examples of this, where you participate in a co-production? Just take a totally hypothetical example on Canadian soil, but the balance is round the other way and the product then comes back to Australia or to other markets with more Australian creative elements, so that there must be other co-productions that occur where the balance shifts the other way.

MS LARSON: We're perfectly happy for those to receive Australian content points from the network, if they qualify under all the creative elements tests, which is why we're saying it needs to be tightened, because some of these co-productions are "sneaking in", even though their primary market is, for example, the US cable market, and we think that that Australian content standard was written so that Australians could see Australian product on TV.

PROF SNAPE: Were they speaking Canadian or American?

MS LARSON: They were speaking American.

PROF SNAPE: They were speaking American, not Canadian. I gather you don't want the look and feel test, from what you said earlier - or do you?

MR JEFFREY: The look and feel test is that the Australian look - is that what we're talking about?

PROF SNAPE: I mean, a look and feel test would have to be identified. It's been investigated from time to time. I think many times in the discussions we've had on this subject this week, when one talks about tightening the creative elements test or they're speaking American and it doesn't look or feel Australian - you were talking before, Mr Smith, about how you got a magpie in the background so it had a look and feel Australian on it. A lot of American ones that I've seen, whenever they try to do something in Australia, they immediately switch a kookaburra on in the background.

MR SMITH: There are plenty of kookaburras in Tarzan's jungle as well.

PROF SNAPE: Yes. But does that mean that you really want - instead of having the check list and creative elements or who's involved in it, that you would prefer to have a look and feel test?

MR JEFFREY: No, not at all. I think that leads to some potential dangers, particularly in the area, say, of documentary - just to use documentary for a moment, we haven't really referred to that - is that we would not wish an Australian documentary maker to be precluded from going into Africa, for example, and making a documentary which may reflect an Australian's view of something which may be occurring in that area, in that territory and that continent. I think the danger is that a look and feel test might preclude that kind of exploration of ideas. We want an Australian view of the world to be reflected on Australian television.

PROF SNAPE: Okay. Well, I think that that sums it up nicely.

MR JEFFREY: Thank you very much, professor.

PROF SNAPE: Thank you very much for your contribution. You're a new organisation, I gather.

MR JEFFREY: Yes, indeed, only about three months old.

PROF SNAPE: Thank you for the birth of this baby.

MR JEFFREY: Thank you very much. This is our first official kind of public performance.

PROF SNAPE: I think we will have a very short break and resume at about 10 minutes past, which is about an eight-minute break, just to have a walk.

PROF SNAPE: Let's resume and welcome the Australian Screen Directors Association and we have a submission, which is just a number of dot points that you're going to speak to anyway, so if you would like to identify yourself in the usual way and then speak to the submission, thank you.

MR HARRIS: My name is Richard Harris and I am from the Australian Screen Directors Association. I'm the executive director. Just quickly, as well, we are also signatories to the AFTA submission which was put in prior to this and I guess I am here to follow up any questions or things about that submission which you might have for our members as well.

PROF SNAPE: Thank you.

MR HARRIS: Quickly, I mean, the main issue we were focusing on was the issue that while we welcomed the fact that the Productivity Commission - - -

PROF SNAPE: We are trying to improve the acoustics by shifting the seats somewhat but, as you know, it is very difficult to hear down there.

MR HARRIS: Right.

MR SIMSON: You may wish to move over here if you want to hear what is being said.

MR HARRIS: I guess the main issue of our supplementary submission was to say that while we welcome the fact that the Productivity Commission actually supported the cultural objectives of the act that the issue of critical mass - and I understand that has been addressed to some extent this morning - was also an issue we had some concerns with and we had it across a number of the other points. The only thing I wanted to just say quickly about some of the things that were raised this morning was that in terms of increased players in the market I guess when I was asked - at the last hearing we were asked about whether we thought if a fourth network or a fifth network was actually introduced whether that would have an impact on licence fees and whether that would actually lead to a rise in licence fees.

At the time I sort of said if everything else remains equal that may be the case and I guess I have gone away and had a little bit of a think about it. I haven't really done any major sort of analysis on it - just a number of discussions and consultations - and I guess my concern about that is actually while I think increased players may lead to increased demand for product it may not actually necessarily lead to an increase in licence fees. It may lead to an increase in product or an increase in demand of product at a lower end of the scale but the actual impact on licence fees isn't just a simple equation.

PROF SNAPE: It may in fact, you are saying, increase to a greater sale of product in terms of volume or value but not necessarily a higher price of it.

MR HARRIS: A higher price for it. As I was thinking, it may actually lead to an increase in employment for my membership, which would be valued by some but others would not value it because they would be getting paid at lower fees for doing things that they're not that interested in or don't find that valuable, so I guess the issue is really - I just wanted to make that submission.

PROF SNAPE: Greater quantity, not necessarily higher price.

MR HARRIS: That's right, yes, in simple terms.

PROF SNAPE: Yes.

MR HARRIS: The issue of creative elements is actually raised in my paper but I will follow on from what was raised earlier on in the AFFTA submission. It strikes me that - I mean, our issue really is that there may be ways of actually trying to work out where you actually draw the line. I was thinking about the academic institutions and where you would draw the line in terms of academic and teaching staff and administration, but where people like researchers and even students would come in that equation. In terms of the creative elements I think you would really have to say creative elements is basically those who have a creative contribution and I think the people on the AFFTA include some of the key creative people - sound, cinematographers, directors, writers, producers - but I also think that there is an issue of pathways and I think if you are looking at an academic institution where you are looking at students who are actually learning to possibly become academics or researchers, or whatever they might be, I think the issue of the creative elements for directors is that there's a lot of very clear pathways for people to become directors through a creative element line; people who are working as assistant directors who might not be considered creative by one definition of it, who are actually attempting to become directors and who are actually getting a level of experience on the studio floor, on the location floor, whatever it might be. So I think there's also those two elements towards the actual creative elements.

PROF SNAPE: Yes, I take that point and again one has a problem of separating I think critical mass from those who are actually doing the cultural and social things but I take your training point.

MR HARRIS: Yes. I mean, I think there may be a discussion to be had about where you actually do draw the line but I guess, at the moment, we would be very concerned from ASDA's point of view to actually simply say that the line ended with writers, producers and directors. I mean, certainly actors are obviously key parts of that but also all of the other guilds who are represented who are represented at the AFFTA. I mean, they're the immediate ones but I think there is actually a line below that as well.

PROF SNAPE: You're not arguing for the key grip to be in, are you?

MR HARRIS: I myself am not, although I am sure some may.

MR SIMSON: The what?

PROF SNAPE: Key grip.

MR HARRIS: There are also of course - there are pathways for cinematographers like clapper loader who are actually involved.

MR SIMSON: That is referred to in one of the submissions, I suppose?

MR HARRIS: Yes. I mean, I wouldn't myself here at this table actually decide where the line is going to be. I think the discussion can be had but, you know, I think - - -

MR SIMSON: We have asked SPAA to perhaps provide some more detail on this that might help us know where lines should be drawn.

MR HARRIS: Yes.

MR SIMSON: Could I just move for a moment to point 2 of your note to us with regard to advertising?

MR HARRIS: Yes.

MR SIMSON: The Australian Association of National Advertisers appeared before us this week and they said there was actually a shortage in Australia of directors and producers - they were I think specifically the two categories they mentioned - for making advertisements. They also said that the Australian industry was high cost and that notwithstanding the fact that the advertising quota is being exceeded - that is, it is over 80 - it is about 90 or thereabouts - they said the way it is actually administered or not administered, as the case might be - really there is almost a belief or a practice amongst agencies and the creative shops that source and order the content to be made to really go for Australian because in terms of somebody keeping a check of the percentage - it is done at the network end, as we understand. There's a score card.

MR HARRIS: Yes.

MR SIMSON: It's almost an ingrained culture thing that 80 per cent plus means really it could be 90, it could be whatever, but it has to be made locally.

MR HARRIS: Yes.

MR SIMSON: Could you just comment on those three separate points that were made, that is, shortage of - - -

MR HARRIS: Shortage of directors, yes.

MR SIMSON: Cost, and the third one is - answer the claim they have made about the way it is administered in practice.

MR HARRIS: In terms of a shortage - I mean that is something I certainly hadn't heard and it is certainly not - I mean, I know that numbers of directors in my association do a lot of commercials work but I certainly haven't heard there was a shortage and it may be a question - I'm not sure if you put it to the Screen Producers Association?

MR SIMSON: No, I'm sorry. I forgot to.

MR HARRIS: No, that's right. They may want to comment later on.

MR SIMSON: But it is open for people to go back and have a look at the transcript of what the Australian Association of National Advertisers said to us this week and if there is some elaboration which SPAA or others - or yourself wish to make we would welcome it obviously.

MR HARRIS: Yes. In terms of high cost, that is interesting in that a lot of - I mean the commercials over the last couple of years actually decided given that there was the change in regulation and that the commercials industry has basically been struggling for some years is that they have actually been accessing or attempting to access overseas markets and there has been some success with that and I would be very surprised if they are actually being able to attract work here, given the difficulties of time zones and whatever else it might be, but that actually does surprise me. I mean, I hadn't heard the issue of cost - that we were actually a high cost. I know certainly in the other areas of production we are very low cost compared to other production sectors in the world. Certainly in TV production we're just - I mean, I have just come back from being away and talking to people in Canada and LA and they're amazed by the low cost and the low licence fees we get here in Australia.

MR SIMSON: Yes, well, these are matters which you and colleagues may wish to elaborate on.

MR HARRIS: Yes. What was the third point, sorry?

MR SIMSON: The third point was really - I suppose the question we were throwing at the AANA was - the question we threw to the previous participant - what is the problem? The quota level is at 80 per cent but the way the figures are panning out it is in fact in excess of 90 per cent of advertisements are being locally made. "How is this a problem for you, the Australian Association of National Advertisers and your members?" They said it is to do with the fact that at the level of the agency - and indeed at the level of the client no line was taken, so it is almost assumed that it has to be made locally even though, of course, it is not a 100 per cent quota any longer. It's an 80 per cent quota.

MR HARRIS: Yes, that's interesting. I would be interested if they have actually watched TV lately because I can tell you that there's a lot of overseas ads that are made here and whether the actual definitions of - - -

PROF SNAPE: There are a lot of ads here made overseas, you meant?

MR HARRIS: Well, I'm not saying there's a lot. I'm saying there have - - -

PROF SNAPE: You have got the sentence the wrong way around. You said there are a lot of overseas ads made here.

MR HARRIS: Sorry, yes, you are right. There are. That's right, there are a lot of ads being played on Australian TV which are made overseas. You're right. The other issue is the extent to which that 80 per cent or 90 per cent actually means that ads are brought here from overseas and then are just essentially spoken over the top and whether the actual commercial regulations are actually being enforced properly is another issue. I know a lot of commercial operators or production companies have complained about the way the actual regulations are enforced.

MR SIMSON: It's a terrible phrase but in a globalising environment where marketers are looking to promote their goods and services globally and clearly to minimise costs and have one ad, one size fits all, as far as possible, why should a local production industry be in a position to dictate, to arguably distort, the business strategy or the business decision-making of the marketers of those goods and services by dictating to them that their ads have to be made or arguably have to be made in Australia for some quota?

MR HARRIS: The problem is that you're not actually dictating to specific advertisers and what has actually happened with the 80 per cent or 90 per cent or whatever it might be is that the actual top end of the market has been taken away. I mean, essentially the Coca-Colas and the Nikes and whoever it might be - the kind of global advertisers - are still being global. They're able to put numbers of their ads on Australian television because it is actually about the transmission time rather than actually dictating to specific advertisers. Interestingly, though - I mean, talking about dictating or not, I think some of the trends which may not actually deal with your question but are actually interesting to just note, are that a number of the advertisers like Coca-Cola and McDonalds are actually finding that they're most effective when they actually act globally and then act locally.

They actually are dealing with local conditions to suit their international marketing. They actually found that some of those generic ads that they did - where McDonalds did ads across the world, showing people eating McDonalds in a number of different locations - didn't work in a lot of different countries, so they are now targeting each country and actually working out the specifics of that market, what are the specifics of that audience, so that may not actually deal with your question about

why should it be up to us to dictate to them what they should actually be making but it is actually interesting that they are now moving towards that.

MR SIMSON: Although, as you pointed out a second ago, the bit that has moved since the 100 per cent rule was relaxed is what you call the high end.

MR HARRIS: The high end, yes, it certainly is and so far there has been and there is a lot of generic stuff that's coming in. I think it will be interesting to see whether that generic stuff does change or which brands change the generic but that really has been where the effect has been the most. People can still make you know Crazy Clints ads or occasional ads for Telstra or whatever it might be - - -

MR SIMSON: But I'm just wondering if the extent to which - what you're saying - you have just made a couple of points in the last couple of minutes. Firstly you have said that you believe that some global marketers will increasingly see value in acting globally - - -

MR HARRIS: Yes, and acting - - -

MR SIMSON: Strategising globally but acting locally and doing at least local versions of global ads.

MR HARRIS: Yes.

MR SIMSON: And you have also pointed out that the erosion as you see it has occurred at the high end.

MR HARRIS: Yes.

MR SIMSON: Isn't this just another way - if we put those two propositions together - of saying that at the end of the day if it is a good idea for a McDonalds, for example, to do a local ad - - -

MR HARRIS: Then they'll do it.

MR SIMSON: - - - they will do it and therefore you shouldn't need any quota.

MR HARRIS: Yes, well, it may be.

MR SIMSON: You shouldn't need any 80 per cent rule.

MR HARRIS: Yes, it may be that that's the case. The thing is that a lot of these thoughts that are happening about the "acting locally" - as I said, they don't address the issue of whether and why we should be dictating to them. I just thought it was interesting to note that they are actually doing it.

MR SIMSON: Just to summarise that point, if it's in the interests of the marketer and, you could also say, the local industry is good enough to be able to produce the ad, it will happen anyway; it shouldn't need an 80 per cent rule.

MR HARRIS: I think that the 80 per cent rule is still actually addressing a number of ads that may be below and I don't think you actually - - -

MR SIMSON: The number of ads that, sorry, may be - - -

MR HARRIS: Well, I think that the McDonalds ads may be dealt with by the actual fact that it is in the interests of the global marketer to do it, yes, but I still think that the 80 per cent rule is important, because that may be an ad which was made that didn't affect the 80 per cent rule - or not - but I still think that there needs to be a rule for ads that ensures that the critical mass is there, because commercials production, both for the work of people who are members of mine but also for commercials quotas, was crucial in establishing Australian content on TV and I think to lose it could actually - - -

MR SIMSON: But it's at 90 per cent.

PROF SNAPE: It's over 80 anyway. It's well over 80.

MR HARRIS: Yes. There's a big concern in the industry about the extent to which the figures are being enforced or being kept to, to the level that they are. I'm not sure if I believe that the numbers are actually that high. That's just a concern of ours. I don't have anything specific, but just on anecdotal evidence that we have - - -

PROF SNAPE: In view of that comment just then, you then don't really have very hard data, or you'd be suspicious of the data, as to how the things have changed since 92 when it was deregulated, because before then, while in principle it was 100 per cent, there were a number of exceptions as I understand.

MR HARRIS: Yes.

PROF SNAPE: And if one takes those exceptions and makes the calculation of what was actually done in Australia, the question is: has it changed much?

MR HARRIS: The Screen Producers Association might have something to say on that, because all I know is that the commercials production companies that I have talked to in the last number of years - this is one of the reasons they are targeting the international market: because it has been very tough here.

PROF SNAPE: It's probably a good idea to target the international market anyway, isn't it?

MR HARRIS: I agree. I think it is. They are actually using it as an opportunity, but what I'm using that as an example of is the fact that there has been an impact. That was really the gist of the question that was being asked.

PROF SNAPE: I think that it would be a good thing to see how the actual figures have changed over the years in view of the fact that there were the exemptions prior to 92 so that in practice it wasn't 100 per cent, and what has happened to the actual figures since that time.

MR HARRIS: Would it be useful for you if we managed to get some information from production companies and - - -

PROF SNAPE: We need aggregate data. The trouble is, working on any particular production company, you may in fact have got the one that was not too good or you may have got the one that was doing - - -

MR HARRIS: Yes, okay. Well, any aggregate data I can find.

PROF SNAPE: Yes, please. Do you recall that advertisement a number of years ago by Coca-Cola which showed someone on a surfboard - - -

MR HARRIS: Flying out of the plane?

PROF SNAPE: Yes, which was Australian.

MR HARRIS: Australian-made for a generic international market.

PROF SNAPE: That was my question. That was shown around the world?

MR HARRIS: That was. It happens very rarely. There was one in the 70s as well.

PROF SNAPE: So there are - I was going to say "some".

MR HARRIS: There are occasional ones that are, yes.

PROF SNAPE: There are occasional ones in which in fact the international market is being served out of Australia.

MR HARRIS: Yes, occasionally.

MR SIMSON: Why is it only occasionally?

MR HARRIS: I don't know. I wouldn't want to go into why that happens, but - - -

MR SIMSON: Well, you say your industry is cost-competitive.

MR HARRIS: Well, okay. It is cost-competitive. They have only really started globalising their production I think in recent years. There's a lot of production that happens from the UK that goes to South Africa. Part of the problem that Australia has, or a lot of the problem that Australia has, is just to do with distance.

MR SIMSON: But we've now got Fox studios here, for example, and for me to throw a specific question with regard to Fox, and not necessarily in the context of advertisements, to what extent does the establishment of a group such as Fox here - will that be actually beneficial to your industry?

MR HARRIS: It will be beneficial to our industry, again, in terms of a kind of critical mass thing. It doesn't have a lot of relevance to most of my members, although it does have to some specific ones. But again on the issue of what an actual offshore industry offers to you, it does offer employment and it does offer critical mass. This is the same issue that was brought up earlier about the co-productions issue. I mean, what is the issue that is there and where is the potential for displacement?

The potential for displacement for co-productions, for example, is not, "Would Beastmaster get up or not get up?" It's the question of, "If Beastmaster is bought" - it has been bought by a commercial station but as part of a package of a number of other programs - "would it displace other Australian programs that would have been made otherwise?" That's the issue. It's not actually saying if Beastmaster didn't get up as a co-production therefore it wouldn't have got up, therefore you wouldn't have had the program on Australian TV or people working. People might have been working but they would possibly have been working on something else.

Our issue with the co-productions is really to do with the fact that we want the program tightened up, is to do with the fact that co-productions have for the last few years been allowed access to the content standard. Previously, if there was an issue of one feature film that got up as a co-production, if there was a little bit of flexibility within that system you'd say, "Well, it's a feature film, it's got up. It may not necessarily displace a lot of other things. It's an hour and a half of programming. It's a chance for a number of people to get some work," but the problem has been in the last few years that it's actually been series programming that has been getting up and it's been series programming targeted at the American market and essentially funded out of the American market that we argued would have actually got up anyway. That's another issue, but the issue is then that this has been bought for a markedly reduced licence fee from the broadcasters because it's been funded out of America.

MR SIMSON: Can I just go back to the Fox studios example, because it's a major investment.

MR HARRIS: Yes.

MR SIMSON: It just seems to me you're almost sort of skipping over it.

MR HARRIS: Sorry, no.

MR SIMSON: It is a structural investment in this country. It is significant.

MR HARRIS: Yes, it is.

MR SIMSON: You seem to be indicating though that it's only of marginal benefit to your members.

MR HARRIS: It depends who you're asking. If you ask my members, yes, marginal.

MR SIMSON: Why is that?

MR HARRIS: Because the actual number of productions that get up is - I mean, the members of mine who will benefit are Baz Luhrmann, Alex Proios, a number of - - -

MR SIMSON: Big-name players.

MR HARRIS: The big-name players, and there's a number of TV directors who are working on a series that's in there at the moment, so there are a few people who actually benefit. But where I see the benefits of Fox studios is really in allowing companies such as D Film or other companies that act as facilities to be able to operate and keep a level of work coming through. I mean, that's just on discussions with them. But in terms of the rest of the industry, a lot of it is to do with actual employment of people who aren't actually members of my association. You'd maybe ask the question to the Media, Entertainment and Arts Alliance about that. Basically, in terms of employment, the most important stuff is the stuff that might come through TV production and that comes through Warners and it may come through the Paramount Viacom studio opening in Melbourne.

PROF SNAPE: I think that that's taken you through your submission. Thank you very much for that and for your contributions both on the previous occasions and on this one.

MR HARRIS: No problem.

PROF SNAPE: We will now move to the Media, Entertainment and Arts Alliance. We're having a very cultural morning.

PROF SNAPE: We're now turning to the Media, Entertainment and Arts Alliance and we welcome the participants from there. Thank you for your submission. If you would care to identify yourselves, each separately, for the transcript, please.

MR WARREN: My name is Christopher Warren. I'm the federal secretary of the Media, Entertainment and Arts Alliance.

MR WHIPP: My name is Simon Whipp. I'm the assistant federal secretary of the Media, Entertainment and Arts Alliance.

MS GAILEY: I'm Lynn Gailey and I'm the federal policy officer of the Media, Entertainment and Arts Alliance.

PROF SNAPE: Thank you very much. Of course, having sat up the back, you will realise that the voices don't carry all that well and we apologise, but these microphones are only for transcription and not for amplification. We have inquired and we have reorganised the seats and so we've done about as well as we can, but it is necessary to raise the voice. Thank you for the submission. Who is to lead off in speaking to it? Thanks, Mr Warren.

MR WARREN: Perhaps if I can make a few introductory comments, although I think that perhaps the more useful way is obviously through questions that you may have in response to our submission. I should say that we know, obviously, this is a different group than the ones who represented the alliance at the previous round of hearings at the commission.

PROF SNAPE: Yes. We notice that Anne Britton has gone on to other things I think.

MR WARREN: As has Tom Burton, who has also moved on as federal president of the alliance. Our view is that our submission, both the ancillary submission and the initial submission, sets out our positions fairly clearly. We represent, as you know, the people who are at the pointy end of this business, the creative workers in the media and entertainment industries which, if I can use the verb, converge through broadcasting, but our perspective is more than a crude industrial one, if I could characterise it as that. Our concerns are equally with not only there being jobs for our members but there being an industry framework for our members to work in, and our organisation and its predecessor organisations have over the years - I don't think it's bragging to say - played a pivotal role in the architecture since the early 70s that has enabled the growth of the Australian cultural industries and all the matters that have flown from that.

To a certain extent I must say there are obviously aspects of the draft report that we welcome and I think it's probably fair to say that broadly we welcome the intellectual framework of it, if you like, that there is a recognition of a need for there to be some regulatory support for cultural, creative industries through broadcasting legislation. To the extent to which we have disagreements or whatever, for you to

vary your findings in your final report, it goes much more to the detail, and I think that the consensus within the Australian community about the need for regulation, which I think is underpinned by the extent to which you can say there's any consensus in international trade regulation currently - I think there is nonetheless a broad international recognition that these sorts of industries play a very particular role within the national life of individual states, and that there does need to be some overarching structure to defend or enhance national cultural development. I don't really want to talk about the detail because obviously it's in our submission but I'm happy to answer questions that you may have.

PROF SNAPE: Okay, thanks very much, Mr Warren. Starting at the beginning I suppose is not a bad idea, and an early section is on media ownership and I notice that you say that you take the view that the current cross-media rules work. You then refer to some ideological purity - I'm not quite sure whether that was a shot at us or not, seeing that I thought that we had taken very much the spirit of the existing rules and tried then to say where we thought they weren't working, and then in fact to say the world is changing and the rules will have to achieve their objectives - will in fact have to change to meet those objectives in the changing world because the existing rules are in fact anchored in the old technology. I was rather worried and wondered why you said "ideological purity" but perhaps you weren't poking at us but in some other direction.

MR WARREN: No, I wasn't poking at you. I was poking at the media companies, I guess, more than anyone else.

PROF SNAPE: And they have ideological purity?

MR WARREN: I would actually say they have a mask of ideological purity over strict commercial self-interest and I'm sure they'll even admit that if provoked. I do want to challenge a bit this view though that we're dealing with old technology. I think it's actually getting ahead of ourselves a bit to say that these sort of dominant mediums - print, television, which are the two key mediums - are still not the dominant mediums and that they won't continue to be the dominant mediums for some time. I note the recommendations that you've made and I can accept that they're perhaps a more elegant way of dealing with these issues than the current cross-media rules but I just can't get away from the fact that the cross-media rules in relation to newspapers and television do work.

There has been a break-up of ownership since 1986, not just at the national level that tends to get all the publicity - and whenever there's any mention of this obviously the next paragraph is always what's going to happen between Fairfax and the Nine Network - but it's also been very important in a lot of local communities. You look, for example, at a community like Launceston - to drag something out of the air a bit - where prior to the sort of shake-up of ownership in the late 80s there was rarely a media voice in Launceston other than the ABC. That was the pattern in a lot of regional areas and I think the introduction of the rules has worked to ensure that those two dominant mediums have operated under separate ownership. As a result I think

there has been a divergence in the sort of outlets and the views and the comments, and I just think we should be reluctant to play around with something.

MR SIMSON: Mr Warren, just before you go on could I just interrupt you there because we're not advocating that we play around with anything. We're very precise in the way we have couched our recommendation with regard to any change in the cross-media ownership rules, and indeed we also have made it clear that, if you like, conditions have to change before they change. We say that there needs to be removal of regulatory barriers to entry in broadcasting together with the availability of spectrum for new broadcasters. So we're not saying that everybody is using online at the moment. We're not saying there's a great diversity of other sources at the moment. That's implicit in the way we couch that.

We then say also there needs to be abolition of restrictions on foreign investment, ownership and control in the BSA - we've noted your concurrence with the thrust of that - and finally amendment to the Trade Practices Act to provide for a media-specific public interest test to apply to mergers and acquisitions. Only then the cross-media rule should be removed, and we've put no time on that. We're not saying that that needs to happen tomorrow or the year after or even in 10 years' time. We're only saying when those three - in fact there are four conditions in that when you take them together with the availability of spectrum for new broadcasters. Only when those four conditions are met should there be a change to cross-media ownership laws.

We've seen that as a more desirable way of going than taking, if you like, the thrust of your recommendation, which is do nothing because we've got something there and if it's broke, don't fix it. We've said conditions - that the world is changing and we've attempted to come to grips with that. I suppose it hasn't been terribly helpful to us in trying to come to grips with it when there are groups such as yours saying, "No change," and are not even attempting to countenance the preconditions in your mind. You may agree with some of these, you may disagree with some and you may have others, and we'd like to hear them. It would be useful for us to hear from you what would be your preconditions for change - whether these are enough or you want to add another four - so that we can actually understand at what point in your time could the cross-media rules be removed because our terms of reference for this inquiry are pretty precise as to the way need to conduct the inquiry.

The terms of reference - and we've been reminding a number of people about these - are pretty precise within the Competition Principles Agreement, which specifies that:

Any legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives can be met only through restricting competition.

MR WARREN: But in a sense are there two questions here? The first question is what is the most - I know that in the report there's obviously a recognition in the

report of the need for there to be diversity of ownership or diversity perhaps where there's no - - -

PROF SNAPE: Diversity in all its dimensions.

MR WARREN: Yes, that's right.

PROF SNAPE: Including ownership.

MR WARREN: Yes, that's why I withdrew any qualification I put on the noun. Then two things flow from that in a policy sense. The first is how do we ensure the maintenance of diversity or the enhancement of diversity in the world here today. Then the second question is what do we do to ensure that a pattern of diversity is maintained? Those two things may be very different. I can see where you're going with the recommendations and, as I said earlier, I think it may be a more elegant road to attempt to get to the same end. I guess the problem that we have is that we have a set of rules currently - they may be blunt, they may be ugly, they may be a lot of things but they do get us to the point where we think, and also we think a large part of the Australian community thinks we should be - that is, that there should be more, not fewer.

PROF SNAPE: You gave before a particular example and that's always - we try not to give particular examples as much as possible, for obvious reasons, but let me give you another example. Under the current regulations Telstra could buy a channel. They could also, of course, be very big in datacasting. They could also be very big in the Internet and they could have major positions - - -

MR SIMSON: They could buy Fairfax.

MR WARREN: That's right. Not all at once but - - -

PROF SNAPE: Well, they could buy Fairfax or a television channel. They couldn't buy both.

MR WARREN: Yes.

PROF SNAPE: Let us suppose that it is that scenario. There's nothing in the cross-media rules to stop them doing just what I have said.

MR WARREN: Yes, that's - - -

PROF SNAPE: Nor would there be necessarily anything in the Trade Practices Act, as it stands, to stop them doing what I said. As I say, I don't like to use specific examples but whereas in the way that we have recast the rules and suggested that they be done, and with the definition of "media" which in fact embraced those new areas, in fact such acquisitions would have to pass the test.

MR WARREN: Although from a public interest perspective what's the real difference between Telstra owning a newspaper and owning or having a 50 per cent share in the dominant pay TV industry.

PROF SNAPE: You're just reminding me that they have got that interest, so anything that I said would be added on to that, and so what I am challenging you to say is would the alliance be comfortable with such a set of acquisitions by one company, and let's leave Telstra out and say that it was in fact across all of those in a very very big way because the current regulations would permit them to do it.

MR WARREN: But I think it's clear from our submission that we're not comfortable with it. I think our view is that there is a strong argument for a cross-media, to use that phrase - or a form of regulation that divorces content from delivery; that given the change in delivery systems which is happening perhaps not as quickly as it may have seemed, is that whether there is - I mean there is a strong argument for saying you're either in the delivery business or you're in the content business. That I think would do a lot to provide diversity because if you're in the delivery business, obviously you want to be delivering as much as possible, or in the content business you want to try and monopolise the - - -

MR SIMSON: But Mr Warren, that flies in the face of what we're seeing in America, what we're saying in Australia: the major media conglomerates merging with telcos, merging with film distribution businesses.

MR WARREN: I'm not sure that's actually right. I think over the past five years there's been - if you look at the corporate strategies of the big players on a global scale, I don't think there is a clear strategy.

MR SIMSON: Well, can I suggest you take a look at Channel 7's submission, which is being released later today, which in some detail outlines this vertical integration that's occurring, and also take a look at - I think it was the SPAA submission earlier this morning that also documents in some detail the aggregation that's occurring amongst delivery - against content generators, delivery systems and so on.

MR WARREN: I'm aware of the difference. You know, there's the Sony software-hardware model. News Ltd is actually an interesting company to look at. I accept that examples are not necessarily indicative of the world but News Ltd in some ways has been going the other way. News Ltd was a company that three or four years ago was precisely going on that model. It had the deal with MCI. There was then a tie-up between MCI and British Telecom. It's now gone the other way and walked away from the little close relations with telcos in Australia. Although they're still in partnership with Telstra there's quite a lot of tension within that partnership and I think there's a lot of predictions that that won't last but, in a sense, that reinforces my point that in terms of providing diversity in the new medium - and I think that is in some ways a separate question to how we provide diversity in the current medium - I think that that vertical integration between telcos and content systems is a bad thing. I'm not as convinced that it is a universal model and I think as much as I hate to hold

News Ltd up as a model corporation, that is actually an example of a company that is going in another direction.

MR SIMSON: Just so we are clear on this, the MEAA is saying there should be a regulation which would stop the merger, takeover by a telco of a media company in Australia?

MR WARREN: Yes. Why not.

MR SIMSON: Okay, that's good. I just want to clarify what your policy is.

PROF SNAPE: And you would go by that rather than having more effective third party access regulations?

MR WARREN: I think my personal view - and I think it is our view - that is you start from the principal position that in a sense one of the paradoxes of the new technology is that it actually does enable a greater concentration at the delivery level and greater diversity of the content production level that that is a way of dealing with that. There are other ways of having some impact but I just think that would have the greatest impact. Having said that, I don't walk away from the difficulty of it, given the corporate tying up that is already going on.

PROF SNAPE: So you would have two strings to this bow. One is that you would have a restriction on vertical integration.

MR WARREN: Yes.

PROF SNAPE: However, as you acknowledge, it may be very difficult to specify a break because it's not exactly the same as electricity generation and transmission.

MR WARREN: No.

PROF SNAPE: And, secondly, where there are a limited number of pipes - to use Prof Hilmer's term - you would in fact have more effective access regulations of it.

MR WARREN: Yes.

PROF SNAPE: So you would want both of those.

MR WARREN: I must say that sort of ties - maybe I am reading what I want to read in your submission. Your recommendation at 4.1 about dividing up basically transmission licences and broadcast licences - - -

MR SIMSON: But really what you are saying is that the cross-media ownership rules should be extended to include telcos?

MR WARREN: I think the cross-media rules as they currently are work in terms of the technologies we know of now. If you want to look at a structure to make it work for what we currently believe the new technology or the new technological means of delivery will be, which is pipes, then that's a way of providing diversity in that environment.

MR SIMSON: Could we just go to 2.4, please, where you say - and this is to do with the consolidation which is occurring around ownership - that expanding the number of licences able to be held in a single market would actually reduce diversity in news and current affairs information. Could you just elaborate on that?

MR WARREN: What the evident state is in commercial radio - and I think the evidence is quite clear that there has been in the past decade a really substantial - in many cases almost a withdrawal from news and current affairs presentations in commercial radio and what has tended to happen is that it has been a treatment of it as an input, if you like - creation of a single input pool within a network or a group of stations that then provides the programming for each of the networks, and I think it is our view that although if you own five stations in a particular range then obviously you are going to be targeting them with different segments of the market. News and current affairs will just be a similar sort of news on the hour, which I must say is a bit the way the ABC operates, although they do vary their news marginally between some of their outlets.

MR SIMSON: It has been put to us by Southern Cross Broadcasting, for example, that in the absence of - and this has already occurred - a network not being able to operate one radio station - that rule is already in place - that some of these radio stations would have gone broke or just wouldn't have sustained and that they are quite different formats. You have got a news talk and you have got a music format, so it is arguable the extent to which the issue of news and information is even relevant with regard to what we recommended in that regard because we weren't seriously suggesting that a music format would necessarily have the same devotion to news as a 3AW, for example.

MR WARREN: To be honest - I think this is reasonably clear in our submission - I think we do have a bit of an ambivalence about that for precisely that reason. I think there are - it does cut a bit both ways. It does mean you get people competing - sorry. You do get stations sort of targeting particular parts of the market, for example. There is that price you pay no matter what happens to news and current affairs, but I think it's right. I think in a lot of ways commercial radio has been one of the - or the decline of commercial radio and the decline of the resourcing of commercial radio - very bad things that has happened in the Australian media over the past decade and, indeed, with very few exceptions and, despite it all, 2UE being one of those honourable exceptions, there is already, it is correct to say, very little investment in news and current affairs by commercial radio at any level.

PROF SNAPE: I think it's two in Sydney, one in Melbourne.

MR WARREN: Yes, that's right.

PROF SNAPE: So nothing is going to decrease that very much, one wouldn't have thought.

MR WARREN: I think economics will continue. I fear that the economics of running commercial radio will mean it will continue to decrease but I hope I am wrong.

MR SIMSON: Without revisiting the debate we were having earlier with regard to the cross-media ownership and our recommendations, could I nonetheless ask you just to comment specifically on the recommendation we had as part of a larger recommendation for a media specific public interest test? If we could just isolate that for a moment?

MR WARREN: Yes, sir.

MR SIMSON: And let's not revisit the debate we were having on it. If we just isolate that and if we could have your thoughts on that test and in particular any guidance you can provide us as to how it could be made to work.

MR WARREN: To be honest, if there were to be a move from the cross-media rules - without resiling from our ultimate position - then obviously there would need to be - and it was to end up with the Trade Practices Act and the ACCC, which is obviously the trend to put all forms of regulation up to the ACCC - an incorporation of those what you might call "cultural principles" in the act. I don't think there is any reason that that can't be done. It is done elsewhere. Although I can't think of any off the top of my head but I know it is done elsewhere.

MR SIMSON: In the UK there is a similar - - -

MR WARREN: Yes. Certainly our view would be that - and we make this comment in relation to foreign ownership - you want it to be sort of arm's length removed from government obviously. You don't want the judgments to be made by government either in the way they are made over foreign ownership and the print media currently or indeed the way they are made, for example, under the - in terms of ministerial reference to the Monopolies Commission in the UK. I think it is important obviously that the commission has a clear view and I suspect that most governments would actually prefer that in a lot of ways, as well. I guess it depends a lot on the wording of it and how you structure it.

MR SIMSON: When we last met in Melbourne at our last hearing because you represent the pointy end, as you put it, of journalists and other creative people, it would be helpful to us - I understand within the qualification of where you stand on the greater cross-media, so have no fear you are compromising your position on that - - given you have the operatives if you were able to give us some guidance on this. I mean, we are trying to get our heads around, rightly or wrongly, how a media specific

public interest test might work, and it would be useful if we could have some input from the MEAA within the boundaries of your overall position as to what you would want to see in it and how it would work and what your experience is overseas and the views of your people on it, if that were possible.

MR WARREN: Yes. I don't think we would have any difficulty in that overall framework of making comments on - - -

PROF SNAPE: When you're giving some thought to that subject, too, I wonder if you might take up the challenge which you have - take up yourself the challenge which you have got in paragraph 2.3 in the second paragraph, where you say, referring to the - it's the audience reach, and you say, "Agree that further evidence should be sought on the effect of this rule."

MR WARREN: That was your recommendation, I thought.

PROF SNAPE: We are seeking further evidence, yes. That's right.

MR WARREN: I must say my view on that is once the 87 act went to 43 per cent or 45 per cent or basically had an audience - once the government made its announcement at the end of 96 that it was going to enable an audience reach that basically replicated the Sydney-Melbourne dual licence, I have always thought that any ultimate restriction on audience reach was farcical because you know you control Sydney-Melbourne. You control the network. If you control the network, well, that pretty much dictates what happens.

PROF SNAPE: Okay, thank you.

MR WARREN: So my short answer is, I doubt there is evidence on the same.

MR SIMSON: Mr Warren, could we also again - perhaps you could take us on notice, and this is a question that we have - or a request - put to SPAA and the Film Commission and the directors and other groups at the creative end that have been appearing with us. We were also particularly interested in trying to get our heads around why the creative elements that we have recommended should be deleted from the creative elements test are indeed creative.

In other words, we have made a recommendation in our draft with regard to removing some elements of the production process from the creative elements test - and we have been challenged on that - and again in the context of our terms of reference it would be useful if you were able to provide us with specific guidance as to how those particular tasks which we identified as not being creative - how they are in your view creative and therefore contribute to the social and cultural objectives - - -

PROF SNAPE: Creative in the cultural and social context. You heard the discussion earlier, I think.

MR WARREN: Yes.

PROF SNAPE: I don't think there is any need to go through the discussion again unless there was anything specific which you thought was wrong or that you wished to add to it but rather you might reflect upon it.

MR WARREN: Sure.

MR SIMSON: Simon or Lyn may want to make a quick comment.

MS GAILEY: We have touched on it in the submissions, as I am sure you are aware, but you would like us obviously to go further than - - -

PROF SNAPE: On the submission I thought that it didn't keep its eye all the way through on the social and cultural aspects. I thought that, yes, it was talking about the critical mass that was necessary and I could see it in that context - the argument there - but I thought as you went through the various elements in those couple of pages that you went through there - I didn't think it was focused enough on the cultural and social aspects of each in each of those stages. It seemed to me a much better argument for critical mass than for each of them giving the cultural and social - if I could make that comment on it.

MS GAILEY: Certainly.

PROF SNAPE: That's the trouble with dolly grip, I must say, in that context, but that's just beside the point.

MS GAILEY: I'll give you a very good example of the creativity of a dolly grip, and that is a film called Strictly Ballroom. If you go and have a look at that film again and look at the opening sequences of that, you will see a film that is constructed in all of its moves as a waltz. In very large part it was the creative contribution of the dolly grip.

PROF SNAPE: Okay, I can get that, but I still come back I think probably to - let's not go through it all, but you might reflect on the university example again and how my PA has done great things to assist me but she hasn't been the academic. I think it's the same thing.

MR SIMSON: Could I just take you, please, to 3.3. You refer to "an unpublished survey conducted in November this year of picture editors and post-production facilities". Is there more detail we could have on that or is that basically the guts of the findings of the survey?

MS GAILEY: I can go back to the person who conducted that survey and get greater detail.

MR SIMSON: Would you mind? That could be useful data for us to have a look at.

PROF SNAPE: As I have mentioned before, we are data-hungry because we like to be able to substantiate the various arguments as far as we can so that they're well rooted in figures and facts and analysis.

MR SIMSON: We don't want to go into any detail on this at this point, but you have of course appeared before the ABA inquiry on 2UE matters, have you not?

MR WARREN: Yes.

MR SIMSON: In the context of our draft recommendations on codes and compliance - and we just go to what you've had to say about that; that's at number 4 - again, it would be useful in the context of the Broadcasting Services Act, which is obviously our terms of reference, if you could encapsulate whether it's sourced from the ABA inquiry or not. If you could comment specifically on our recommendations with regard to these matters, because others have disagreed. Some have agreed and others have disagreed with the thrust of our draft recommendations as they relate to change in the codes and compliance. We refer you specifically to some points that were made by Mr Jock Given earlier this week and it would be not unfair, I suppose, to say that notwithstanding what's been said at the ABA inquiry and what we said in our draft, he argued that we had to be cautious about tightening the grip on regulation. We'd be very interested from your perspective to get feedback from you specifically on our draft recommendations, because they are important.

PROF SNAPE: In that chapter we were addressing things in the generality and, of course, not the inquiry in the specifics. But we're looking at complaints mechanisms as well for misrepresentation or errors of facts and the correction of them and matters such as that and, of course, the ethical standards, which your members would be very interested in I'm sure, and the way that they could in fact be incorporated into codes of practice, etcetera.

MR WARREN: Yes, we could certainly do that. My only reservation is that I think once this 2UE inquiry is completed we will actually have a much better idea of what the ABA itself thinks its powers mean.

PROF SNAPE: Of course.

MR WARREN: It's difficult to make a judgment in advance of that. I guess we have some concern - actually, we're a bit schizophrenic about anything to do with content regulation because of the various freedom of speech issues that flow from that.

PROF SNAPE: Yes, I can see that. That is the tension.

MR WARREN: Yes.

PROF SNAPE: That was the reason in a sense why we did what you have endorsed: suggest that such a statement be added to the objectives of the act to draw attention to that tension.

MR SIMSON: And one of the reasons we took that path was, in a situation where clearly we were making some recommendations in a converging media environment to deregulate structurally, we saw the need in terms of protection of consumer interests to perhaps tighten or sharpen some regulations in some areas.

MR WARREN: I think that's important. I think within the history of broadcast regulation - I suspect not just in Australia but probably everywhere except the United States where there's the First Amendment underpinning it - there is often either an assumption, "Yes, of course that happens," or just an ignoring of it, and I think it's such an important part of the overall framework, whether stated or otherwise, that it should be stated.

PROF SNAPE: That perhaps did not take as long as you and we might have anticipated and that's because, of course, a number of the issues were already canvassed earlier in the day. That doesn't mean that your contributions to them were not very valuable, of course. We'd already read your submission before we discussed those issues with the other parties. We thank you very much for that and for the effort that you have put into this, and that your predecessors did too. It's been very helpful.

I should say before we break, however, that Mr Herd wishes to make a further statement and we could have put him off until the end of the day when I call for general statements, but insofar as we'll be on perhaps slightly different matters this afternoon, it might be better to have his statement now and to thank you very much for your contribution.

PROF SNAPE: We're now having a further statement from Mr Herd of the Screen Producers Association. Perhaps if you could identify yourself just again, because these tapes get divided up amongst various transcribers and it may be that the person who gets this one may not have heard you earlier.

MR HERD: Okay. Thank you, professor. Nick Herd, executive director of the Screen Producers Association. Thank you for your indulgence in allowing me to make the statement at this stage. It won't take very long, but I did want to get onto the record an immediate response to the assertion that was raised earlier in the questioning of the Screen Directors Association that I understand first arose - - -

PROF SNAPE: By whom? By the Media Alliance or - - -

MR HERD: No. I'm coming to that.

PROF SNAPE: It's just, as they may be about to leave, it might be advisable if they - - -

MR HERD: No, it's not the Media Alliance.

PROF SNAPE: It's not. Good. Thank you.

MR HERD: Mr Simson raised it in his questioning of the Screen Directors Association in relation to television commercials and I understand from his comments - and I haven't had the benefit of looking at the transcript - that it came up the other day in evidence from the AANA. It really goes to the question of what I understand is the assertion that the television commercial production industry in Australia is of high cost and inefficient in comparison to the rest of the world.

MR SIMSON: Just so that we're absolutely clear on this, that was not my assertion.

MR HERD: No, I know that.

MR SIMSON: I was merely giving Mr Harris the opportunity to comment on what the AANA had said.

MR HERD: Yes.

PROF SNAPE: We can check from the transcript the precise words that they had, of course. We were speaking from memory.

MR HERD: Yes, I understand it wasn't your assertion and that you were just reacting to earlier evidence. What I wanted to say was that from the information that we have - and we will elaborate on this further in our additional submission - our estimate is that in comparison with North America and Europe the cost of production in Australia is about 20 to 30 per cent cheaper than those areas. This is not just

because of the exchange rate differences, it's also because the elements of production such as labour, stock and equipment are cheaper.

I give you a couple of examples. It's my understanding that in the UK the going rate for a director of photography working on a television commercial is about 1000 to 1300 pounds per day, whereas in Australia directors of photography working on commercials are paid \$A2000 to \$A2500 per day.

PROF SNAPE: The first figure was?

MR HERD: 1000 to 1300 pounds per day, which is about \$2300 to \$3000 per day. Similarly, in the USA directors are paid \$US10,000 to \$US15,000 per day, which takes them close to around 15 to 20 thousand dollars per day, whereas in Australia the going rate on commercials is around 7000 to 10,000 dollars per day. The other thing too about Australian crews in comparison with Europe and North America, and particularly North America, is that they are smaller crews and they're much more flexible and adaptable. For example, in the US the demands of the unions there require higher numbers of crews. A particular example of that is that we don't have the Teamsters Union in Australia, which operates in America and requires numbers of people to drive trucks and crew to and from locations. It's also my understanding that the state and federal taxes are higher and that the on-costs in areas such as insurance are higher in the US.

These are all the things which contribute to us having a lower level of production cost in Australia, which makes us very competitive, and one of the responses of that sector of the industry to the partial deregulation that occurred in the 90s was to try and benefit from that competitiveness and go out and seek offshore television commercial production to come to Australia. That's been an initiative that we as an association have been pushing for some time and it is having benefits in the same way as we're seeing it in the drama industry. There is an increase in offshore television commercial production. It's difficult to put figures on that. I noted before you said that you're data-hungry. We are data-hungry as well because the collection of data in this industry is not as good as it should be and we're having to rely on collections by the Bureau of Statistics which are some years behind where we are now.

The other thing I just wanted to say in relation to competitiveness is that not only are our members seeking domestically originated television commercial production and trying to attract offshore commercial work here, but they are also going out internationally and producing in Asia and in North America.

PROF SNAPE: Thanks very much. With that we will now conclude the morning session and we shall resume at 1.30 with the Federation of Commercial Television Stations. Thank you very much.

(Luncheon adjournment)

PROF SNAPE: We resume our hearing and we welcome FACTS, the Federation of Commercial Television Stations, and we would ask the representative from FACTS to, in the usual way, identify himself for the transcript, thank you, and of course to remind you that once again the microphones are not amplification but only for the transcription.

MR BRANIGAN: Thank you, professor. Tony Branigan, general manager of the Federation of Australian Commercial Television Stations.

PROF SNAPE: Thanks very much, Mr Branigan.

MR BRANIGAN: I should add I'm representing all stations on many of these issues but not representing the 7 Network on, in particular, the issues concerning digital television.

PROF SNAPE: Okay, thank you very much for that introduction and clarification, so you are representing the regional stations such as WIN and Prime on all issues?

MR BRANIGAN: Yes, indeed, chairman.

PROF SNAPE: Thank you. Just as another preliminary matter, you did indicate that there are a number of attachments. Somehow they haven't come through. In fact, the only attachment that's come through is an advertisement for PACE.

MR BRANIGAN: Yes, indeed.

PROF SNAPE: Even that one, I'm afraid, has come through on the fax so that I'm sure it's a marvellous device but you can't see it in the copy that we have got, but you do refer to survey, for example, and - - -

MR BRANIGAN: Yes, indeed, chairman. I apologise for not including that. I have two copies here to provide to the commission.

PROF SNAPE: Thank you. I wonder then, Mr Branigan, if you would like to speak to the submission.

MR BRANIGAN: I don't really want to say anything as preliminary comments, chairman. I am happy just to respond to any questions you may have on what is a fairly abbreviated submission. Obviously it deals in a fairly succinct way with issues that may well need to be unpacked a little so I'm happy to do that.

PROF SNAPE: Thank you very much. There is quite a bit of detail on pricing and with respect to high definition television and so on that we can leave on one side for the moment, I think, but just for clarification FACTS are advocating 1080i with 1900-odd pixels per line. What is the exact number?

MR BRANIGAN: 1980?

PROF SNAPE: Yes, pixels per line.

MR BRANIGAN: Sure, that's the intention of certainly the Nine and the 10 Networks and I understand the regional groupings as well; that when broadcasting high definition they would choose the 1080i format, so-called 1080i format. Whether or not it's mandated in any way, and the reason for that is essentially picture quality, and also I guess the very significant related practical considerations that 1920 by 1080 is the international production standard, and most origination equipment, cameras, and tape-recorders, is produced in 1080 rather than in other - - -

PROF SNAPE: It is produced in 1080p not 1080i, is it not?

MR BRANIGAN: I'm sorry?

PROF SNAPE: It's produced in 1080p, not 1080i, is it not?

MR BRANIGAN: No, largely 1080i. 1080p is useable for 24 frames a second for movies. It's not practical at the moment to broadcast in 1080p. It simply consumes too much band width.

PROF SNAPE: But nevertheless the international standard being adopted by film-makers, and we were told the other day by other producers, is 1080p, not 1080i.

MR BRANIGAN: That's not entirely correct. It's 1080 by 1920 and there are a number of frame rates built into that, and it's available then for transmission as 1080i or 1080p.

PROF SNAPE: Or 720p or whatever.

MR BRANIGAN: Indeed. It can be converted to other formats and to the extent that you're prepared to put up with possible loss of quality as a result of format changes, that is quite practicable.

PROF SNAPE: We might come back to that but I wonder if I could begin with a very basic question that addresses, I think, a great deal of the information which you have here, or at least goes underneath it, if you like, a fundamental question. If I can put it as a proposition, two propositions, it would seem to us that if there is no price difference or a very small price difference between standard definition and high definition, then there's no need to mandate high definition. If there's no price difference the sets will be designed automatically so that they take both of them; that they take the range. So the first proposition is if there is no price difference there is no need to mandate high definition.

MR BRANIGAN: Agreed.

PROF SNAPE: The second proposition then, if there is a price difference, and a significant price difference we're talking about, then mandating high definition will slow up the conversion and it will slow up the adoption of digital and therefore on the analysis that we have is bad policy. It would seem to me that that is a fundamental statement, a logical statement, that underlies it all. There are only two possibilities. One is that if it is no price difference or very small, there is no need to mandate high definition. If there is a significant price difference then mandating high definition is going to slow up significantly according to our analysis, and many, many submissions, significantly slow up the adoption of digital television.

MR BRANIGAN: Sure. It's perhaps worth spending a moment discussing what's meant by mandating. This is a word that has been used very loosely, particularly by the reptiles of the press, over the last few months. As I understand it the only mandating that's involved is the requirement that's envisaged in last year's legislation that there will be in effect a quota on broadcasters for high definition television. In other words they will be required to provide a certain minimum of high definition programming.

PROF SNAPE: That is our understanding and that's the sense in which we have interpreted it in the draft report. That's our understanding of the term of mandating.

MR BRANIGAN: Sure. That's certainly an accurate description of it. Our view - we have been prepared to accept a quota but we have never regarded it as essential. The reason for that is that we have continually, well, from the beginning, taken the view that it's clearly in broadcasters' interests to provide as much high definition television as they can as an inducement to people to take up the higher range of digital television viewing equipment. I should add at that point that we have always envisaged that there would be a very wide range of viewing equipment starting with relatively simple decoders, and extending upwards through standard definition displays, up through higher resolution displays to full high definition displays. In other words, displays that are capable of displaying over 2 million pixels, but we have never regarded a mandated HDTV requirement as in any sense essential to what we're seeking to achieve.

PROF SNAPE: So in other words FACTS would be quite relaxed if high definition television was not mandated in the sense that we have been using the term "mandating".

MR BRANIGAN: That's correct. We don't see the need for a minimum quota of HDTV programming. We accept that there is quite a lot of political pressure to have such a quota.

PROF SNAPE: If that political pressure is not coming from FACTS where does it come from?

MR BRANIGAN: I think it's coming from both sides of parliament. They take the, I guess understandable view, that having provided seven megahertz channels to

broadcasters on the understanding that the broadcasters would be providing substantial amounts of high definition programming, they want to make damned sure that the broadcasters do.

MR SIMSON: Mr Branigan, if my memory is correct, the last time we were with you, you or your members used an adjective and I can't recall the exact description, but you were highly derogatory of any suggestion that any standard below HDTV would be an inferior standard. You were highly derogatory of any digital standard lower than HDTV. Have you then changed your mind on that?

MR BRANIGAN: No, I'm not saying that. I'm saying that left to our own devices, certainly the Nine and the 10 Networks will provide as much high definition programming at the highest level that they're able to, and that will depend obviously on what's available, what the production economics are in the short-term and so on, but they certainly envisage that more or less from day 1 they will be providing a certain amount and that that amount will increase. They also envisage that they will be providing large amounts of standard definition transmission, particularly in the early years.

MR SIMSON: Standard definition digital?

MR BRANIGAN: Yes, indeed.

MR SIMSON: And presumably early in the years there would be a larger amount of standard definition digital transmission compared with HDTV or the 1080i type?

MR BRANIGAN: I think that's right.

MR SIMSON: So that would then make sense, would it not, particularly in the early years, for individuals to - particularly if they're less expensive - to purchase standard definition set-top boxes.

MR BRANIGAN: If they're prepared to accept the downside of purchasing such equipment, in other words that it won't be able to decode a high definition signal, sure.

PROF SNAPE: It won't be able to decode - I'm sorry, I should interrupt. Yes, go ahead.

MR BRANIGAN: And I must say, I have personally always envisaged that there may well be a market, for example, PC cards that can only decode standard definition for services such as datacasting which may never wish to provide high definition transmissions. In other words, specialist types of receiving devices that may never need to be HDTV capable.

MR SIMSON: So it's quite possible that in the early years if, as you say, there's more SDTV content being generated than HDTV content, and if people are

purchasing these SDTV set-top boxes, that that could almost establish itself as a critical mass, couldn't it, at the standard end rather than the high end.

MR BRANIGAN: I think it's unlikely in that I imagine that the main reason most people would acquire digital reception capability is to watch television, and particularly commercial television, and if the significant parts of prime time viewing in particular are not accessible via a standard definition only device, I would imagine that they would be of very limited interest to most consumers.

MR SIMSON: But you're not suggesting that in the early years the HDTV that you would pushing out would be prime time television, are you?

MR BRANIGAN: Indeed. I imagine that most of it will be in prime time.

MR SIMSON: Okay. So that that content you're pushing out as HDTV then would not be accessible in prime time - of course, it's successful in an analog environment, because you're simulcasting, so you can still get the analog picture, but that content would then not be accessible to people who had bought a standard set-top box.

MR BRANIGAN: A set-top box that can only decode a standard definition signal, yes, that's quite correct.

MR SIMSON: Isn't that to an extent putting a gun at the head of a consumer in that they can't enjoy the benefit of standard definition television because the networks are only pushing it out in an HDTV format?

MR BRANIGAN: Well, what we will be doing is providing an analog simulcast for eight years so anyone who jibs at the price of equipment, whether it's a decoder or a standard definition display or a high definition display, has the option of waiting.

MR SIMSON: Yes, Mr Branigan, that's correct, but on the other hand there is a - and we have seen a demonstration of this - there is a discernible improvement in SDTV over analog.

MR BRANIGAN: There may be.

MR SIMSON: Well, I'm sure you're aware of that. You would have seen a demonstration - - -

MR BRANIGAN: There can often be. Sometimes there's not. For some sporting telecasts, for instance, the standard definition may be inferior to very good analog. It's simply because it's not able to cope with the motion to the same extent that an analog broadcast can.

MR SIMSON: That surprises us because that's not the basis of what we were informed and certainly wasn't, in the demonstration that we saw of the various types

of digital television, from your standard up through those various 720s and so on up to the - - -

MR BRANIGAN: All I'd say, Mr Simson, is it depends very much on the material that's chosen.

MR SIMSON: Mr Branigan, Channel 7 in a submission to this inquiry have said they've undertaken what they call an exhaustive study of developments in digital terrestrial television and I quote from their submission:

The Seven Network remains concerned that in the USA the only world market that has chosen so far to introduce high definition television as part of its terrestrial television regime, consumer take-up has been well below expectations.

It says further:

No European country is currently considering introduction of a DVB-T based HDTV as opposed to SDTV for consumers. No sustainable business case could be found, given the high cost of the technology and the lack of identifiable new revenue sources other than subscription.

It says that:

There is no perceived consumer demand for a better picture quality than that provided by SDTV.

It says that:

Some manufacturers have expressed concern of early problems with HDTV in the USA and if they are not fixed quickly HDTV is unlikely to emerge as a consumer item for at least a decade.

It says that:

Several manufacturers and system operators have emphasised to us -
that's Channel 7 -
the importance of avoiding leading edge technology in small markets.

It says:

In summary, early market experience in the UK and the US indicates that the picture quality of standard definition digital TV combined with additional and difference services are the drivers of consumer demand for take-up of digital television.

Would you like to comment on those comments?

MR BRANIGAN: As best I can remember them, Mr Simson. There are quite a number of comments. I think perhaps as a general observation the American introduction of digital television has in a very real sense I think been a case study in how not to introduce any new system. It has involved a poorly implemented standard. It has involved a very spread out introduction of transmission. It has involved a great reluctance on the part of broadcasters to come to the party in terms of actually putting digitally produced, and particularly high definition product, on air. It has involved major question marks about the interoperability of digital receivers of any kind and the cable system which distributes over the air signals to some 70 per cent of the market. It's not surprising that it has gone as badly as it has.

My view, and I think it's a view that's expressed on behalf of the stations supporting this submission, is that it is however too early to write-off the US. I think that it may be a very different picture 12 months from now. I'm not suggesting for a moment that we will have an unequivocal answer to whether HDTV works, whether multicasting works, whether datacasting works, because I think most of the complaints that you can level against the lack of interest in HDTV in the US equally apply to multicasting and to datacasting. But I think we'll have a much clearer picture, and I would imagine a picture that points towards much more rapid progress than appears predictable at the moment.

As for Europe, it's certainly the case that no European country is planning the introduction of HDTV based terrestrial services and the reason for that is patently clear. There is a critical spectrum shortage in all of Europe. It certainly wouldn't be possible to introduce HDTV based services. We're very fortunate.

MR SIMSON: With regard to datacasting by the way the Seven submission says this:

We could find little evidence of such services or demand for them overseas, other than those already catered for by the Internet.

MR BRANIGAN: I think it's true that you have to look long and hard for over the air datacasting services in other markets which isn't to say that they won't emerge over the next few years and certainly over the next decade but it's certainly true, as I was trying to indicate earlier, that if the lack of success of HDTV is arguable in the US, so is the lack of success of datacasting.

MR SIMSON: Could you also please comment on this statement by Channel 7:

While we actively sought a set-top box or integrated digital television capable of receiving DVB-T, HDTV transmissions for down converting to SDTV for digital or analog output, no-one was able to satisfactorily demonstrate such equipment, even in prototype form.

MR BRANIGAN: I can't comment on how extensively and thoroughly the Seven Network pursued its quest. All I can say is that the Nine and Ten Networks have been demonstrating such a device over the last couple of days in Canberra and I understand that they're prepared to demonstrate it to the commission if - - -

PROF SNAPE: And that was a prototype?

MR BRANIGAN: What they have, I understand, is three devices. Two of them are what I believe are called development kits. In other words, they're certainly prototype devices which are supplied by the chip manufacturer to prospective set manufacturers - set-top box manufacturers. The third was actually the product of a limited production run for the Chinese market. The Chinese have been conducting some detailed testing of various digital transmission systems including DVB incorporation HDTV and they ordered I think close to a thousand units for tests last October. One of those has been supplied to us - not to us but to Nine and Ten for testing and evaluation and that is, I believe, the unit that was actually used for these tests. It differs only in one respect from a unit manufactured for Australia and that is that the tuner is designed for an 8 megahertz television channel rather than a 7 megahertz. Otherwise it - - -

PROF SNAPE: So we still don't have one to Australian specifications and what level of high definition was it working up to?

MR BRANIGAN: I understand it can output format conversion into standard definition and any HDTV format, in particular 625 - I think they mean 576i there; 720p or 1080i and it also includes Dolby AC3 decoding.

MR SIMSON: Mr Branigan, we're simple people but it's difficult to rationalise that an organisation of the size of Channel 7 would say what it has in a submission on evidence to this inquiry and yet you're saying to us that two other members of FACTS have been demonstrating in prototype form the piece of equipment that Channel 7 says that no-one has been able to satisfactorily demonstrate to them even in prototype form.

MR BRANIGAN: Indeed. I believe that Nine and Ten have been displaying it to people as the device that doesn't exist, doing the things it can't do. They have a device which does what it's claimed to do and they have, I understand, a quotation for the supply of large quantities of that device in the fourth quarter of next year.

PROF SNAPE: What price would it retail?

MR BRANIGAN: That I don't know but the FOB price is \$US240. I can table a copy of the quotation if it would be of any assistance.

PROF SNAPE: It could be useful.

MR SIMSON: Sorry, just so that - - -

PROF SNAPE: FOB where?

MR BRANIGAN: FOB Taiwan.

PROF SNAPE: Okay, of \$US240.

MR BRANIGAN: That's correct.

PROF SNAPE: Thank you.

MR SIMSON: So this is a set-top box capable of receiving DVB-T HDTV transmission for down converting to SDTV for digital or analog output.

MR BRANIGAN: Correct.

MR SIMSON: \$US240.

MR BRANIGAN: And it can additionally supply HDTV output in three formats. In other words, it can act as the receiver part of a high definition or enhanced definition display.

MR SIMSON: So what price would you estimate that would retail in Australia? Clearly well under \$500.

MR BRANIGAN: Not necessarily.

MR SIMSON: Sorry, it's FOB so it may be more.

MR BRANIGAN: Yes, perhaps around 600, 650 dollar mark.

PROF SNAPE: Do you also have someone who is able to supply a cathode ray tube that will handle 2 million pixels?

MR BRANIGAN: Such devices do exist as computer monitors.

PROF SNAPE: 2 million pixels?

MR BRANIGAN: I believe so.

PROF SNAPE: We've had a submission - I can't put my hand on at the moment - suggesting, I think it might have been Mr Ansell, that there weren't but perhaps - - -

MR BRANIGAN: I may be marginally wrong in that. It may be that the highest resolution computer monitor is a little below 2 million pixels but certainly 1600 by 1200 is not uncommon in very high end computer monitors.

PROF SNAPE: We have come across the actual quotation.

MR SIMSON: This is again from one of your members, Channel 7. They say this in their submission to us today:

There is no cathode ray tubal glass available today or in the near future that is capable of displaying a full 1080i picture 1920 times 1080. Several manufacturers estimated the cost of such equipment at 10,000 pounds, A\$25,000 for the glass alone. If a technical problem of reduced pixel size to enable display of 2 million pixels on a screen of sensible size and weight could be solved.

So you clearly reject that proposition as well?

MR BRANIGAN: No, look, they may be absolutely right. It depends what sensible means, of course. If you want a very large screen perhaps - you know, 60 inches or 70 inches, then I imagine that you're absolutely right. With glass you're looking at some very severe technical problems. I think the reality though is that the large screen full high definition displays are likely to be either projection sets or some time in the nearish future either LCD or plasma screens.

MR SIMSON: Mr Branigan, if - sorry, go on.

PROF SNAPE: Again, as you say, they don't exist at the moment.

MR BRANIGAN: That's true, except as prototypes. I think some of the best projection sets come very close to that but it may well be that there is very little at the moment, certainly of a consumer product, that can display full 2.1 million pixels but as I think we mentioned in the submission, that's a little like saying that there's very little available at a consumer level that can display the full audio range of a \$30 CD. That doesn't mean that CDs should be banned.

PROF SNAPE: I understand that point but then nevertheless the equipment does exist at which you can hear more sophisticated ones.

MR BRANIGAN: But it's equally the case, chairman, that equipment exists and is readily available which will allow a greatly enhanced display, very significantly better than standard definition and the evidence suggests that there is some demand for this in the United States.

MR SIMSON: Mr Branigan, the document that you passed to us which is the quotation for this 240 US FOB set-top box is from a group in Taipei called the EFA Corporation.

MR BRANIGAN: That's true.

MR SIMSON: The quotation is dated 25 November 1999. Could you just give us some background on this corporation?

MR BRANIGAN: I don't know a great deal about it, Mr Simson, except that it's I think \$US50 million turnover outfit that specialises in making electronic equipment for other people. It may well provide ranges of equipment that appear here under other people's names. I don't think you would ever find an EFA branded piece of equipment in this or any other market.

MR SIMSON: It's just very confusing because again, Channel 7, one of your members, says in its submission that the cheapest DVB-T set-top box operating in STDB mode in the UK is retailing at 399 pounds or \$A1000.

MR BRANIGAN: One of the problems that has bedevilled the discussion of this issue, Mr Simson, is that people have jumped from FOB to wholesale to retail and I can't say what the normal retail mark-up on 240 FOB Taiwan would be. For some manufacturers building in their own margins, it could well be \$1000; for others, it could be closer to 500.

MR SIMSON: I mean, this is a very important issue, this quotation you've provided us today, because it's a quotation at a particular price. Do we know if this EFA Corporation would be able to supply the Australian market at this price?

MR BRANIGAN: They have undertaken to supply I think 10,000 units by the fourth quarter of next year.

MR SIMSON: To whom?

MR BRANIGAN: To anyone who gives them an order for 10,000.

PROF SNAPE: In the fourth quarter next year, I think.

MR BRANIGAN: Yes. I should say EFA was the manufacturer of the unit that is in Australia at the moment that was made predominantly for the Chinese market, for the test process there.

PROF SNAPE: I think that the difference between 1080i and 720p is generally agreed to be extremely hard to detect in most circumstances.

MR BRANIGAN: It's not a gross difference, that's quite true.

PROF SNAPE: In normal circumstances etcetera, people are not likely to notice any difference in fact.

MR BRANIGAN: People would notice no difference at all because as I think we may have pointed out in the submission, virtually no receivers are able to display 720p.

PROF SNAPE: I'm sorry, virtually no receivers - - -

MR BRANIGAN: Can display 720p. They automatically convert it to 1080i or down-convert it to standard definition and that's because - and this is where I get out of my depth in accurately describing what the problem is - the scanning rate requires a considerably higher priced receiver equipment than is readily available at the moment. In other words, to design a cathode ray tube set which will display native 720p, as they call it, is considerably more expensive than designing one that displays 1080i or standard definition.

MR SIMSON: Mr Branigan, in a submission to us earlier this week from NTL, they included 720p in a table against or along with a 1080i and 576p and SDTV and the purposes of doing this, NTL in their submission to us this week, was to explain to us the services that would be available under those various configurations. The reason that we're raising this is that at 720p, according to NTL, on seven megahertz, you can get HDTV times one, and you can get SDTV times one and you can get some datacasting. Am I correct in saying what you're saying to us is that 720p is really a bit of a furphy here?

MR BRANIGAN: That's right. What I'm saying is this: in the real world, to film anything, to tape anything in high definition, you will have to use 1080 equipment. If you then transmit it in 720p, you will have to down-convert it to 720p. Most of the receivers will not be able to display 720p, so they will have to up-convert it to 1080i or down-convert it - - -

PROF SNAPE: Most of what receivers won't be able to?

MR BRANIGAN: Digital receivers, high definition receivers, and that is, for the reason I tried very clumsily to explain before, because the 720p scanning rate is a very difficult one for manufacturers to include in a consumer cathode ray tube based set. I understand it's relatively easier with LCD screens or plasma screens, so in the long term, it may not be an issue, but everything seems to be focused on the short term. It's obviously going to be an issue. There are unlikely to be any, or if there are any, there will certainly be very few sets which are able to display 720p as 720p.

MR SIMSON: Mr Branigan, I hope you haven't misread us or are implying that in either our draft or anything we have said today that we are focusing on the short term - indeed, to the contrary.

MR BRANIGAN: I'm sorry, it was more a comment about the - - -

MR SIMSON: No, I just want to make it clear, the whole thrust of our recommendations is very much long term and ensuring that yes, sure, as soon as possible, as many Australians as possible have the opportunity to enjoy the experience of digital television, but none of us are going for a quick fix, I can assure you of that.

MR BRANIGAN: No, I understand that. The comment was more one of frustration at the focus in Canberra than here.

MR SIMSON: Just with regards to some speculation, we would be interested in your reaction to this, there is speculation that the government may mandate both a quota for HDTV and SDTV. Could you comment on what you see is the efficacy, if it were to happen?

PROF SNAPE: Or more particularly, whenever SDTV will be required whenever the HDTV is - - -

MR SIMSON: So it will be a simulcast of those two?

MR BRANIGAN: Yes, we tend to call it a triple-cast because it has the effect that whenever you're broadcasting what approximates HDTV under that regime, you are effectively broadcasting two identical other services, one standard definition digital and the other, analog. I guess our main concern about that approach is that it's a long-term imposition to address a short-term concern, the short-term concern being about price, because we remain very confident indeed that the price issues are going to vanish by about year 3. It does have other real worries, we believe, not least the fact that it constrains HDTV and as you say, it may be possible to broadcast much material in 720p without affecting its quality, not necessarily all. I've already outlined some of the problems we will see with 720p.

I think more generally, the problem is that it makes it unattractive to broadcasters to broadcast in HDTV because they are left with virtually no or no capacity to do anything other than to broadcast two signals, the identical HDTV and SDTV signal. There may sometimes be some data capacity but it's unlikely to be significant. It certainly wouldn't allow extensive enhancements to the HDTV program and it most certainly wouldn't allow any significant degree of unrelated data or datacasting at those times.

PROF SNAPE: Could I just come in on that point.

MR BRANIGAN: Yes.

PROF SNAPE: We are at the moment comparing the 1080 with the 720, and with the 1080 of course, you couldn't require that the standard could go out at the same time because there isn't space for it under current technologies, it would appear.

MR BRANIGAN: With much material, that's absolutely true.

PROF SNAPE: Yes, with much material under current technology, it couldn't, so we are in fact comparing a situation in which you have only got high definition going out and when that is not going out of course, you can do standard and you can do all the other wonderful things that you may wish to do at the same time. With 720, you are in fact going to have a high definition signal at 720, plus a standard definition, if that were to be required to be going out and what you call triple-casting, and then there would be some space over for whatever else you might want to do, a little bit of space probably for something else as well, according to NTL anyway, opportunistic datacasting is what they refer to it as. So you're no worse off; I mean, whenever you're doing high definition, whether you're doing it in 1080 or in 720, and the 720 plus the standard signal going out at the same time, you're not able to do anything else much, but all the other time, you can do all the other things that you might want to do. So just comparing those two, I can't see how you're worse off in the terms that we have been talking at the moment, why you're worse off than having to go in 720 plus a standard signal at the same time. Indeed, that's what you might want to do commercially anyway. It puzzles me.

MR BRANIGAN: As I say, there are some major drawbacks to accepting 720p as your HDTV standard and they are largely practical. It receives very little support internationally. We would be adopting pretty much an orphan standard.

MR SIMSON: According to Channel 7, we're doing that anyway.

MR BRANIGAN: I don't want to comment on what Channel 7 may say, but it seems to me that we're heading down the track of (a) adopting an orphan HDTV standard and (b) adopting a very unique way of mandating both HDTV and standard definition television in the form of triple-cast. It's certainly a very odd way to set up a - - -

PROF SNAPE: But I think, certainly as you described it as triple-cast, you would have an incentive - a considerable incentive or your members would have an incentive - in fact to reduce that to a double-cast quite quickly. That double-cast of course would come from the switch-off of the analog. The triple-cast may give you a much greater incentive - to members - to get the digital take-up with all the benefits accompanying it, and to switch off the analog and free up the spectrum for all the other things which it may be used for.

MR BRANIGAN: Whatever we may wish to do, chairman, the view we take is that this approach will largely deny us the means of achieving that. It will mean that we have worse high definition, that we have no capacity to do anything else of significance while we're doing high definition, that we have to rely more heavily on standard definition, but because of the way the legislation was structured last year, we have very little scope in what we can do with standard definition. Now, I don't know whether multichannelling offers a business case, as the Seven Network puts it. All I can say is that no-one has come up with a compelling business case that they have been prepared to make public here or in the United States about advertiser-supported multichannelling in the early years of digital.

PROF SNAPE: But you can't do anything else when you're doing 1080 anyway.

MR BRANIGAN: You can a lot of the time. The amount of bandwidth that's required for 1080 depends (a) on the nature of the material and (b) on the particular demands that that material is putting on your transmission capability at any given moment. With a lot of programming, typically movies, typically drama programming, studio-based programming, the 1080i transmission may not be taking up much more than half of your available bandwidth. Now that obviously leaves a lot of scope for enhancements and also for unrelated datacasting.

PROF SNAPE: Could I just come back if you - let's suppose you're doing your triple-casting.

MR BRANIGAN: Sure.

PROF SNAPE: And you've got that same sort of program that you were just describing, the same sort of signal that you were just describing that was going to, on the 1080, leave you space to do a lot of other things. Now, let's suppose you're putting the same thing out in 720 plus the standard, and so once again it's not being demanding of the whole spectrum and you would again have the same opportunities, I - this is the question - would you then have the same opportunities in that format as well? I mean, where is the difference?

MR BRANIGAN: Well, the difference is that the savings for using 720p may well not be as great as NTL has suggested. I haven't seen the NTL charts so I can't obviously comment on them but we'll certainly have a look at them and I'd be happy to get back with our engineer's comments on them.

PROF SNAPE: That would be helpful because we thought that - we've been bouncing it off people this week because we are trying to get something - something, I might emphasise - which is agreed.

MR BRANIGAN: I understand, sure.

MR SIMSON: Mr Branigan, the focus for the last few minutes has been on 720p. But what about 576p?

MR BRANIGAN: Well, I think it's a misnomer to call that high definition, Mr Simson. It's technically high definition. It's exactly the same number of horizontal and vertical pixels as a standard definition. It would certainly give a better picture in many circumstances but we doubt, frankly, whether at a commercial level it would provide any incentive to viewers to spend money on a higher resolution display.

MR SIMSON: Mr Branigan, the documents supplied from NTL, they say, "HDTV at 576p (still far superior to SDTV)." I mean, this is from NTL which is ostensibly an independent organisation.

MR BRANIGAN: Sure.

MR SIMSON: So they're wrong too?

MR BRANIGAN: I'm sorry, no. Well, I mean, NTL has some stakes in this like everyone else. I mean, they clearly want as many people using their facilities as possible. Now, it's - - -

MR SIMSON: But don't we all want that? Isn't that what everybody wants?

MR BRANIGAN: Indeed.

MR SIMSON: We want as many people as we can using this.

MR BRANIGAN: Indeed, but they may well see this as a way of liberating more spectrum, of getting more datacasters on earlier. I don't - - -

MR SIMSON: But that would be good, wouldn't it? Isn't that what we're on about, trying to liberate spectrum?

MR BRANIGAN: Indeed. I don't object to that at all. I think a lot of people have made quite the wrong assumption about how costs are going to go in the early years. That is our main objection to this, that it's a long-term imposition on the basis of assumptions about short-term costs; and I stress assumptions, because no-one knows. But once this triple-cast is imposed it's, if not forever, then certainly for a very, very long time.

MR SIMSON: Mr Branigan, just so we're clear, you said, "No-one knows." I want to be very clear on this because you provided a quotation to this inquiry. I thought you'd hung your hat on the \$US240 FOB. I thought you said that you did know what the cost of a set-top box - - -

MR BRANIGAN: We reckon that we know what the cost ex-manufacturer of the various types of equipment will be 18 months, two years, three years out. I think the debate is largely about how all of this translates into retail prices, and you get people with a straight face saying that it will be a ratio of two or three to one.

MR SIMSON: What about receivers, Mr Branigan? What's your latest information on the pricing of HDTV receivers?

MR BRANIGAN: Well, I think, you know, to be complete, we would expect that there would be a range of receivers from wide-screen standard definition right up to full HDTV and it's pretty clear that, in terms of standard definition receivers, wide-screen standard definition digital receivers, the only cost difference between a standard definition only and one that can also receive and convert to standard definition a high definition signal is the cost of those decoding chips and whatever

additional memory is required, and that is quite trivial and will become almost non-existent within two or three years.

MR SIMSON: But unless I've got a high definition screen - sorry, such a receiver, I'm not getting the benefit of HDTV over SDTV, am I?

MR BRANIGAN: True, but the point I'm making is it's not going to cost you anything additional in any case.

MR SIMSON: But we're not getting anything out of it. I mean, the stations are pumping out the stuff in HDTV but we're not getting anything over and above what we'd be having if they were pumping it out as SDTV.

MR BRANIGAN: For people who choose to buy a wide-screen standard definition set, that's absolutely right.

MR SIMSON: That's why I asked you the question, which I'd appreciate some help with.

MR BRANIGAN: Sure.

MR SIMSON: As to the pricing, the latest information on the pricing of a receiver that's going to give me as a consumer the benefit of this HDTV content that's pumped out by your members, or some of your members anyway.

MR BRANIGAN: Well, just to make it clear what I'm trying to say, we imagine that the range of sets that will be available for people who want something better than standard definition will start somewhere a little north of standard definition. I mean, there's not a huge gulf between a standard definition display and a high definition display. One of the interesting things that has come out of the American experience to date, limited though it may be, is that there is a wide range of resolutions between standard definition and high definition and it may be, for instance, that early sets will display two or three times as many pixels as a standard definition set rather than, say, seven times which is - - -

MR SIMSON: So what am I getting out of it as a consumer?

MR BRANIGAN: You're getting a much better picture.

MR SIMSON: But I get that on SDTV.

MR BRANIGAN: No, what you get on SDTV is basically what you get now with a line-doubled receiver from analog. SDTV is no better than that. If you get good reception now and you have a line-doubled receiver - and a great many of the high-end receivers that are available in the market right now offer that 75 or 100 hertz, whatever it is, line-doubling display - you will get what is virtually indistinguishable from standard definition digital television.

PROF SNAPE: Unless you're getting ghosting and that sort of thing.

MR BRANIGAN: Indeed, absolutely right, yes.

PROF SNAPE: So there is an improvement from that - - -

MR BRANIGAN: Sure.

MR SIMSON: But once again, we've seen a demonstration of an SDTV against something around 720, I can't remember, or certainly 1080, something approaching 1080i or at 1080i. Now, to us there was a difference, but the improvement at SDTV was substantial over analog just in terms of quality.

MR BRANIGAN: Sure.

MR SIMSON: And of course there was a discernible difference between SDTV and the very high definition.

MR BRANIGAN: Sure.

MR SIMSON: But the best - there was a significant jump between analog and SDTV. Now, I'm just trying to understand why - unless I purchased an HDTV receiver, compatible receiver or receiver, I am not going to get the benefit, am I, of that 1080i content that you're pushing out?

MR BRANIGAN: Unless you get a receiver that has a significantly better display than standard definition, that's true.

MR SIMSON: So let's cut to the chase on that. What's that going to cost me?

MR BRANIGAN: Well, we believe that there are likely to be receivers, wide-screen receivers with considerably higher resolution than the best resolution you would get today even with line-doubling, able to display a high definition picture, probably between 4 and a half and 5 thousand dollars in early 2001. Exactly how much better than standard resolution it will be, I don't know; it may be twice, it may be three times, it may in fact be considerably more than that but we would - - -

MR SIMSON: So considerably more in price or resolution?

MR BRANIGAN: Resolution. But we would imagine that there will be also receivers that are much closer to full high definition which are available at 7 or 8 or more thousand dollars. These are, I stress, the sort of prices we'd expect to see in the first half of 2001.

PROF SNAPE: So what was it for the 4000, the 4 to 4 and a half you said?

MR BRANIGAN: 4 and a half to 5 thousand.

PROF SNAPE: 4 and a half, what was that?

MR BRANIGAN: It's a 32-inch wide-screen set with a very considerably higher resolution screen than the best standard definition, best analog set that you can acquire at the moment.

MR SIMSON: Mr Branigan, could I take you to page 9 of your submission, in the datacasting area, just towards the bottom there where you say:

We see HDTV as an essential element in marketing digital television even if the cost of HDTV receivers means that relatively few of them are sold in the first year or two. We remain convinced that it will be an essential longer term element in driving conversion to digital.

Could you just elaborate on that please?

MR BRANIGAN: Sure. We think that it's not going to be easy to sell digital television. We haven't pushed the whole notion of moving to digital because we think that it will be an instant seller; we don't think it will. We think it's essential that we make this painful transition to digital but we think that we will need to use every marketing tool at our disposal and every form of offering that's available to us to persuade people to take up digital receivers. Now, we think that high definition television is a very important part of this marketing concept. It's going to provide the sizzle, if you like, for what otherwise may be a pretty ho-hum sort of offering for lots of people because for many people with good reception digital will not provide a big jump in picture quality.

High definition we would see as very much the marketing face of digital television and there's no doubt that high definition will be a very visible part of it too because we would expect that pubs and clubs and so on will make it their business to have widespread high definition sets from a very early point in the transition. Later on, and just how much later on is arguable but we would have thought by about 2004, 2005, the range and cost and quality of sets, of higher resolution up to high definition sets, will be such that we would imagine that they will become a significant part of the actual purchase of digital receivers. We don't dispute some of the assessments that high definition, actual high definition or very high resolution receivers are likely to be a fairly small proportion of the initial purchases. We think that they will be a rapidly growing proportion from about 2004 and 2005.

PROF SNAPE: But some others have suggested that the real drivers of this would in fact be the other - the real drivers uptake rather than being the high definition pictures, the better quality pictures that one could get with the various highest level of high definition, but the drivers are really going to be the other things which could be done with digital including the multichannelling and the datacasting, however it's

defined, and the inter-activities that are there, that those are likely to be the real drivers and the extent to which in fact they are cut out by mandating the high definition route and all the implications of that which we've outlined, in fact just greatly inhibits the take up and therefore will inhibit the switching off of analog.

MR BRANIGAN: Well, I don't think they're ruled out by any means, chairman. It's not an either/or situation and particularly for commercial broadcasters. Commercial broadcasters, as you know, survive basically on the number of viewers they can attract and anything that involves splitting their audience is something they approach with a great deal of trepidation. As I say, I haven't seen any persuasive business cases for free-to-air - advertiser-supported multichannelling in the early years. That's not to say that broadcasters mightn't experiment with it if they were permitted to, but I don't see any indication here or particularly in the United States to date, that anyone sees any scope for making money that way.

PROF SNAPE: But that's not the experience of radio, is it. In radio where dual ownership is allowed in the cities, in fact they are going into dual ownership.

MR BRANIGAN: Indeed, yes.

PROF SNAPE: And you may call it splitting the audience, but what they are doing is in fact targeting different segments of the whole audience and therefore expanding their audience.

MR BRANIGAN: I think it's perhaps a little hard to - let me try to explain why I would see that as different. I don't think radio would voluntarily have gone from mass reach to multicasting, if you like. Radio ceased to have mass reach as soon as television came on the scene. I mean, radio is essentially a niche medium that happened to be a mass medium for a few decades because no-one knew how to transmit pictures over the air. Radio sees multichannelling as a way of increasing their reach. Commercial television broadcasters see multichannelling as a likely way of reducing their overall reach and certainly reducing their attractiveness to advertisers. Now, that may not be the case long-term but certainly until - - -

PROF SNAPE: It may not be the case if in fact there is spectrum available from all broadcasters. That is a characteristic perhaps of when there are only three commercial broadcasters.

MR BRANIGAN: You could perhaps be right, but if you look at markets in the United States where there are anything up to nine to a dozen commercial broadcasters, there is great caution in approaching multichannelling because I think particularly the larger broadcasters see this as a way of losing their market dominance. The smaller players see it as a way of fragmenting their already tiny share.

PROF SNAPE: Could I just go back a step from that one to something which is also on page 9, and where we are talking about the simulcast of standard and high definition. It's in the paragraph that's headed Possible Requirement to Simulcast and

it's at the end of that paragraph where we are talking about the capacity penalty. But also, could I ask what would be the additional costs? Would there be any significant additional cost on the commercial channels for - well, any channel - for having to simultaneously do high definition and standard definition?

MR BRANIGAN: There would be some capital costs, chairman, but it may simply be a matter of bringing forward capital expenditure that would have been required in due course anyhow.

PROF SNAPE: But they would be doing standard anyway for the rest of the day.

MR BRANIGAN: Yes, I think it's a question of whether the transmitters can cope with putting out two services when they would normally only be providing one.

PROF SNAPE: I should say that on transmitting, NTL told us that it should be costless.

MR BRANIGAN: Yes. As I say, I haven't pursued the issue but the initial response I received was that it may involve bringing forward some capital expenditure, but it's probably capital expenditure that would have been required anyhow. So to all intents and purposes you can say that it's not costless, it's not a significant - - -

PROF SNAPE: So in fact to have, what do you call it, triple-casting, in essence is no more costly than having to simulcast on - - -

MR BRANIGAN: In operational terms, no.

PROF SNAPE: Thank you.

MR SIMSON: Mr Branigan, could we just move to page 10 and 11 of your submission to do with regulatory restrictions on entering into broadcasting and also the content regulation, because it's clear from those two pages that you are implying, to put it mildly, that if there was a change in circumstances in a competitive environment, your members would look again at what they are doing in some areas of local content. Could I put it to you though, if there were to be no change to the existing regulatory arrangement, including the subquotas - for that matter, the 55 per cent transmission quota etcetera - the children's quotas - and a fourth player or another player was licensed to operate in your space, that really nothing has changed. I mean, you have got to obey the law. The new player has got to obey the law. So how can you imply on these pages that there would be a deleterious effect in terms of local content when you have all got to obey the law?

MR BRANIGAN: I guess it really comes down to a couple of points. Firstly, the law is not an immutable law, as we know. The Australian content requirements have changed over the years and, you know, it's perhaps instructive to go back to look at how they were many years ago, as I think your report quite usefully does in one of the

tables. It's clear that they have been increased over the years and increased quite explicitly in line with the perceived capacity to pay by the industry.

What is also I think clear, if you look back, is that each time a new service has been licensed, it has been allowed quite an extended period to come up to speed in quota compliance. So I think the point we are making here is that firstly, if you simply look at the quotas, you can't assume that a quota level which is regarded as reasonable in one set of circumstances would be regarded as reasonable in significantly changed competitive and economic circumstances.

MR SIMSON: You are saying that you would ask the government to change the quota arrangements.

MR BRANIGAN: Well, what typically happens is that every few years the Australian Broadcasting Authority holds an inquiry into the Australian contents standard and it tweaks a standard or sometimes makes quite significant changes to it. But they always come back to capacity to pay.

MR SIMSON: Sorry, do they?

MR BRANIGAN: Well, implicitly, if not explicitly.

PROF SNAPE: I'm not sure that viability is part of their brief.

MR BRANIGAN: In terms of determining an Australian content standard.

PROF SNAPE: Their planning in general.

MR BRANIGAN: That's a policy question, chairman. You'd have to ask Prof Flint about that.

PROF SNAPE: We have.

MR BRANIGAN: The other point I would like to make, chairman, is that I think if you go beyond the subquotas, there is the broader issue of the very wide range of programs that are currently produced because they make economic sense or at the margin help meet the 55 per cent quota, which might well begin to melt away in much tougher competitive circumstances, much tougher economic circumstances. I think we have seen that sort of thing happening in New Zealand which is admittedly a very small market but one where the advent of competition meant that a lot of the - the programming that had been accepted as automatically available disappeared.

Secondly, in US markets where, you know, at the city level, even in very, very large cities, you have network programming, you have local news, you have a few local talk shows, and that's it. There is very little local programming.

MR SIMSON: Mr Branigan, I put it to you that in what is quite a robust advertising environment we are experiencing - and certainly the outlook for next year on what we have been seeing the last few days is going to be even more robust - the networks are already pulling back in resourcing in some areas, in terms of the way they organise their news services and in axing shows and so on. I'm just wondering the extent to which there is actually a connection between, if you like, their economy, which is the point that you are making, their P and L, and the decisions they are taking with regard to programming anyway.

I mean, you are saying in this paper that if a new player comes in, you would attempt to persuade the government to change the rules, for example, on local content. Could I put it to you at a time when you are in a very robust revenue environment, that your members are already pulling back. So I'm just wondering how we are meant to rationalise all of this.

MR BRANIGAN: Well, is it a very robust revenue environment? I mean, the revenue growth in the last couple of years has been very, very low indeed for commercial television.

PROF SNAPE: Perhaps you should remind us of the valuation that the companies put on their - - -

MR BRANIGAN: I'm familiar with that, chairman, but I mean - - -

MR SIMSON: I am referring specifically, Mr Branigan, to the growth in advertising.

MR BRANIGAN: Yes, indeed.

MR SIMSON: You are saying it's not a robust environment?

MR BRANIGAN: No, indeed.

MR SIMSON: Sorry, so it's not a robust environment?

MR BRANIGAN: Well, it's a very fluctuating environment. If you look at the last 12 months, I think most stations had their worst quarter ever in the June quarter this year. It was well below the June 12 months earlier.

MR SIMSON: But I think all have subsequently reported publicly that for whatever reason, that was a blip.

MR BRANIGAN: Indeed. But if you look at the revenue growth for metropolitan stations over the last three years, it is, I think they would say, worryingly low.

PROF SNAPE: I'll come back to the balance sheet valuation of licences and the licences, according to the accounting practices and requirements - the balance sheet

valuations reflect essentially expected future profits attributable to the licences, and they are increasing the valuation of those licences - a number of them have over the last two or three years - the valuation of the licences on the balance sheets. Currently the three networks together are valuing the licences in total at somewhere around \$3.5 billion.

MR BRANIGAN: Indeed.

PROF SNAPE: Which reflects future profits. That to me seems a pretty healthy environment. I think that more than pays for East Timor.

MR BRANIGAN: Thank you for making that link, chairman. I think most of the profit in the last few years has come from maintaining a very tight grip on the expenditure line rather than on booming revenue. This is something that television stations have belatedly learned to do very well over the last seven or eight years. But it has exactly the effect that Mr Simson was suggesting, that networks are much less patient with programs than they might have been a decade ago or even half a decade ago.

PROF SNAPE: Obviously the management of them has been a big factor in the improved performance, yes.

MR BRANIGAN: Indeed. I guess we have seen that particularly with the regional networks, the operating groups in the aggregated markets. As I think we have pointed out in earlier submissions, in some cases they now provide no local programming at all.

PROF SNAPE: But they may if there was multichannelling? I mean, that's what the ABC is planning to do with their multichannelling, as I understand it.

MR BRANIGAN: What the ABC actually does will depend very much on what funds are made available to it. I think if regional commercial services believed that by providing local programming, either in multichannel form or in their existing service, they could make more money, they would do so. But clearly in most cases they don't believe that's the case.

MR SIMSON: Mr Branigan, I don't think you touch in your written submission, unless I have completely overlooked it, on the cross-media recommendations in our draft, and we were wondering if you would be able to provide us with an update on your position on this.

PROF SNAPE: In fact, I think there was no comment on chapter 8 at all.

MR BRANIGAN: Yes, I should have said, as we did in our earlier submissions, that as an industry association we don't have any comment to make on issues that I think are station specific in terms of viewpoints. On foreign and cross-media ownership we have no comment as an association.

PROF SNAPE: Okay. Or on your audience read through?

MR BRANIGAN: No, we don't.

PROF SNAPE: And so you're regional members don't have a - you said that you are representing them and I think you mentioned that some of your members might be making independent submissions.

MR BRANIGAN: Indeed.

PROF SNAPE: The only one we have had is from Seven.

MR BRANIGAN: I understood that - I think it may be Prime was planning - but perhaps I have misunderstood.

PROF SNAPE: We haven't received anything, and as I understood it they said that you were speaking on their behalf.

MR BRANIGAN: Well, as I say, I should perhaps have clarified that we were speaking on their behalf on the matters that we have listed there.

PROF SNAPE: So they may have a view on it which is something you wish to express?

MR BRANIGAN: Indeed.

PROF SNAPE: Okay. I understand what you were saying about Dolby and actually Dolby is coming to see us tomorrow so they can tell us about that themselves also. There is one aspect of that. You said that the cost to the consumers at the consumer end of having Dolby in there is trivial or very low. What about at the other end of it? What about at the broadcasting end, and the transmission and the production end, so not the consumer end but the various aspects of production end.

MR BRANIGAN: I can't give you a specific answer on that other than to say that we have chosen to use Dolby AC3 so we can infer from that that we think it's commercially beneficial.

PROF SNAPE: I wasn't sure. You did mention that Philips had an interest that, to paraphrase it and putting Dolby down somewhat, but I found it difficult to - I mean, Philips has, what's it called, the MP3, yes, that is on anyway, and so it's not as if the Dolby would be replacing the Philips component, so I find it difficult to see the - - -

MR BRANIGAN: I understand there is some trade-off in terms of licence fees. I don't fully understand it, I must say, but no doubt the Dolby representative would be happy to fill you in on that.

PROF SNAPE: Okay. I didn't realise that you were thinking in terms of licence fees because - and the thing was going to be there anyway and Dolby goes on top of it.

MR BRANIGAN: I think it does come down to licence fees.

PROF SNAPE: I see, right.

MR BRANIGAN: I think the same issue has arisen with digital video discs, chairman, where a specification started out as MPEG sound only and now Dolby sound is almost universal.

PROF SNAPE: Does FACTS have a view as to the definition of broadcasting versus datacasting?

MR BRANIGAN: We certainly have a very strong view in how the dividing line between broadcasting and datacasting should be drawn. This is obviously a matter very much of the moment and one that it appears the government will be seeking to make a decision on within a matter of days. I guess in broad terms we see the need for a clear delineation, one which ensures that datacasters don't become, to all intents and purposes, de facto broadcasters, but one that nevertheless leaves them, you know, real scope to develop new businesses, new businesses that are not quasi commercial television businesses. There is no easy way of doing that and there's no doubt that having - the course that the government has chosen to pursue makes some ultimately fairly messy and arbitrary dividing lines necessary, but that's what we and the government are faced with, with trying to achieve, I guess. By "we" I mean FACTS, the other key parties, who are obviously being consulted by the government on this.

MR SIMSON: Should datacasters be allowed to offer Internet access, that is, a return path?

MR BRANIGAN: In broad terms I would say yes, provided that it doesn't become a backdoor way of providing commercial television.

MR SIMSON: What about, Mr Branigan, moving pictures on the Internet, where do you want to see the line drawn there in terms of when someone becomes a broadcaster in your eyes?

MR BRANIGAN: The sort of definition that appears to be being considered in government circles at the moment focuses on formats, if you like, or genres, and the aim would appear to be to list a number of typically television genres and say that datacasters may not do these but they may do anything that's not included on this list, so it wouldn't in other words prevent them from full motion video 24 hours a day provided that it doesn't cross the line into this established or list of established genres.

MR SIMSON: No, my question related to actually the Internet, that is, delivery by the Internet, not delivery via the digital spectrum.

MR BRANIGAN: Sure.

MR SIMSON: You're saying that the government is going to actually bring down some code or whatever that's going to specify genres for moving pictures on the Internet - - -

MR BRANIGAN: No, I don't know that - - -

MR SIMSON: - - - for what we might call Internet broadcast, with a small b.

MR BRANIGAN: Sure. I think there's a recognition, and I mean, when I say the government is planning to bring this down, I don't know what the government is planning to bring down. This is one of the options that's being discussed and it seems to be one that's attracting some interest. I think there's a recognition that material that's distributed point to multipoint needs to be dealt with differently than material which is point to point. In other words, if you use a datacasting channel to call up something which is inherently point to point then it will involve different - more relaxed rules than if it's point to multipoint. In other words, very much of the nature of broadcasting.

PROF SNAPE: So no matter what the medium, there would only be three commercial broadcasters.

MR BRANIGAN: When you say "no matter what the medium"?

PROF SNAPE: Well, we're thinking of the medium as - we were just talking now about the Internet.

MR BRANIGAN: Sure.

PROF SNAPE: And we are talking about datacasters and that they shouldn't be broadcasters.

MR BRANIGAN: To the extent that it's transmitted over licensed datacasting channels, yes, as I understand it, that's the intention of last year's legislation.

PROF SNAPE: I understand the distinction but you're saying essentially that that same distinction should be, I'm not quite sure what the verb is appropriate there - should be applied to the Internet as well.

MR BRANIGAN: No, only to the extent that the Internet is transmitted via a datacaster's licence.

PROF SNAPE: Okay.

MR BRANIGAN: So if a datacaster chose to transmit Internet programming as its service or as part of its service, it would have to make sure that that material complied with any rules that applied to datacasting.

MR SIMSON: Excuse me, Mr Branigan, maybe I'm - but surely it's not the datacaster's licence that is the transmission mechanism. It's the Internet that's the transmission mechanism, that is carrying moving pictures, maybe datacasting content. The point we're trying to nail here is if a group is transmitting moving pictures over the Internet, whether or not it's as part of a datacasting licence, and as I understand with a datacasting licence in the context of the legislation last year related to the digital spectrum, did it not?

MR BRANIGAN: Indeed.

MR SIMSON: It did not relate to the Internet or anything else.

MR BRANIGAN: No, indeed.

MR SIMSON: The question we're exploring with you is as to whether those moving pictures transmitted over the Internet, and sure they may be for all intents and purposes in identical content service to what you're getting on a datacasting service over a digital spectrum, whether regulation should also apply to those moving pictures that are being applied over the Internet, a la genres and number of minutes per video or anything else that - - -

MR BRANIGAN: I'm sorry, I misunderstood your question. I thought it was related to datacasting. We, I guess, as an industry have no concern whatsoever as to what appears, what is received via the Internet on computers or via cable television or via satellite. Our only concern is what appears via datacasting licences.

MR SIMSON: In the context of the Digital Conversion Act.

MR BRANIGAN: In the context of the Digital Conversion Act.

MR SIMSON: That's clarified, thank you.

PROF SNAPE: If I could briefly to spectrum licences and the proposals that we had for a separation of spectrum licence from broadcast licence etcetera. I just want to pick up one sentence towards the end of page 3 where you say:

The separation of licences could give rise to a situation where a spectrum licensee each year, multiplex operator, goes bankrupt and is unable to maintain the service.

Well, I would have thought that that same worry or lack of worry would apply to privatised utilities. Now, if you have in fact a privatised transmission service, I don't really fear my electricity going off because the owner of the transmission service goes under. I would have thought that that would be instantaneously picked up by someone else, and this same thing here applies to the multiplex. I think that that's a bit of a furphy really.

MR BRANIGAN: I think we're probably envisaging a situation where, rather than as happened with the National Transmission Authority, the whole box and dice was sold to a very large entity. You might have much more ma and pa operations so to speak where individual multiplexes are owned by quite small operators, and that sort of situation could well arise.

PROF SNAPE: I think the receivers would try to make sure that was maintaining the service. I can't imagine that they wouldn't, but I think that's a bit of a furphy, if I may say so. The calculation in the middle of the following page where you're talking about options and so on, what rate of interest was used in there to annualise that figure?

MR BRANIGAN: I think it was simply divided by 15 over the - - -

PROF SNAPE: So no rate of interest since?

MR BRANIGAN: No rate of interest, no.

PROF SNAPE: We would all like to borrow at that rate, but not lent.

MR BRANIGAN: Quite.

PROF SNAPE: I mean, it's a question of valuation of a spectrum etcetera there.

MR BRANIGAN: Indeed.

PROF SNAPE: As you're saying there are different purposes, but of course the broadcast band is used for the broadcast purposes. Have you ever cast your mind over what a broadcast spectrum would sell for if there were a separation of the broadcast licence from the spectrum licence, and the spectrum licence in Sydney or Melbourne were to be off-sold?

MR BRANIGAN: I can't say I have, chairman.

PROF SNAPE: I think it would probably sell for considerably more than you're envisaging there and that is of course the appropriate figure. The problem, as you rightly identify here, is trying to find some way of getting a handle on it and what one chooses to get it.

MR BRANIGAN: Sure.

PROF SNAPE: But of course it is perhaps the most valued use of the radio frequency spectrum in terms of value - that is, for broadcasting - and one would be going to the high end rather than the low end, I would imagine, for other purposes.

MR BRANIGAN: You may be right, but the point we make about particularly the VHF spectrum and the lower part of the UHF spectrum are nevertheless important ones, that they are not efficient parts of the spectrum for most other purposes. They're very efficient for broadcasting because they throw a signal a long way. They are problematic for any cellular based system that relies on frequent reuse of the same spectrum. I should point out, on a very minor point, in that paragraph we have been discussing, it was actually eight megahertz of spectrum, not six.

PROF SNAPE: Yes, okay, thank you. At the bottom of page 5, you refer to a Singaporean industry in India understood to use - intend to use some HDTV. Do we have any hard evidence of that? What's the source of that statement?

MR BRANIGAN: Only statements. I'll provide what sources we have, chairman.

PROF SNAPE: Thank you.

MR SIMSON: Just Channel 7 say on that, and I'll quote:

We heard regular market whispers that India or China may adopt DVB-T HDTV technology, no doubt motivated by the promise that such potentially large markets would eventually drive down the cost of HDTV equipment in Australia. Previous experience has taught us to be sceptical of such claims.

Then it goes on.

MR BRANIGAN: I just note, chairman, I think it was the Philips submission earlier in the year made exactly the same point about India in relation to DVB-T standard definition.

PROF SNAPE: Could we go to the end of your helpful submission please and ask you to elaborate a bit on your attitude to what we said about the codes and complaints. For example, your statement right at the end:

FACTS does not accept that its members have unreasonably refused to broadcast on-air corrections or clear errors of fact. We can't accept the commission's analysis or its recommendations.

I find it very difficult to recall a correction of fact being broadcast but perhaps there have been no reasonable - you know, it's all in the word of "unreasonable" or maybe it's just that I don't watch enough television.

MR BRANIGAN: There certainly have been on-air corrections of errors of fact. I don't have the details at hand but again, I would be happy to - - -

PROF SNAPE: How does one judge "reasonable" in this matter?

MR BRANIGAN: I guess that goes to the wording of our code and it's something that a station, and in the last analysis, the ABA, has to determine.

PROF SNAPE: So you're basically happy with the codes as they exist?

MR BRANIGAN: We're broadly happy with them. We reviewed them quite recently. I think the current code has only been in place for about seven or eight months and that underwent quite a lengthy review and I think the majority of those who commented on it felt that it does a reasonable job. We certainly wouldn't say that it's perfect or that it couldn't be improved but we think that at this point in time it is a good and practical code which provides significant consumer benefits and consumer protections.

PROF SNAPE: You'll know of course that we didn't just distill this out of nowhere. We were in fact responding to a number of complaints and comments which had been made and which you've no doubt looked at yourselves and one could always argue, and no doubt FACTS would take this view or I would if I was sitting in your position, and say that you hear from the complainants and not from the people who are not complaining, who are satisfied. But were you satisfied that those complaints and comments which were made to us didn't have substance in them then?

MR BRANIGAN: I must confess I haven't checked all of them and that's a deficiency that occurred to me yesterday when I was rereading your report, that I hadn't actually read the entire transcript and identified all complaints about complaints and checked them with stations. So I can't honestly say that I'm satisfied that they're groundless.

PROF SNAPE: It seemed to us that there were some significant grounds in terms of procedures and obviously that's so because of what we went to recommend in that section.

MR BRANIGAN: Sure.

PROF SNAPE: You would also have noticed, however, that we did put it against - invite against the freedom of expression objective so that the two would be balanced against each other. But nevertheless we did see or we did make a judgment, rightly or wrongly, that there were inadequacies there and also that in ethical standards, for example, of journalism and that with respect to broadcasting it doesn't seem to have the same procedures as it does for the print media.

MR BRANIGAN: Yes, we should have commented on that, chairman, by way of clarification. The commercial television industry code of practice is deliberately restricted to what goes to air rather than what may come before what goes to air.

PROF SNAPE: How it is got.

MR BRANIGAN: How it is got, exactly. We've done that largely to avoid overlapping jurisdictions and because individual stations have told us that they have their own house rules covering news gathering ethics and procedures. I guess at a practical level the ultimate court of appeal on code complaints is the Australian Broadcasting Authority and it has no jurisdiction to decide whether the behaviour of a reporter is appropriate or not. So they're the practical reasons why we've avoided getting into the ethics of news gathering, so to speak.

PROF SNAPE: The elements are raging outside but I think it's time that we moved to the next participant and we thank you very much for your patience with our questioning and also for your contributions to both this one and the previous ones which you have made and also your appearance today and the previous appearance. Thank you very much.

MR BRANIGAN: Thank you.

PROF SNAPE: Just in a moment we will keep going I think and the next participant is ASTRA.

PROF SNAPE: Let's settle down and resume and we welcome ASTRA, the Australian Subscription Television and Radio Association and their representatives and we take notice that this in fact is a draft submission on a draft report and that there are a couple of gaps at the end and you will be finalising the submission by Friday. So I suppose we will wait in terms of recording the submission until we have got your submission as this is sort of an interim version of it and that we shouldn't put it on the Internet or circulate it as a submission until we've got the final version. That's correct?

MS RICHARDS: Thank you.

PROF SNAPE: But that will be occurring very shortly. Okay, we have then three representatives from ASTRA and I know, Debra, that you've got bit of a problem with voice at the moment but we'd ask the three of you to identify yourselves in the usual way for the transcript please.

MS RICHARDS: Debra Richards, executive director of ASTRA.

MR KEELY: Chris Keely, head of business affairs for Optus Television.

MS MEERS: Samantha Meers, I'm a deputy chairman of ASTRA.

PROF SNAPE: Who is going to speak to it then.

MS RICHARDS: Mr Keely.

MR KEELY: Thank you, professor. I think we'll probably all have some comments but I wanted to open up to speak to the draft submission and then pass on to my colleagues to make what other comments are appropriate. Thank you once again for the opportunity to make a further submission to the commission. ASTRA values that, and thank you also for accepting a draft submission on the basis that it is a draft submission and as we've indicated, we'll come forward with the complete submission I think by 10 December.

PROF SNAPE: That is tomorrow.

MR KEELY: Indeed. If we look at the recommendations of the Productivity Commission as a whole, I think it's ASTRA's point of view there certainly would be liberalisation of the playing field for media in Australia. But in respect of our subscription television industry, we believe that there is a fatal flaw in those recommendations as regards the subscription industry. Simply put, it is that it's feasible that some of the recommendations could be accepted by the government and for instance these would be the abolition of mandated HDTV or that the free-to-air operators would have the restriction on multichannelling abolished. But it's ASTRA's submission that there's one key recommendation that the government wouldn't in any circumstances accept, which is the lifting of the embargo of new entrants to the broadcast television sector in accordance with the current legislation.

The result of all of this, the net result, as ASTRA positions itself, would be that the competitive advantages of free-to-air operators would be enhanced while the competitive situation of the subscription television industry would be significantly worsened. The practical result of that of course would be significant negative effect on the revenues of the subscription sector and a real threat to the viability of us being able to present our services to the consumers of Australia services which as of recent figures, 1.1 million households in Australia are willing to pay for in value.

The net likely result of the practical acceptance of some of your recommendations, but the unlikely acceptance of others would be an incredibly hostile environment for subscription television in Australia. First of all there's the natural first mover advantage and the brand building that free television has made over the years. There would be the free spectrum loan. There would be the legislative protection from new entrants to free television. There would be the freedom to multichannel. There would be the freedom to datacast. There would be the freedom for enhanced services by free television. In our submission these would be extraordinary commercial advantages that would result to free television and our submission puts forward that this would cannibalise our subscription base and endanger our businesses.

Another question that we would ask of the commission is if there is no mandate relating to high definition television, then why have to free-to-air television operators been given a loan of spectrum. I'd just like to close formal words by reminding the commission of the contributions that subscription television has made here in Australia. There has been a massive investment of anywhere up to \$10 billion. We calculate that there have been around about 3500 jobs created. We've built an industry that wasn't there several years ago. We're preparing for a new digital future. We're training up young Australians and we're providing new choices for Australian consumers, choices that they're willing to pay for. So I thank you once again for the opportunity to make a presentation and just ask my colleagues if there was any words that they wanted to put forward.

PROF SNAPE: Thank you.

MS RICHARDS: Only to the extent that the sector as a whole has continued to make its investments based on the legislative decisions within the digital converting bill and in that it included that being free-to-air broadcasters would have a limitation on providing multichannelling and indeed could not provide subscription services until those decisions were reviewed in 2005. We see that as a fairly limited window of protection but a fairly vital one. Also, we just wanted to make the point that we do wholeheartedly endorse the recommendations 4.1 to 4.3 in terms of spectrum licensing. I think that's important to note here and I think the rest of if you would have read as in line with the arguments that Chris has already - - -

PROF SNAPE: You've half-heartedly endorsed the anti-siphoning though.

MS RICHARDS: I've half-heartedly endorsed them. Let me heartily endorse any improvement on the anti-siphoning regime. Certainly we had advocated an abolition of the list itself but we see the suggestion of dual rights as a step in the right direction in terms of making what is probably one of the more blatant examples of anticompetitive legislation more competitive. The only other comments I have related really to code, complaints and consultation but that might be better if - I could either speak to those later or just put those down in our submission. It was just a matter of making some points about - you can't necessarily apply the free-to-air environment to the pay TV environment on a couple of those recommendations you've made but certainly a number of them we'd also endorse.

PROF SNAPE: So there's no great issue of discussion with respect to the codes. Is that what you're saying?

MS RICHARDS: Not really. We wanted to point out a couple of issues such as - do you want me to go through those now?

PROF SNAPE: It would be perhaps helpful since it's not written down.

MS RICHARDS: On the idea that you change the requirement to a general support from the relevant sector is amenable to our sector because we have so many members, particularly in the narrowcast sector, that we may not know who are actually providing narrowcast services. So if we could apply that criteria of general support rather than the majority of service providers that would be a lot easier.

PROF SNAPE: That's interesting because I think that's the first time anyone has actually supported that. You're the first participant to support that particular recommendation, so keep going.

MS RICHARDS: I will keep on with my hearty endorsement, but in terms of the ABA developing guidelines for general support, I mean, they could do that but they already have done that in terms of the registration of our codes. We're in close negotiations through that process in terms of what sort of consultation we should have, and indeed, what they will accept as general endorsement.

PROF SNAPE: Right.

MS RICHARDS: In terms of adequate opportunity to comment, again, the ABA has really done that through its own consultation with each of the sectors about the consultation process. We have used a basis for the consultation process on codes; the same process that the ABA itself has done, taking the view that if it's good enough for the regulator it's good enough for us, and in terms of consultation we have extended consultation periods whenever there has been a request for further extensions of time. I think it's working quite well but I don't see a problem with the ABA actually developing guidelines to cover those.

On the question of on-air broadcast at peak or other appropriate audience times, we would just like to make the point that this may be appropriate for a free-to-air environment with a single channel but may not be with the multichannel environment of pay TV. We don't necessarily have peak times and we can have up to 35 channels. What we have found as a relevant alternative, and which the ABA has accepted, is that we have a direct relationship with our subscriber in that they each get a magazine and information about the codes is in the magazine itself, and we have used that to let them know that those codes are available or when there's a review of those codes. They are also in the terms of conditions etcetera of each subscriber.

Just further briefly, your recommendation at 10.3, I just make the same point that the freeway paradigm may not simply apply to the pay TV paradigm. That's again about making announcements about community services, announcements about the complaints mechanism. In terms of ABA, I'm undertaking ongoing monitoring of community awareness, complaint mechanisms, so I do understand that they do that, and we would leave that up to the ABA to decide within their priorities. Licensees required to accept email complaints. We just want to make the point that we do as a sector accept email complaints. The licensee required to institute a telephone complaints system: I just want to make the point that in the pay TV sector we actually have call centres who have handled a range of issues, whether it's about subscription installation or indeed, a complaint about a particular program, so we actually have an established call centre system to deal with telephone complaints.

In terms of part of the recommendation 10.3, licensees found to be in breach of a relevant code of practice, be required to broadcast an on-air announcement, I would just say that that really depends on the seriousness of the breach and that would be up to the ABA and they should continue to have the flexibility to determine the seriousness of that breach, therefore the penalty which may be an on-air announcement. The BSA amendment to provide that relevant codes of practice, once registered, automatically become conditions of broadcasters' licence: that seems to defeat the purpose for having a co-regulatory environment in that you may as well go back to the regulator setting the standards because the codes put the onus on the broadcaster or the licensee to respond and set up the relationship with the complainant. So if they become automatic conditions of licence, that sort of leapfrogs the first step of a penalty in terms of the current process. I think that's probably about all that I could continue with.

PROF SNAPE: Thank you very much. Were there any major narrowcasting issues which is the other matter that you have listed - - -

MS RICHARDS: Only in terms that have been raised by the previous narrowcast radio broadcast sector. They're concerns about tenure of licence and I think said - Mary from Heart N Soul Productions talked about that yesterday, so I would just be reiterating the issues that they have raised on that issue.

PROF SNAPE: Okay, thank you. As I say, thank you for this. I suppose there's a bit of a comment in that you make several times about the gift of spectrum and I think

what you're suggesting is that we should have recommendations, or a number of recommendations, that it should be clawed back. Is that correct?

MR KEELY: ASTRA has always maintained the position that the spectrum ought not to have been made available on the basis of it being free, and that has been our consistent view.

PROF SNAPE: And that that once again - I mean, you have in fact made a number of comments about us making recommendations that you are likely to be - may not be accepted, but you're now proposing that we should make a recommendation that it be clawed back and that what has been gifted they should now have to pay for.

MS RICHARDS: We haven't actually said you should make a recommendation. We have said there should be a reconsider of the handover of the seven megahertz spectrum. Given that we consider that the provision of HDTV was one of the cornerstones of the reason for actually having seven megahertz in the first place. Indeed, the arguments that you have raised throughout the draft report on conversion to digital, ASTRA and others made these points in the digital TV debate. We actually advocated that you could provide conversion by giving the broadcasters each two megahertz to provide a digital version of the analog signal.

The rest could be crudely flogged off at market price to, we would think, gain a substantial windfall to the government and therefore the public, and that could be used among other things to fund the digital conversion for the national broadcasters, but those views were put during the debate, and the decision was made that they would be given the seven megahertz of spectrum and they would be continued to be protected. That wouldn't be lifted until the end of 2006, so I suppose what we're saying here is while you're advocating that that ban be lifted, there is still no reconsideration of what they can do with the spectrum, and that leaves us open to the prospect of multichannelling.

MR KEELY: It's the area of grey, the government has decided to grant the spectrum with a principal purpose of allowing the community to have HDTV. The commission is of the view that ought not to be mandated, so as a consequence we believe that that requires a review of what that very valuable spectrum ought to be made available to free-to-air.

MR SIMSON: Does the equation change if the government were now to decide to simulcast HDTV and SDTV?

MS RICHARDS: Well, if they were mandated they had to broadcast SD and HDTV which would be, by virtue, a triple-cast because they would have to be doing an analog signal, then they would presumably need at least - I don't know - five or six of those megahertz to actually do that. There wouldn't be much left over for them to do anything else.

PROF SNAPE: Would your attitude to multichannelling change if it was to be encoded and that was then to be on a subscription base for a decoder?

MS RICHARDS: What, that the free-to-air would be allowed to provide multichannelling on a subscription basis?

PROF SNAPE: Yes.

MS RICHARDS: No. We would have a problem with that because there's a legislated decision already that says they're not allowed to provide subscription broadcasting services.

PROF SNAPE: Well, yes. We're of course required to be considering things which may need legislative changes.

MR KEELY: I guess we would reiterate that there are a vast number of competitive advantages that the broadcasting legislation concurs on the free-to-air sector at the moment, and recommendations which would see free-to-air broadcasters able to multichannel or to provide subscription television add to those competitive advantages, while the subscription sector does not have similar advantages, and in fact, has burdens including the anti-syphoning list, and has made a very, very significant investment in building this industry.

MS RICHARDS: Can I just add, I think, an important point there is the fact that in providing our services we have actually had to pay a lot of money and a substantial investment to actually get access. They are loaned the spectrum and provide a licence fee. It is very different to allow them with this loan to provide subscription broadcasting services which gets into our business, and we are left in a competitive environment to invest in access and infrastructure, to provide our services. Another government, through the ACCC, is now saying that that should all be opened up as well so on one side our industry, which is governed on the telecommunications and broadcasting side, has been told to open up all this area and provide access to new players, whereas on the other side the free-to-air are not - they would be given the loan of spectrum and the opportunity to provide the business that we provide. We would see that as fairly anticompetitive.

MR SIMSON: Could I just come at this for a moment - not a perspective of self-interest, yours or the free-to-air, but from the perspective of the consumer that the experience, in the US in particular, and elsewhere, and some of the evidence that we have received in submissions over the last few days and indeed, in our initial inquiry, indicated there was one single driver, a digital conversion, one thing the consumers wanted, it was multichannelling; that multichannelling was a service for which there was demand and subsequently increasing demand, yet what you're saying is that consumers should be locked out of that, at least until 2005, which is at least five years away when I think the review - - -

MS RICHARDS: Well, it's four years from the start of digital, so it's a four-year window.

MR SIMSON: Okay, that's 2005, isn't it?

MS RICHARDS: Yes, 2005. It needs to be reviewed before 2005.

MR SIMSON: Okay. So for five years Australian consumers, and that's only if a review occurs in 2005, so no doubt you and others will be trotting up with various - by 2005 - for five years Australian consumers are denied multichannelling on free-to-air, and from a consumer perspective, from a perspective of national interest, how is that in the national interest?

MR KEELY: We would just simply say that it's a matter of practicality. The government has implemented after many, many years' delay, the legislation which allows there to be the subscription television industry in Australia. If the practical result of recommendations that the commission makes is that our revenue is endangered and our very business is endangered, the pay television that Australian consumers have paid for and have embraced in increasing numbers, will be endangered, so we have to look at the practicality of opening up the opportunities contrary to the current legislation with the real possibility of the very negative results to the subscription television industry which is still in its infancy which could endanger that industry.

MR SIMSON: Just before you go on, Ms Richards, could I just say that I'm just wondering if that's just one facet of your business, and maybe life has moved on a bit. Perhaps life has moved on a bit since this debate occurred last year - not here but in the context of the Digital Conversion Act - because your members, or a number of your members, are now putting together pretty sophisticated complex businesses, multi-faceted businesses, vertically integrated businesses. We have Austar along here yesterday bundling telephony, pay TV, high speed access to the Internet. They're also establishing an entirely separate Internet business using MDS. Optus has announced a whole range of initiatives that are going to apparently kick in before Christmas, or be announced before Christmas in terms of high speed access, access over mobile phones, and so on and so forth, and so that the investment that you people have made in - sure, in your case in cable and in Austar's case in satellite - is being leveraged in a whole bunch of ways, and could I put it to you that a number of those initiatives have, certainly from a public perspective, only seen the light of day in relatively recent months, and so that to suggest that your business, your total business, is going to die if the government changes its mind on multichannelling - it's an interesting threat to make to politicians but I'm just wondering how real it is in the context of where your businesses are - in the real state of the vibrancy of the businesses of your members and these individuals.

MR KEELY: I think you've hit the nail on the head by saying that it's in very recent times that plans have been put forward relating to enhanced services. The time that would be granted under the current legislation is valuable time to allow the

subscription industry, as it is developing, to move beyond infancy and into a mature business. The lines of business that you're referring to, which many of our members are pursuing very vigorously, will also be in their infancy. I would go back to the point that it's a matter of practicality to say how many burdens can you place on our sector, which has invested up of \$10 billion, when there is so much benefit conferred on the free-to-air sector through many, many avenues of public policy.

MS RICHARDS: I would just like to add that the services that you have been talking about, in terms of those emerging services, have developed through the business that we have, which is the multichannel business, by subscription. I mean, we have built the new emerging services on an industry that relies on subscription multichannelled services. So when you're talking about the consumer will miss out, we know the importance of multichannelling and choice and diversity because 1.1 million subscribers are saying that's what they want and they're willing to pay for it. So if there is detriment to our sector by the free-to-air being able to offer multichannelling and all the other emerging services that are going to go with that - because I'm sure they have got plans for those sorts of things as well - then the consumer is going to miss out on a choice and diversity that we have already provided for them and will continue to provide for them.

MR SIMSON: But wait a sec. The multichannelling, as you put it, that you're providing through your subscription service is, as I am sure you would argue, a fine multichannelling service - - -

MR KEELY: We do.

MR SIMSON: - - - but you're not saying that should be the end of the game in terms of consumer choice.

MR KEELY: Not at all.

MS RICHARDS: No.

MR SIMSON: I mean, I'm sure the free-to-air would have, in their own minds, ideas as to the types of multichannelling services that they would provide that I'm sure they would see as quite different to yours. We're hearing from Channel 7 later today. I'm sure in some genres, not the least someone you kick a football with, that they would see an opportunity there.

MS RICHARDS: I think we've used them as an example.

MR SIMSON: In addition, for consumers to get your multichannelling they have to pay money.

MS RICHARDS: Yes, that's the essence of the business.

MR SIMSON: That's right, yours is a pay-for - the service. The free-to-air - consumers don't have the opportunity and will not have the opportunity for at least five years to have the opportunity of free multichannelling services. They have to pay for yours.

MS RICHARDS: Yes.

MR KEELY: But at the same time you're suggesting that, you know, let a thousand flowers bloom, let free-to-air services develop multichannelling. The reality of it is that there would be real threats to our businesses based on that decision, but at the same time there are a vast number of public policy decisions which favour the free-to-air operators. It is not a level playing field. As a consequence, we feel justified in pointing out that this would threaten our investment. There's no offer that the public policy field would be levelled to allow us to compete against free-to-air operators without all of the benefits that they currently have. Your recommendations, if looked at in terms of their likely practical acceptance by government, would actually make the conditions less competitive for subscription television. We would have more competitive disadvantages, and it seems skewed unnecessarily towards free-to-air operators.

MR SIMSON: You mentioned a figure of \$10 billion of investment earlier. Isn't about six or seven billions of that in the cable - - -

MR KEELY: Yes, indeed.

MR SIMSON: - - - of Optus and Telstra, and isn't that cable increasingly - and will very much increasingly - be used for a multitude of services by Optus and Telstra, of which pay TV is one, but there's going to be a hell of a lot?

MR KEELY: Significant more investment will be required to achieve some of the advanced services that we would all like to see in place. The commission I think has to be aware that the environment in which this investment is viewed by government and organs of government has to be seen as conducive towards us making further investment. Here we have a got a situation where we would see a business which we're moving towards profitability in - the subscription television business - is going to have new elements of public policy, in your recommendation, stacked against it. The environment seems to get worse year by year. Favour conferred on free-to-air operators continues to be increased. We believe once again your recommendations, if viewed in terms of their practical acceptance, would make our competitive position worse.

MR SIMSON: Well, as Prof Snape pointed out, you're making political judgments as to the likelihood of some recommendations - which we certainly haven't done because we're making recommendations on the back of our terms of reference, not on the back of what we think some politician might do. Certainly as a package we believe our recommendations would be to the benefit of all Australians and not simply one group or another. But the point that we were making with specific respect to

multichannelling is it's a service that consumers want and are shown to want, in terms of the use of digital spectrum overseas and, as you could argue, here, and it's a long time - five years - to lock them out of being able to use that through the free-to-air mechanism.

MR KEELY: Our submission would be that you have to bear in mind the viability of our businesses if there are further benefits effectively conferred on free-to-air operators.

MS RICHARDS: If free-to-air operators want to get into that business, perhaps they should be paying market value for that spectrum.

MS MEERS: I think, to pick up Chris's point and also the point that you made earlier, Mr Simson, that the fact is we have actually had to pay for the very valuable cable that we have been laying and all the other resources that we have contributed to the industry. If you actually allow the free-to-air to multichannel, you are allowing them to set up the same sort of business that we have but without having to pay for it. That doesn't encourage a healthy competition policy, I don't think.

MR SIMSON: We're just trying to look after the consumer, that's all.

MS MEERS: So are we. There are consumer benefits from a healthy competition policy.

PROF SNAPE: Your members with satellite based services have already converted to digital for the satellite services.

MS RICHARDS: That was mandated from the beginning - the digital.

PROF SNAPE: Yes, I'll rephrase it. They are on digital.

MS RICHARDS: Yes.

PROF SNAPE: Do cable operators intend to go digital?

MR KEELY: I think those decisions haven't yet been made. I take the opportunity to point out that in making those decisions, our members would consider the competitive environment.

PROF SNAPE: But if you do that would you - and perhaps this is a premature question then - would you be offering high definition?

MR KEELY: I think that's something that we would have to take on notice, to give you a response.

MS RICHARDS: I think we all see the future in digital but whether you would provide high definition or more channels, that would be up to the business plan of each of the operators, or indeed new services.

PROF SNAPE: We've got a section in here on spectrum clearing. As you will see, a lot of the thrust of our draft report has been to try and free up that analog spectrum and to try and ensure that there isn't a legacy of people who are on analog that creates a great bottleneck to the switch off, and to get that spectrum available for other purposes. Now, pay TV, subscription television, could be a useful part of that spectrum clearing, could it not? Have you looked at those possibilities? Could you comment on it? For example, if one is finding that there are people who have not converted from analog and that's going to be holding up the switch off, services could be delivered through the cable to help clear that spectrum, to get the switch off of the analog. Have you been investigating that at all?

MS RICHARDS: This is the spectrum clearance boys?

PROF SNAPE: Yes.

MS RICHARDS: Heavy-handed pay TV people to go around and say, you know, "I'll make you an offer you can't refuse. Move off this spectrum."

MR KEELY: I guess the simple answer is that the subscription sector has always been on the record to support its aim to deliver free-to-air signals to subscribers. To that extent, if allowed by law in the analog environment, we are keen to deliver those services to subscribers.

PROF SNAPE: Yes, but it may for example be that to get the laggards off the system at the end and in certain areas it might be worthwhile that the cable be extended or the people who are not currently a subscriber in fact get a subsidised subscription, subsidised by people who are trying to clear the spectrum in order to get the switch off. I mean, if they can receive the signals through the pay system and are being subsidised to do so, it may be the cheapest way of getting, in some areas, the spectrum cleared. You haven't been investigating that sort of thing?

MS RICHARDS: No, I'm sorry, professor, I'm not sure of the actual technical capability that we could do that. We could certainly take that on notice but I'm not quite sure whether that would be - I mean, you would have to look at it in terms of presumably - I'm actually not quite sure how it would work.

PROF SNAPE: Okay, we'll leave that with you.

MR KEELY: Broadly speaking, there would be a vast number of factors to be considered before the infrastructure is extended or made available free of charge to subscribers. I guess that there are a range of business decisions where very significant sums of capital are involved.

PROF SNAPE: Yes, well, in the United Kingdom the pay sector has been the driver of the digital. Here, that's not the picture we're getting from you at all.

MR KEELY: Well, that's not fair to say - the reality is we're a very new industry. We have invested billions of dollars.

PROF SNAPE: Yes, but in the UK it's a new industry too.

MR KEELY: Not as new as our industry.

MS RICHARDS: I would say that we're actually probably at the forefront of digital in that from the very beginning satellite had to provide their services using digital technology. Indeed, we would have a number of digital set-top units already out there, providing those services.

PROF SNAPE: Yes, but from the UK one gets the impression that the subscription television people are out there as the driving force in the digital thing. I take your point about the subscription services here but I mean, the picture that you're giving us is not that sort of out there, "Let's do it, let's be the people that get this system going and let's cash in on it." We're getting a picture of fear, not of - - -

MR KEELY: I don't think that's fair to say, professor. There are very significant sums of capital involved in digitisation and the advanced services that I think we would all welcome. It wouldn't be fair to say that there isn't anything but enthusiasm from our sector for that future. Our major concern is to properly consider that the capital implications - which are massive - and at the same time to ensure that the public policy debate isn't making our investment decisions less than good ones.

PROF SNAPE: Okay.

MR SIMSON: With regards to local content, your view is that there should be no local content requirement on pay television?

MS MEERS: I think our view is that there's no need for regulation in that regard. I am the director of business affairs for Showtime and Encore. They're the two movie channels on Foxtel and Austar. We have - just speaking on behalf of my two channels - invested a significant amount of money in feature films and in the industry generally. We have done that without legislation being in place. The reason we do it is because we need to have channels that are appealing to the public and Australian audiences obviously want Australian programming. So our view is that because pay television is market driven, there's actually no need for that sort of regulation because we will be doing it anyway.

MR SIMSON: Could I just ask, from the perspective of the consumer - you just observed that your viewers are market driven. They're paying you for the content.

MS MEERS: Yes.

MR SIMSON: And you're arguing that some of that content will be Australian content because that's what your consumers want to pay. A different argument is put to us, in fact was most recently this afternoon put to us by the free-to-air and certainly it's been put to us by the production industry, that if the content regulations did not exist, for example, if the 55 per cent universal quota were to be abandoned, that the free-to-air would significantly reduce their level of local content because people will still watch TV and people will take what they're given. I might say that's my very rough paraphrase of what others have said but it's a different view as to how the market works. You were saying that your market works quite differently to a free-to-air market in terms of the - the market forces in your industry work quite differently to those market forces in the free-to-air television in terms of determining what the supplier will supply, what content the supplier will put forward.

MS MEERS: Yes, I think that's right. I think that when you say that people will just watch anything, I think people will watch anything if it's free. I think the fact is that you have to pay for our service and people are much more discerning, I suppose, and they think, you know, "I'm paying X amount of dollars per month for this. I want to be watching films or general entertainment or sport that I really want to see." So that to us - I mean, that is the fundamental difference between the free environment and the pay environment in that we are catering, we're very market driven, we have to make sure, you know, that we're capturing the imagination of the subscriber.

MR SIMSON: And yet, I think the figures show, and it'd be appreciated if you could elaborate on this, that the amount of local content that you're showing, let's say in the area of drama, the amount of Australian content that is being shown in the area of drama on pay is still pretty small.

MS MEERS: I'm glad you asked me this because that is because there is not enough Australian programming that's available. We are a movie channel. If we buy every single Australian film that's made each year we still cannot show enough Australian feature films, so what we have been doing is we've been investing in the production budgets of Australian films and actually been involved in getting films made. Now, the fact that there is not as much as perhaps the production industry would want on the screen is, you know, a function of the fact that there just isn't enough product around.

PROF SNAPE: Well, I suppose it's in part, at least in the medium term if not the short, what you're prepared to pay for it and if you're prepared to pay a lot, say, pay more, the supply might be there but I don't think you've made that point in your draft submission.

MS MEERS: I suppose we've been involved quite significantly with the Department of Communications in making submissions to that effect in relation to the Australian content legislation but it's certainly something that you could make - - -

PROF SNAPE: Well, if you do have that argument in another form, then you could perhaps attach it as an appendix or otherwise to incorporate it into your submission because, as I say, we haven't got that information from you before.

MS RICHARDS: Certainly I thought that was part of our previous submission that we had to - - -

PROF SNAPE: Well, I apologise. I have it here but I haven't yet - - -

MS RICHARDS: That's okay. I mean, we were concentrating on the fact that you'd made some - or you seemed to be saying that it wasn't necessary on subscription television and we were endorsing the point that our services are market driven but we also wanted to make the point that the government has now - it may have actually passed into law, the enforceability of the new Australian expenditure condition requirement which is to be made retrospective from 1 July 1999.

PROF SNAPE: I saw that in your submission.

MR SIMSON: How burdensome in reality is that? I mean in the context of what you were saying a second ago.

MS MEERS: Well, for us, what we've had to do because there isn't enough product available, we have had to set up an administrative infrastructure within our business in order to identify projects, make investments, monitor the investments. That, I think, is quite burdensome when you think you're going to be a channel provider and then you have to then make the investments. I mean, it is something we want to do but I think the level is - you know, it is burdensome.

MR KEELY: There are two points that I'd like to make about Australian content. One is that there is frequently a focus on drama and we understand that because it - - -

PROF SNAPE: Sorry, focus on?

MR KEELY: Focus on drama production, and not only is there a powerful lobby group focusing principally on drama production but it obviously has cultural values which we support as well. What has to be realised is that the subscription sector produces around about 300,000 hours or puts to air around about 300,000 hours of television a year and that would lead any onlooker to realise it is a hell of a volume of television to be getting out there to meet the demands of subscribers and consumers. The Australian production sector is not capable of producing that volume of production. In terms of feature films, it is a huge infrastructure and quite a large investment to produce a single feature film and requires not only investment from the pay sector but from other sectors and there also needs to be actual industry momentum to get something into cinemas and on television that the public will want to watch. It's not simply clicking a switch to get that production happening. So that's the first sector, that there is a vast quantity of Australian production in the area of news, sport, general entertainment. It goes across all sectors, not simply drama.

The second point is that if you look across the channel spectrum in subscription television, there are around about 35 Australian-originated, all pass through channels, mainstream channels, not foreign language for instance. The programming budget in order to get those channels to air in some cases is not very significant, that is, simply to have a viable channel provider producing that channel means that the programming budget has to be reasonably modest. As a consequence, the ability to produce drama which is traditionally high budget is very constrained, and if you look at the average general entertainment channel, there's been discussions at the recent screen producers conference to the effect that the programming budget of those channels would be around about 3 to 5 million dollars. The cost, I think, of a high quality television series like Water Rats or similar is anywhere from 500 to 700 thousand dollars per hour. So if you produced, what is it, less than a dozen episodes of Water Rats, you'd only have to run them back to back to fill up the whole of a general entertainment channel. So there has to be perspective adopted in producing television that has high production values and has cultural values and the number of hours that we have to fill to provide our subscribers with a continuous service.

PROF SNAPE: Okay. I think that we've certainly taken your major point and understood your major point, you've made that very clearly, and the other points as well. Thank you very much for coming, and you Ms Richards, particularly with the difficulties that you're having at the moment, and we are very grateful for your contributions.

MR KEELY: Thank you.

MS RICHARDS: Thank you.

PROF SNAPE: We'll move straight then onto Seven's submission. We welcome the Seven Network, and we have a quartet from the Seven Network. The normal procedure, as you know, is for you to introduce each of yourselves individually so your voices are on the tape for the transcript service.

MR RAYNER: Thank you, chairman. William George Rayner, I'm a director of the Seven Network Ltd.

MR NORTH: Christopher Mark North. I'm managing director of a company, Wattle Park Partners, that's providing consulting services to the Seven Network.

MR BARRETT: Roger Barrett, I'm network director of engineering and head of broadcasting technologies.

MR WRIGHT: Colin Wright, I'm the executive engineer future technology at Seven Network.

PROF SNAPE: Good, thanks very much. Who is going to speak to the submission in the first instance?

MR RAYNER: Chairman, if I could briefly cut to the chase, as it were. We've brought the cavalry this afternoon - Chris North is a consultant to the Seven Network, Roger Barrett is our director of engineering and Colin Wright has been associated with our engineering department for many years - as we're sure you have many technical questions to declare and I'm sure these gentlemen will be only too happy to assist.

We were impressed with the report, chairman. It takes a broad view. It takes a long-term view. We don't necessarily agree with everything in it but it's provided a forum which I think is very necessary at this time in the industry's transition - and I say transition. It's recognised that digital television hasn't emerged so much to push in the consumer market for reasons of technological advancement. I think what we all need to realise is the system is evolutionary and subject to continuing development. Now, as broadcasters, we are utterly concerned that the maximum number of viewers can see us and receive us and that's why we have differed from our colleagues in the industry in suggesting that if there is to be a mandate of main platform at high level, it certainly covers 1080i, 720p, 576p and in so doing allows those who want to reach the maximum number of boxes to triple-cast if indeed they wish to do so. Those who don't wish to do so, and there are a majority of boxes out there that are not capable of high definition reception and will go black, and that's the way it will be.

We are concerned that at the very inception of digital television in this country there are immense restrictions on innovation for commercial broadcasters. Not only is it mandated that high definition be broadcast, we are constrained from multichannelling. As you'll hear from my colleagues later, multichannelling is an important aspect of what digital can do. In fact what digital can do will evolve over time and we need a transition that's acceptable to the consumer and viable for the

broadcaster. When I say viable, there have not been many digital business plans, I suggest, submitted to this particular forum. In fact at the Montreux symposium in Switzerland in June, somebody had the temerity to ask one of the broadcasters from North Carolina to share with the symposium his business plan for digital. He said, "My business plan for digital is simple. I plan to stay in business."

At the moment there is so much uncertainty in terms of the technicals, in terms of what we may be able to do, what we may not be able to do. It's extremely difficult to plan, and that's where I think that this forum is useful. It enables a variety of points of view to be tabled, to be explored and in that respect we were so concerned about the uncertainty as to whether or not various types of boxes and receivers would be available at the start of digital in Australia that we sent an engineering team overseas, as our submission explains, to examine what the real situation is and we felt it would be of value to this inquiry to have that information on the transcript. I won't go in detail, chairman, through our submission. I invite you to question us on the various aspects of what we raise and I'm sure my colleagues will be very pleased to answer any questions you might put to them.

PROF SNAPE: Good, thanks very much, Mr Rayner. I wonder if I just might start off with a question for clarification earlier on and this might be a question to Mr Barrett, I think, as the technical man, for the comment on the difficulties that we heard referred to earlier in the day of 720p as compared with 1080. I'm not sure if you were here at that time.

MR BARRETT: No, I wasn't here, unfortunately didn't hear that comment.

PROF SNAPE: It was suggested that 720p is a rather difficult standard, if you like, from a technological point of view.

MR BARRETT: I find that very hard to understand because one network in particular in the US has gone to 720p in toto. If someone is suggesting that it's CBS - it's the ABC network that has gone to 720p. If it's such a technological difficulty, surely they wouldn't have chosen it in the first place.

PROF SNAPE: And it would be no more difficult on DVB than it is on ASTC.

MR BARRETT: No, not at all.

PROF SNAPE: So, as far as you know, there is no particular difficulty with the scanning rates etcetera.

MR BARRETT: No. It all gets down to the fact of where the manufacturers sit in producing this product and obviously the fact that the ABC has already started - as a matter of fact, they were one of the forerunners in introducing high definition in the states - they've actually have been doing it and they're using that technology so obviously the equivalent is available from various manufacturers, so I find that very hard to understand.

MR NORTH: We understand with the networks in the States they all seem to be using different standards. CBS seems to be, we think, the only one that's embraced the full 1080i, ABC as we said has gone 720p, Fox has gone 480p which is really standard definition and we're not quite sure where NBC sits other than it - in fact Colin, I think, has probably got some information on - they haven't particularly adopted any direct standard but they're using some equipment that has been given to them free of charge and they've said they'll pay for the equipment when market saturation gets to 1 per cent, was that the number, Colin?

MR WRIGHT: Yes, something of that order, yes.

MR NORTH: So whoever supplied them with that equipment they'd be using that particular standard, was it Sony and 1080i.

MR WRIGHT: I believe there's a mixed feeling within that network and they're waiting to see how the situation pans out. But certain colleagues, friends of mine have said to me that they're quite interested in 480p which is in fact an HD - quality 480p at 60 frames per second is an HD format in that it requires a chip set that has the so-called main profile of high level capability compared with the regular standard definition boxes which have a chip set that is known as a main profile at main level specification. It's all to do with the data rate.

PROF SNAPE: Could I just ask how many pixel on the 1080i with ABC, do you know?

MR WRIGHT: 720p is with the ABC.

PROF SNAPE: 720p was ABC. Who was 1080?

MR NORTH: CBS.

PROF SNAPE: How many pixel?

MR NORTH: There's a difference between what is transmitted and - production transmission and reception.

PROF SNAPE: Yes, okay.

MR NORTH: There is no 1080.

MR WRIGHT: The basic specification for 1080i at least is 1920 pixel.

PROF SNAPE: Yes. But that's not being received?

MR WRIGHT: No, that's not being received. That's the transmitted format. The tape machines that are commonly available at the moment that broadcasters are using for that format, I believe, actually only are capable of recording 1440 pixel - they're normally 1440 pixel. With the 720p format, the pixel count is 1280 pixel, but there is a common fallacy - there was great difficulty in the United States of demonstrating to the interested parties that more lines isn't necessarily a sharper picture.

MR NORTH: We went looking for the glass, that was one of the things we looked for.

PROF SNAPE: That's the tube?

MR NORTH: That's right, the picture tube. And there is no 1080i, 1920 as the commission has noted and we were given quite firm positions by all of the major manufacturers that it's still some considerable time off to produce a glass that is a suitable size, a suitable weight and a suitable price. The closest anyone has ever got to 1080i 1920 is the Japanese news system. What are the numbers there, Roger?

MR BARRETT: 1035 by about 900.

MR NORTH: That glass has been available in the Japanese market for some eight or nine years and the price never fell below \$25,000 Australian.

PROF SNAPE: That's about a million pixel as against over 2,000,000.

MR BARRETT: 2,000,000, yes, at 1080 1920, yes.

MR SIMSON: What do you understand to be the evolving international standards with regard to production of the content, what was made to us by the Film and Finance Corporation, I think, earlier in the week that 1080i was the production standard, that is the standard at which the emerging international standard for the - 1080p, sorry, with the emerging international standard for the generation of content?

MR BARRETT: Different frame rate.

PROF SNAPE: That's 24 frames?

MR BARRETT: 24 frames, that's correct.

MR SIMSON: So it's therefore argued by FACTS and others that we're getting ourselves into a pickle if we adopt anything less than the high standard.

MR BARRETT: Not from the production format perspective. It does make some sense obviously to record your originating material in as high resolution as possible, but how you present that and what is actually presented to the viewer can be less but still with an extremely high quality.

MR NORTH: People don't transmit 35-mil film quality.

MR SIMSON: No, fair enough. The other point or another point that FACTS makes is that if some of the content, as was proposed by at least two of the FACTS members, is HDTV content and there was an increasing component of that, that the only way that viewers will be able to have the benefit of that is by obviously a set-top box that can convert to that and also having a receiver that at least gives them the benefit of being able to - gives them the opportunity to benefit from that transmission standard. Could you talk to that? The other point that FACTS made - I think a couple of you were here earlier - is that in the early period FACTS does concede that a body of digital transmission will in fact be an SDTV not HDTV. Could you comment on both those propositions that they've put forward?

MR NORTH: What many of the networks would show, everyone would expect HDTV transmission in the early years and there have been a range of numbers put forward as possible amounts of hours per week but no-one is anticipating much more than an hour or two per day in the early stages. It's expected to ramp up over time as more receivers capable of receiving that picture get out into the market. There are certainly not a lot of HDTV original production material already available, so most of what will be transmitted is expected to be what the networks actually produce themselves, be it - well, I think the only one that NBC is running at the moment in the US is the Jay Leno Show. From the Seven Network's point of view, they would be expecting to do their major news and current affairs and some sport in HDTV. But, yes, potentially 22 of the 24 hours a day is likely to be transmitted in SDTV.

MR SIMSON: Mr Branigan earlier today tabled a quotation from a company called the EFA corporation with regards to an HDTV set-top box and the price quoted for this piece of equipment by Mr Branigan was \$US250 FOB. Could you comment on that and on the basis of this - - -

MR NORTH: We have seen the quote. We are familiar with it and we've been doing some research on the company which I will get Roger to give you some clarification of. But in terms of - there has been so many furphy's in this debate it's very reminiscent of pay TV which several other people in the room also were heavily involved in nearly a decade ago when we had carpetbaggers regularly tramping through Canberra with boxes under their arms and promises of prices and all these wonderful potentials as to what was going to happen and about 80 per cent of what we heard then was proven to be totally fallacious and so we're very suspicious of any prices that we hear quoted or any undertakings that are given to us in relation to when a particular piece of technology will be available and what it will cost.

I think even Optus I think I remember back in the pay TV days, fell into the trap of undertaking to the prime minister the day that digital receivers would be a significant commercial proposition on satellite by 1993 and I think 1996-97 ended up being a little closer to the truth and that had an enormous cost to industry and particularly the initial players that eventually went broke under the strain of it. The

networks, I think, in Australia wouldn't want to go down the same path. So what we did, rather trying to believe anybody's estimate of future prices or promises of what future boxes may be, we went out to see what's actually there and available in the market at this point in time. The cheapest - and we have to look very much - I mean, ATSC is doing some different things and because that was a potentially a bigger market, there were some potentially lower prices available there.

But the comparable market has to be the DVB-T market out of the UK. If we're going to have cheap set-top boxes here they would have to be derived in some way from what's currently going into that market. We heard a lot about the free box and in fact we did bring along current ads out of the Independent and whatever which show the free box which costs you 6.99 pounds per month for the basic service which doesn't give you very much plus another 11.99 pounds per month to get the good stuff, which is mainly Fox Sports. So the all-up cost for the is about 20 pound per month for a free box and you can keep it so long as you are paying that rental and it's a 12-month minimum contract. So the free box doesn't exist.

PROF SNAPE: So it is a rental box?

MR NORTH: It's the same marketing technique as is used for mobile telephony. You get the box up front at no cost but that cost is amortised over a period of contract and you take the box back if you don't sustain the contract.

PROF SNAPE: Well, you don't have to take the phone back.

MR NORTH: No, that's one big benefit? You actually do better out of it in the mobile phone business.

PROF SNAPE: So it's not in fact the same, that is an important distinction. I mean, you're talking about there is a rental which is analogous to the subscription TV boxes here.

MR NORTH: Very much so. It's very much a subscription television marketing model that has been implemented in the UK. That box can also be purchased if you don't want to take a period contract and that will cost you 399 pounds which is equivalent of about \$1000. We spoke to a couple of the manufacturers about an FOB price while we were over there and they were understandably coy because none of them want to be cited as committing themselves to a price because they see this as the new market and they are going to try and extract as much as they can out of it. But we were given to understand that 180 pounds would be probably a reasonable FOB to expect for the existing digital set-top box available into the UK market and that's about 450 or 500 dollars Australian.

PROF SNAPE: That's the FOB price?

MR NORTH: Yes, that's right.

MR SIMSON: You were going to ask one of your colleagues to comment on the EFA Corporation.

MR NORTH: Yes. Have you looked at their Web site? It's EFA.com.tw. You can find out all you want about the company there. It's not very big, I mean it's got a revenue of 100 million, but their only digital product is a satellite digital receiver, it's the PRO 2000 box which is, I think, the one that someone gave to a couple of parliamentarians. It's not a digital terrestrial television box. We don't know what's inside it. We haven't been able to get one to take it apart but that's only one of about 50 or 60 products in the product range of EFA. In the scheme of things they're not a big operator but Roger has been looking in more detail at this. I think he has got some of the downloads from its Web site there as well.

MR BARRETT: Just to follow on from Chris, I mean, we've also been hunting around like everybody else has to see what there is in fact out there because, again what Chris said earlier, our mission was literally to try and sort out fact from fiction. EFA has only come up just in recent times. We've had a look at the company. The only product that we can see that they actually manufacture at this time is satellite receivers. It purports to be - and I've got no doubt it is - MPEG and DBB compliant, but all I've got to say is as far as being suitable for the Australian market, what we're talking about here is it being satellite receivers. A lot of satellites are receiving - transmission systems around the world of course are DBB but not terrestrial. The significant issue of course is the receiver standard for Australia has only just passed through Standards Australia but has not been approved at this point in time so - - -

MR NORTH: As far as yesterday, by the way.

MR BARRETT: The day before yesterday. So it's hardly going to be that this box is going to be compliant to the Australian specifications or the Australian Standards. So I find that somewhat interesting. I know the box has been demonstrated and what I'm saying is correct, there was no transmission as such, so the front end of the box - and it has a tuner side of it - would have had to have been bypassed to actually get a demonstration happening. I don't want to get into the nitty-gritty of all that but obviously to demonstrate it you would have to put a transport stream, a DBB transport stream, into that box to be able to display it.

MR SIMSON: Mr North, you used the term earlier, a little earlier in this - the term carpetbaggers. Do you put EFA in that category, do you?

MR NORTH: I don't think I would like to be quoted as describing EFA as a carpetbagger. I don't know sufficient about their overall business practices but we certainly saw a range of them with boxes under their arms promising to do all sorts of things in Canberra in 1990, 1991, 92 - George Frame will remember them. Anne Davies will remember them. The couple that we were able to test back in those days did show some pictures. We could get a picture through it. They broke up every now and then, as all of these pictures seem to, and none of those boxes ever made it to market.

PROF SNAPE: I'm a little puzzled, I guess, and of course, as you say, we get lost in boxes, but we quoted a figure in the draft report for a standard definition box using Philips' submission. That we quoted an estimate 500 for a standard definition box. In the Philips' submission to us which was submission 166 - and of course Philips are in the standard definition business - they quoted two models and their source was the home entertainment magazine for April, May 1999. They quoted a Pace box, DTR730, the model number, which was 199 pounds, and a Philips' DTX7370, which was 199 pounds also. So I was a little bit surprised of your figure of 399 as the cheapest box available. It is probably something we can't solve on the run.

MR NORTH: No. We will go and find out what we can about those particular boxes.

PROF SNAPE: It might be an idea if you were to be so good as to have a look at the submission 166, page 9, where there is in fact a table there of those prices given to us by Philips.

MR SIMSON: I'm curious to know why - or how is it a part of the free-to-air industry, which yourselves can see a business case for multichannelling - a business argument at least for multichannelling - whereas other parts of your industry do not. Are we missing something here? As we commented in our draft, we have received a body of evidence that suggests multichannelling is something that's a driver of digital services in the US. What is the difference between your business and other parts of the free-to-air business in Australia that throws up at such a different prospective?

MR RAYNER: I can't speak for the others, Mr Simson - - -

MR SIMSON: Nor they for you today.

MR RAYNER: Nor they for us, chairman, thank you. But it's been a bipartisan decision to allocate spectrum to the free-to-air for the conversion to digital television. To solve a legacy problem that exists with the viewers, the viewers have long regarded the television set as sacrosanct. When colour came it had to be compatible with black and white. When digital comes it won't be compatible with their analog set. Digital offers many opportunities, as we see. Multichannelling is one. Datacasting of course is another, high definition television is certainly a factor. We believe that to force this transition, to encourage consumers to buy a box, there has got to be something more than just a high definition picture.

If you buy a box to receive a high definition picture on your analog set it is not going to look much different. Why would you? Why wouldn't you just continue watching it in analog? So the difference between us may well be that we see a much better business case in the development of the enhancements that digital provides to us than our colleagues do. We know there's a limited period of time - at the moment it's about eight years - before the British say not switch off but switch over. During that time we've got to get 100 per cent of viewers across in some way to digital.

We're not going to do it by just having high definition for two hours a night, I wouldn't think.

I don't know, I'm not going to speak for him but from where we sit if we're going to be innovative in a new age and have an opportunity to enter this convergence that's upon us anyway then we've got to embrace this and we've got to make it work. At the moment there are so many constraints on it in our terms that it's going to be very difficult, especially if the cost of entry for consumers is going to be high.

MR SIMSON: Would you give some examples of what you'd like to do with multichannelling, what sort of programming the viewer could expect with - - -

MR NORTH: As a result of the overseas visit, the key thing that no-one has done yet, as we said earlier on, has developed business cases around what might be done with digital television. That was a salutary caution that we had from almost every group that we met with overseas, that if there isn't a sound business case and if there isn't a strong and concerted effort by all players in the game, which are the networks, the manufacturers, the retailers, to drive this technology in, it will fail. That is one of the significant reasons we believe behind the failure in the US and the significant difference between the enormous successes that we saw in the UK where after only 12 months in the UK I think there are something like 350 to 400,000 terrestrial set type boxes and receivers out in the market.

I think about 30 or 40,000 of those were actual integrated receiver decoders, built into the television set with glass. There's about 1.7 million, I think, satellite receivers - have gone into the market in that period of time. In the same period of time in the US we've seen, by some counts, 5000 to 10,000 boxes sold over the same period.

MR SIMSON: The question, Mr North, was what sort of content - - -

MR NORTH: Where do we find a business case? What the network has done at the moment is put together some people to develop a programming options that can sit within the constraints of the regulations. We have got to remember that the act currently bans multichannelling but does allow enhanced services so we have to look at, within the context of enhanced services, what can be done.

MR SIMSON: Do you see much difference between enhanced services and multichannelling?

MR NORTH: Yes. It is unfortunate but it's there and it's something that we've got to live within.

MR RAYNER: Does he see much difference?

MR SIMSON: Yes, I asked.

MR NORTH: Yes, you do. A very good example I saw has been run by - the BSKYB is running it in the UK called Sports Active whereby - this is the multiple camera angle for your sport. That becomes a big issue as well because if we were required to broadcast in 1080i there is no space left when you're in high definition to run extra channels to do your service enhancements, therefore you have to cut it back to at least 720p to get one in and maybe 576p to get two or three in. Then you can run different camera angles. You can run player profiles. You can run the last 1600 Plugger goals. You can do stats, which is a combination then of datacasting and enhanced services.

That is one option. Looking at the option to enhance news services, the extent to which you can have more in depth coverage to particular stories, greater coverage of local issues attached to your news services, looking at the option of delayed start of programming so that instead of, you know, everyone having to watch the news at 6.00 you can watch it at 10.00 by running the full program stream over again on a separate channel at a delayed date. There are other issues that then arise of course, particularly to do with classifications and times of screening and that sort of thing that would have to be dealt with. The extent to which you can tack onto something like the Great Outdoors or Burke's Backyard, to quote other network's programming - enhancements which, if you're in a cooking segment you might be able to cut to something on another channel that's providing more detailed, more interesting information.

There are business cases there because the only way you can derive new revenue in this digital scenario is because subscriptions can't be charged and that's the model that's working very well in the UK, you have to either grow your own advertising cake by taking it off your competitors or you have to grow the advertising cake overall by generating new and different options for advertisers. So you would then look at - the golf is a very good one. If you are running the golf you could have a separate channel that is just following Greg Norman round or Baddely or whoever is the hit of the day - or you might just be covering the 18th hole, so everyone finishing off there. Then your core advertiser we believe could then be approached to pay more money to pick up the other services.

So these as the sorts of options that we're not just working through. We've got about eight on the table that are being worked through and developed up. As they get into a little bit more detail needless to say they will be highly commercially confidential.

MR SIMSON: They're fundamentally enhanced programming, aren't they?

MR NORTH: That is right.

MR SIMSON: They are not multichannelling.

PROF SNAPE: Are we sure they are enhanced programming?

MR NORTH: We won't know until the cabinet defines enhanced services and datacasting.

MR RAYNER: Mr Simson's question is a very interesting question. We'd like to answer it rigorously but at the moment it's a bit difficult when we're not allowed to multichannel. For instance, if we were allowed - if we were allowed, and we're not - the problem with anti-siphoning wouldn't be as great as it is. For instance, Channel 9 some time ago delayed the first session of the cricket in peak time.

MR NORTH: With the agreement of fairly senior politicians too, I might add.

MR RAYNER: I don't know - and probably for good reason - if multichannelling was available, why shouldn't the cricket fans see on channel B the first session while Water Rats 1 is on channel A? I mean, all those sort of things are possible in the digital environment.

MR SIMSON: Can I turn to datacasting where you say in your submission, "We could find little evidence of such services or demand for them overseas other than those already catered for by the Internet." Could you just expand on that please in terms of what you found out.

MR NORTH: Actually we didn't find any datacasting services, which is a problem.

PROF SNAPE: There's a weather channel in the US. On the pay television set there are a number of datacasting services I think.

MR NORTH: Yes. In Australia - I mean, a weather channel would be - in my view, I mean, open to legal interpretation, but that would be a narrowcast service which becomes our broadcasting service. Almost everyone we spoke to - and we asked the question, "What is your view on datacasting? How would you define it? What is it?" I think almost unanimously the answer we got back was, "We haven't seen any evidence of anything that is datacasting emerging here." What we see it as being is primarily the whole range of services that can be delivered on the Internet.

What you're seeing here is the capacity for a much fatter pipe, Internet-related pipe, to be delivered directly into all homes. So that potentially it's a little bit like Internet access on cable. It opens up a whole plethora of new opportunities if you can speed up downloads and if you can get better picture quality for streaming, for audio, for everything else. The problem of course with the Internet is that it's only as fast as its slowest point and even if you could potentially get 10 megabits per second into a home you're probably only going to run it at about 56 kilobits per second because that's as fast as you're getting anywhere around the world unless you start caching; unless you start dropping down all the information into data warehouses that are located in Sydney, Melbourne, Adelaide, Brisbane, so you can just feed directly off them, then it becomes a much different proposition. But once you start to do that, once you do start caching, you're not really providing traditional Internet, you're providing something different and it starts to raise new issues.

People seem to have lost sight of the fact that datacasting is really only a phenomenon of the broadcasting services bands. It doesn't exist anywhere else in any of the other regulatory environments. There's no such thing as datacasting on cable, on satellite, on anywhere else, and never will be. Datacasting is a - - -

MR SIMSON: It depends how you define - excuse me for interrupting - datacasting. I mean, there are some people who define datacasting as definitely something that is not - a service that not be confined to the digital band or that can be delivered over cable or satellite or anything else.

MR NORTH: Sure, but it doesn't matter out there. You don't need a definition on all of those other mediums because you're not trying to either restrict, contain or otherwise define what it is and what it can do. We only need a datacasting definition for those services that have been carried on the broadcasting services bands so it's important to always draw that distinction. Did I answer the question or did I waffle on too much and lose the point?

PROF SNAPE: Perhaps it's been - I mean, in our draft report we said that datacasting should be defined as liberally as possible and the reason that we adopted that strand was in fact that if it made no distinction between broadcasting and datacasting then datacasting would have been subject to the cross-media rules and to the content rules. So it was the fact that there are those regulatory restrictions attached to broadcasting that we in our draft report maintained the distinction.

MR NORTH: Yes, but what you would have, as our submission says, is a de facto broadcasting service emerge almost immediately if there was no differentiation between a datacasting service and a broadcasting service on the broadcasting service's bands.

PROF SNAPE: On page 9 at the top you say - and you're referring to subscription services:

Consideration should be given to preventing those that control access to carriage services for subscription services from also acquiring exclusive rights to program material.

Would you apply the same principle to those who have the carriage rights on free-to-air and if so why not?

MR NORTH: No, because it's certainly the Seven Network's view and I think a public policy view that the carriage services available for subscription services are communications carriage services and there was a regulatory regime put in there called the telecommunications access regime, the policy purpose of which was to ensure that where carriage services were in place, everyone could get access on equal terms. In other words, at that point in time when that regime was contemplated, there were principally two cable operations that had been rolled out, the Telstra and Optus

hybrid fibre coax systems, and it was envisaged from a policy perspective from day 1 that after 1997 when the telecommunications regime was opened up to competition, so too would those networks which had been given a two or three year protection of exclusivity as an incentive to roll-out of the networks, that as you're probably aware, is currently sub judice. I think that matter will be decided by the courts in the first instance on 30 January.

PROF SNAPE: I'm just trying to look at the principle here and of course the principle in the commercial sector in Britain is that there is a separation between the transmission and the ownership if you like of the content or the suppliers of the content and it would have seemed to me that the principle that you were making here, in the context that you were making it here, would have applied equally to the free-to-air.

MR NORTH: If the government had decided to go down a process of common carriers with multiplexing, selling off the spectrum to someone to then put all that together, there would have been some merit in considering that approach. The government has chosen to go down a different path where they're looking to the broadcasters to fund the cost of the transition. That will certainly be picked up when I think the extra additional available spectrum is available for datacasting services. I would expect those sorts of principles might come to apply at that point in time but at the moment the decision that the government has taken is to allocate broadcast as part of that spectrum, not allowing them to multichannel but to continue to provide free-to-air services within certain parameters if they're going to limit the amount of channel capacity that's available as a quid pro quo for the cost of going through the process of conversion. So I think a different in area but I understand your point.

PROF SNAPE: In Media Alliance this morning - I think you might have been here for the discussion?

MR NORTH: No.

PROF SNAPE: Media Alliance was in fact suggesting I think something along the lines that I'm just implying might have been an extension of your argument here.

MR NORTH: Sure.

MR SIMSON: Could I take you to page 11 and the value chain schematic that you've got there and just be clear as to the implications that you're drawing out of this. Would you just speak to that diagram in terms of what are the key messages that you want to convey.

MR NORTH: It is embryonic but let me say that what we're talking about in relation to cross-media ownership and ownership generally in the media and market definition in the media relates directly back to the sorts of arguments that we're making in relation to conversion to digital. Why we're taking a different stand from some of the other networks because we have a different perception of where the

market is going and also the Seven Network's role in that market. This is embryonic thinking and literally it's being done in the context of something else that we're working on but we thought this was probably the last opportunity we'd get to expose some of the thinking to the commission before you go down that path.

What we're trying to identify is what's happening in the market at the moment in the context of mainly competition law and the value chain was trying to identify what all the components are that sit behind what consumers eventually receive through the various mediums and media. As you see there, we worked from you know the initial inputs. We've listed, you know, journalists, players, actors, writers, and below the line as we go through each one of the sections, we've then identified some of what we see are the key major players that have got significant commercial stakes in that part of the value chain. The reason why we've tried to piece that together in conjunction with our concept of the market - we haven't provided this to the commission yet but we will if we can get it finished over the next couple of weeks but a significant concern we have, as the OECD has, is the growth of some of the major media enterprises at the moment.

We've been charting News Corporation - I'll pass these across to the commission to have a quick look at but I won't leave them with you at this stage. Those charts show you everything we've been able to identify that News Corp currently owns or operates and PBL currently owns and operates and Telstra currently owns and operates. There's a fourth diagram that's now three-dimensional which overlays all three of those and shows you where they intersect. The disturbing element from other players in the market in all of that is, as we've argued a number of times, the extent to which - whilst none under current competition law could be regarded as dominating in a particular market segment by being able to exercise power across all of those, they can in fact leverage positions where other players in the market cannot compete on anything like equal terms and you have these two effects of the network effect as we've talked about and the tipping effect, particularly the tipping effect, where the strongest get stronger and the weak get weaker, to a point where it's attractive for consumers just to go to one particular supplier because that's where it's all happening.

PROF SNAPE: So what does this mean for us?

MR NORTH: What does it mean for you? It means that we don't, I think, accept that just a public interest test within the Trade Practices Act is sufficient to deliver diversity and plurality should we remove cross-media and foreign ownership rules. I mean, we'd like to see them removed too at an appropriate point in time when those other things within the package that was addressed in our original submission have been dealt with. The thing that hasn't been dealt with adequately is the way you deal with this changing market and how you then protect against the risk of far greater concentration of market power, particularly by those three powers.

PROF SNAPE: I think these are extraordinarily interesting diagrams to us and I think that we would be very grateful if you could supply them to us. We would then

possibly ask you what we can do with them because they could be of interest for us for our report.

MR NORTH: I was showing you them to explain why we've got the value chain in there. It was to identify the areas that we see in that chain and the extent to which those players play in each one of those elements of the chain.

PROF SNAPE: Just to enlarge, we have been trying to convey a bit better - to give more thought to the interactions of various businesses. We gave some illustrative examples in the draft report and one of the things which we'd had on our plate was to try and think if that could be gone a bit further but it looks to me that you're way ahead of where we had reached. Thank you for that. Just drawing on that, I would like to then ask - at the end of your submission you say:

In these circumstances the Seven Network considers the recognition of definition of this new market is fundamental to ensuring plurality of ownership and diversity of views in the digital age.

That of course relates to the public interest test that we were suggesting could be incorporated into the Trade Practices Act but if you can carry it - we have been giving it further and careful consideration as you suggest we should but we are also asking people to give us guidance on this and to help our thinking. I think that we've had some suggestions but really nothing that is advancing where we were in the draft report very much but if you could give further consideration to help us in the formulation of that, that would be extremely valuable.

MR NORTH: Shall do. We'll follow that up. I mean, we have a concern I suppose that again going back to the analogy of the pay TV debate, that was really all about broadcasting reform. It started off as the broadcasting reform and the debate was subsumed by pay TV. We see the same risk with the Productivity Commission's report, that your deliberations are being subsumed by the highly contentious current debate of digital terrestrial television and we would consider this issue far more important in terms of what's coming out of the commission's work and therefore we were trying to urge it be given greater prominence and dealt with more exhaustively, I suppose.

PROF SNAPE: Yes, we are. Of course our terms of reference are very broad and we've been covering a number of things and we have not tried to subsume everything under the digital debate but of course it has reached - got rather a high profile of late.

MR SIMSON: It is interesting in the context of the value chain you've got in your submission and these charts you've provided us here and also in the context of quite a good table that was in the SPAA submission this morning, and this is a question now. If industry is aggregating in the way that this sort of evidence suggests, the implications for audiovisual cultural policy, for Australian content in the context of the cultural and social objectives of the BSA Act, of deregulation, of what's superficially be seen to be a more competitive environment which, whether it be

through a change to the cross-media ownership rules or some of the other recommendations that we made on our draft, the extent to which there is emerging such a fundamental change in industry structures, that you could actually have a perverse effect in terms of competitive effects.

MR NORTH: Absolutely. That's exactly what we - we agree with that position and that's what we're trying to articulate and argue here. I mean, there are areas where deregulation can be a significant benefit to competition but the regulatory safeguards have got to be there. We believed, for example, within pay television from the point of view of contestability and access to that market, that the telecommunications access regime was going to deal with that but I think history has proven, not just in the area of pay television but in a whole lot of other areas for access interconnect and the amount of litigation that's going on at the moment in - - -

MR SIMSON: Including yourselves, yes.

MR NORTH: That's right. Is clear evidence that the attempts of regulatory safeguards to foster competition to date haven't worked. Why haven't they worked? That's part of the reason.

PROF SNAPE: Thank you very much. Yes, I think that being 5 o'clock of course - - -

MR NORTH: We've done a couple of charts actually and Roger has put a lot of time into these and I'd like to hand them across to the commission as well because they might be useful in terms of - there seems to be a lot of toing and froing about what you could fit into the spectrum available in the various formats and also what within those formats you would actually push out as product. These I think are an excellent couple of diagrams that might be - - -

PROF SNAPE: I think we'll treat these as submissions of course to get them into the public domain.

MR NORTH: Those are but not just yet the - - -

PROF SNAPE: And as soon as you've finished the other ones, if you could incorporate those into a submission because, as you know, it's one of our principles to get everything into the public domain which is not commercially in confidence which is given to us and so we would wish to do that. So thank you very much for that submission and discussion which has been very helpful. I normally at the end of the day, and shall again, ask anyone who is present, and it's pleasing to see that today there are a number of people present at this time of the day other than the commission staff, that if there is anyone present who wishes to make an oral statement at this point, and it appears not, then in that case we'll close the proceedings for the day and thank the participants very much for their contributions during the day. We shall resume here tomorrow morning at 9 o'clock.

MR SIMSON: Mr Rayner wishes to say something.

PROF SNAPE: I'm sorry.

MR RAYNER: Chairman, I just wanted to say thank you for the opportunity to appear and present. We'd like to leave you with the impression that we're enthusiastic broadcasters. We do believe in HDTV. We believe it's an evolutionary thing. We want as many consumers to enjoy digital as possible and the work we've done I think shows the commission that we're working very hard to reach that point. Thank you.

PROF SNAPE: Thanks very much, Mr Rayner and thank you everyone. As I said, we shall resume at 9 o'clock here tomorrow morning. Thank you.

AT 5.08 PM THE INQUIRY WAS ADJOURNED UNTIL
FRIDAY, 10 DECEMBER 1999

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