

Australian Key Centre for Cultural and Media Policy

**Supplementary submission to Productivity Commission
Inquiry into broadcasting**

**On matters relating to content regulation for pay TV, advertising and the
transmission quota.**

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[1] This submission supplements that submitted by the Key Centre in December 1999, in particular section 5, "Influence and Australian Content Regulation". It is submitted as a result of discussion at the hearing of the Productivity Commission on 17 December 1999 in Brisbane. It seeks to clarify arguments made in that submission and in the hearing about the cultural rationale for content regulation on pay TV, for advertising on commercial television and with relation to the transmission quota.

Pay TV

[2] The problems with Australian Content Regulation for Pay TV, in the view of the Productivity Commission, are that it is ineffective due to problems with the legislation and that because there is no requirement to broadcast the programs funded, the regulation is unlikely to address the stated social and cultural objectives. On this basis, the Commission is "not convinced that Australian programming or other content regulations should apply to subscription television" (Draft Report p 237).

[3] The Commonwealth Parliament passed the Broadcasting Services Amendment Bill (No 3 1999) in December 1999. These amendments to the Broadcasting Services Act now ensure the enforceability of the expenditure requirement on pay TV predominantly drama suppliers. The requirement to screen product thus funded has at least been clarified to the extent that the Minister's second reading speech refers to the obligation on the part of the pay TV industry to comply with the spirit as well as the letter of the amendments. This should be seen against the background of there being no evidence to date of non-screening of funded drama; indeed the possibility that the pay TV industry would act in this way is virtually inconceivable given its need for content across multiple channels and a significantly lower threshold for suitable product than free-to-air TV.

[4] Therefore, the reasons adduced by the Commission for being unconvinced of the effectiveness or justification for Pay TV Australian Content Regulation have recently been significantly addressed.

[5] In addition, it is explicit in the parliamentary proceedings in the course of the passage of these amendments that Parliament is of a clear, bipartisan

view that there is as powerful a cultural rationale for this regulation as there is for that obtaining on free-to-air television.

[6] The relevant minister, the Minister for the Arts and the Centenary of Federation, in his second reading speech stated that “the Government recognises the important role of television drama in developing and reflecting a sense of Australian identity, character and cultural diversity. The aim of the licence condition is to require the subscription television industry to contribute to the production of Australian drama programming for the cultural benefit of Australian audiences”. With implicit relation to the requirement to screen product thus funded, he stated “the government expects the subscription television broadcasting sector to comply with the spirit, as well as the letter of the new enforcement arrangements ...”. In addition, the government indicated in this second reading speech, that it believes that “extending Australian content regulation for pay television warrants further consideration” in respect particularly of the contribution of documentary to developing and reflecting a sense of Australian identity, character and cultural diversity.

[7] The opposition spokesperson, the Hon. Steven Smith, in the House of Representatives, stated that the opposition has a “strong attachment...to the notion that Australian local content production for broadcasting matters is a very important part of our cultural character and cultural diversity is something which we have a very strong attachment and commitment to”. In the debate on the bill in the Senate, Senator Mark Bishop referred to TV being the “dominant purveyor of culture in Australia” and “Australian content production and TV screening is a piece of instant history which reflects the growth, dynamics and change in our society”. He also referred to the opposition’s support for the bill as it makes “the existing requirement for Australian content for pay TV enforceable on the same basis as for free-to-air television in respect to drama”.

[8] This strong bipartisan acceptance of the cultural basis for pay TV content regulation reflects broad community sentiment supportive of regulation to ensure minimum standards of Australian content in both new and established media. (See section on Evaluation, below). The commission is clearly well ahead of, or outside of, community standards in its draft findings on this matter.

Australian Content Quotas for Advertising

[9] The Centre’s 1999 submission submitted that it would be appropriate for the commission to clarify the social and cultural objectives for Australian Content regulation rather than recommend deregulation in these areas.

[10] At the 17 December 1999 hearing, it was agreed that the Centre should provide suggested wording as to how this might be achieved with regard to the existing regulations.

[11] The Centre's suggested wording for Television Program Standard (TPS) 23 is as follows:

Objectives

3. [12] The objective of this standard is to ensure that social and cultural objectives of broadcasting legislation, including promoting a sense of Australian identity, character and cultural diversity, apply to commercial television advertising. This is in recognition of the significant impact of television advertising on a sense of Australian identity, character and cultural diversity. The standard will ensure that the majority of advertisements on television are Australian made, by means of a flexible regulatory system that recognises the market reality of advertising.

Transmission Quota

[13] A suggested wording which would clarify the rationale for the transmission quota is as follows:

Australian Content Standard

Part 5 – Transmission Quota

9. Australian Transmission Quota

...

- (2) Subject to Subsection (3), and in recognition of the role of commercial television in developing and reflecting a sense of Australian identity, character and cultural diversity across all program types during main transmission hours, Australian programs must be at least 55% of all programming broadcast in a year by the licensee between 6am and midnight....

Evaluating the Social and Cultural Effects of Regulation (p 237)

[14] The Key Centre strongly supports the Commission's identification of the need for more systematic evaluation of quota systems' success in meeting social and cultural objectives of regulation. While there may have been "no systematic evaluation" of the efficiency and effectiveness of the quota system, there is sufficient research to hand which suggests that there is broad community support for, and expectation of, policies underwriting Australian content across a variety of media forms. In a recent survey of available findings on this matter, the Communications Law Centre, (in *Programming Australia in the Digital Age* for the Australian Broadcasting Corporation, 1999) found a very close correlation between the amount of Australian content in a given media format and Australian audiences' use of it.

Australian Content in Australian Media: Overview of Performance¹

| Medium | Availability of Australian content as a proportion of all content available | Use of Australian content by Australians |
|-----------------------------|---|---|
| Television | Commercial: High ABC: High SBS: Medium Pay TV: Low overall; varies across channels | Commercial: High ABC: High SBS: Medium Pay TV: Low |
| Video | Low | Low (higher for direct sales) |
| Radio | Talk formats: High Music formats: range from low to medium | Talk formats: High Music formats: range from low to medium |
| Recorded Music | Low | Low |
| Newspapers | High | High |
| Books | Fiction: Low Non-fiction: Low Children's: High | Fiction: Low Non-fiction: High Children's: High |
| Magazines | High | High |
| Cinema | Low | Low |
| Video Games | Low | Low |
| Internet and World Wide Web | Low | Medium |

Source: Communications Law Centre, *Programming Australia in the Digital Age*, Australian Broadcasting Corporation, October 1999, p. 15.

[15] The broad conclusions which can be drawn from this research are:

- High proportions of Australian content are available only in free-to-air TV, radio and newspapers – sectors which are regulated or which provide major sources of very specific local information;
- Where high levels of Australian content are available, there is also a high level of use of it;
- Even in some areas where low levels of Australian content are available, usage is still high (non fiction and children's books), or medium (sell through video, internet and www);
- Availability of Australian content is generally lowest in entertainment/story telling media, such as video rental, fiction books, cinema and video games.

[16] Franco Papandrea's 1997 *Cultural Regulation of Australian Television programs* included the results of a large survey from the mid 1990's which found:

"Awareness of the cultural benefits likely to accrue as externalities to the production and consumption of Australian films and television programs appears to be widespread. The surveyed data reveal widely held beliefs that Australian films and television programs confer benefits that are deemed to enhance national culture and identity".

[17] These results were consistent with earlier studies by Thompson, Throsby and Withers (1983; 1994) and by the Australia Council (1993) of the cultural demand for Australian painters, singers, writers, actors and others.

Content Regulation in a Fully Converged Media Environment

[18] While the Commission is to be commended for its systematic examination of the problems faced by content regulation in a converging, liberalising and expanding environment, the Centre would caution against a tendency to “bring the future into the present” by recommending or making broad assumptions that full deregulation should flow inevitably from market expansion and convergence. This is itself based on the assumption that such expansion and convergence will proceed uniformly and inexorably and that community responses – for instance to the significant loss of Australian content – will not require political and policy mobilisations to continue to ensure access to culturally specific Australian material in the future.

References

Australia Council for the Arts (1993), *Public Attitudes to the Arts :1992, Report of Surveys of Public Opinion for the Australia Council*. Sydney: Australia Council

Papandrea, F (1997) *Cultural regulation of Australian television programs*, Bureau of Transport and Communications Economics occasional paper number 114, BTCE, Canberra (p 124)

Thompson, B, J., Throsby, C, D. and Withers, G, A. (1983), *Measuring Community Benefits from the Arts*, Research Paper Number 261 Macquarie University, School of Economics and Financial Studies.

Thompson, B, J., Throsby, C, D. and Withers, G, A. (1994), *Measuring Demand for Public Expenditure: Theory, Methods and Preliminary Results*, Research Paper Number 383 Macquarie University, School of Economics and Financial Studies.

¹ Australian content levels were defined as: High- greater than 50%; Medium- 20-50%; Low- less than 20%.