

AUSTRALIAN CHILDREN'S TELEVISION FOUNDATION

SUBMISSION TO THE DEPARTMENT OF COMMUNICATIONS INFORMATION TECHNOLOGY AND THE ARTS IN RELATION TO ITS DISCUSSION PAPER - "PROVISION OF SERVICES OTHER THAN SIMULCASTING FREE-TO-AIR BROADCASTERS ON DIGITAL SPECTRUM"

May 2004

The Australian Children's Television Foundation ("**ACTF**") welcomes the opportunity to comment on some of the key points and issues raised in the Department of Communications Information Technology and the Arts ("**DCITA**") *Provision of Services Other Than Simulcasting Free-To-Air Broadcasters On Digital Spectrum* Issues Paper of May 2003 (the "**Paper**").

The conversion to digital transmission presents exciting opportunities for new and diverse programming and viewing alternatives, for the Australian broadcasting industry and Australian audiences. The potential for multichannelling presents an opportunity for Australian audiences to gain access to a wide and unprecedented range of free-to-air programming, whilst the technical capacity to transmit a High Definition television ("**HDTV**") picture enhances picture quality and viewing experience. Accordingly gradual conversion to digital transmission, and analog "switch-off" potentially translates to enhanced viewing opportunities and free-to-air television experience for the Australian audience.

The opportunities presented by digital conversion will only translate as real benefits for the Australian audience if Australian content, in particular Australian content made especially for Australian children, continues to be screened in a digital environment. Strong regulation of content in a digital environment now and in the future, is the key to insuring Australians continue to have access to quality Australian content that enriches their lives and is relevant to them.

The case for regulation

Since the 1960's governments have been consistent in their recognition of the role that commercial television plays in the promotion and nurturing of Australia's cultural identity.¹ Television is recognised by governments as the most important, accessible and affordable of all cultural mediums and the importance to Australians of local telemovies, miniseries and children's drama is recognised to the extent that each of these productions,

"tell our stories, the stories that Australians want to see, the stories that become part of our sense of who we are as Australians".²

¹ Australian Broadcasting Authority, Review of Australian Content Standard – Issues Paper, November 2001, p.15

² Department of Communications, Information Technology and the Arts, "Additional funding for quality Australian TV drama – Fact Sheet" accessed from www.dcita.gov.au on 22/05/03

The availability of a diverse range of locally produced television for Australian audiences is a primary aim of the *Broadcasting Services Act* (the “**Act**”). Section 3 of the Act notes the following as some of the objects of the Act:

- “To provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive *and responsive to audience needs*”;
- “To promote the role of broadcasting services in *developing and reflecting a sense of Australian identity, character and cultural diversity*”; and
- “To promote the *provision of high quality and innovative programming* by the providers of broadcasting services”. [Our emphasis]

It is crucial that content broadcast via digital transmission is regulated in accordance with current content standards, to ensure that the objects of the Act outlined above are considered and adhered to in a digital environment.

The case for ensuring Australians access to local stories is steadfast regardless of the mode of transmission. Spectrum, *including* additional spectrum recently allocated to commercial licensees for digital transmission, is public property to which the licensees are given access free of charge. It is therefore essential that public interest be respected and that audience requirements are met when granting this privilege to licensees. Commercial television broadcasting licensees ought to conduct their broadcasting activities in a way, which is in the public interest and is culturally constructive, rather than in a manner motivated purely by maximising financial returns for the licensee.

It is well accepted that Australian content is vulnerable to foreign replacement as, for example, the cost of acquiring one hour of drama from the United States is significantly lower than producing one hour of drama in Australia.³ Australian content arguably becomes more vulnerable with conversion to digital transmission. Broadcasters, presented with the challenge of filling slots on multiple channels and maintaining profitability, will aim to acquire cheap product from overseas, particularly the United States, in order to fill a space rather than provide a culturally advantageous service to the Australian public. Australian free-to-air broadcasters are driven by profit. The only means by which greater public interest may be served and cultural objectives achieved, is through continued regulation of digital content both now and in the future.

The Australian Content Standard (the “**Standard**”) currently directs free-to-air broadcasters to broadcast a set minimum of locally produced product, by imposing content quotas in terms of general transmission, and sub-quotas in respect of local children’s drama and documentaries. The Standard has made an important cultural contribution to the preservation of Australian content and ensured that Australians have had access to a diverse range of programming free of charge. With analog “switch-off” and full digital conversion scheduled for 2009, the application of the Standard to free-to-air digital transmission is paramount to the preservation and continued broadcast of Australian content free-to-air.

³ Australian Broadcasting Authority, Review of Australian Content on Subscription Television, December 2002,p.12

There are recognised social and cultural benefits associated with the broadcast of Australian content. Regulation is necessary to secure the broadcast of Australian content. The Australian Content Standard MUST apply to new free-to-air networks broadcasting through digital transmission.

Simulcasting

The current requirement that free-to-air broadcasters simultaneously transmit the same analog and standard definition television (“SDTV”) version of their service effectively ensures the application of the Standard to digital broadcasts. Accordingly the ACTF has no objection to maintaining the status quo. Current simulcasting requirements ensure that content quotas are met on commercial licensees’ analog and digital networks, ensuring equal access to Australian content for Australian audiences.

However, increased flexibility allowing broadcasters to either timeshift or present alternative programming in SDTV format, will ideally increase audiences’ choice of programming offering a range of viewing times and programs in a SDTV format. This will in turn encourage viewers adoption of digital transmission as an alternative to analog.

In order to promote uptake of digital and programming diversity, broadcasters should have maximum flexibility to program SDTV versions of their service independently of their analog broadcast. However any flexibility granted to broadcasters relaxing simulcast requirements, must be on the condition that content quotas are applied wholly to SDTV broadcasts. Lifting simulcast requirements will give broadcasters maximum choice to create a variety of new service options for audiences and advertisers within the bounds of new and workable business models. No concessions should be granted to broadcasters in respect of meeting the Standard on SDTV transmissions.

In particular any flexibility in respect of simulcast restrictions must be absolutely conditional upon the concurrent application of the Standard to commercial licensees’ SDTV transmissions. The Standard is presently technology neutral and requires compliance by “*commercial television broadcasting licensee[s]*”⁴. Commercial licensees must not be allowed to accumulate quota points or broadcast hours by calculating the total sum of programming on both the analog and digital transmissions.

The ACTF in principle supports the relaxation of simulcast requirements ONLY on the condition that the Standard applies to SDTV and analog broadcasts. Broadcasters must not be given the ability to accumulate quota points and broadcast hours required under the Standard by calculating the total sum of the dual transmissions.

The ACTF does not object to an amendment of the simulcast requirements allowing simulcast of analog versions in HDTV. Broadcasters should be given the choice to simulcast in HDTV and any shift in regulation in this way will continue to secure the application of the Standard to HDTV transmissions. It is worth noting that additional delivery requirements for HDTV significantly increase production budgets. Any increase in production budgets incurred as a result of HDTV delivery requirements should be reflected by an increase in broadcaster licence fees. It is crucial however,

⁴ Australian Broadcasting Authority, Australian Content Standard

to see the application of the Standard to transmissions on new spectrum allocated to broadcasters free of charge for digital programming, which a simulcast in HDTV of analog would secure.

Multichannelling

A relaxation of the current prohibition on digital multichannelling by free-to-air operators will ideally increase channels available to free-to-air audiences and offer potential benefits to viewers, through wider choice and diversity of programming. The potential benefits of additional digital networks will not resonate for Australian audiences unless there is strong regulation and application of the Standard in a multichannel environment.

The *Australia-US Free Trade Agreement* (AUSFTA) provides that the Australian government may introduce new or additional local content requirements in relation to digital multichannelling on free-to-air commercial TV. The AUSFTA specifies that a transmission quota of 55% Australian content (as is provided for in the Standard) may be imposed on no more than 2 channels, or 20% of the total number of channels made available by an individual broadcaster (whichever is greater). The AUSFTA also provides that the subquotas may be applied within the 55% quota in a manner consistent with existing standards.

The protection of Australian content in a digital environment depends upon the current content quotas contained in the Standard, being applied to digital multichannelling at the maximum levels provided under the AUSFTA. Regulation must coincide with an introduction to multichannelling in order to secure a regulatory framework in a digital environment. With analog transmission scheduled to cease by 2009⁵ it is crucial that current content regulation be effectively transferred and applied to digital transmissions to provide clear direction to broadcasters and offer a set ground rules [for] all participants to *“ensure that the community benefits from opportunities presented by the development and application of this [digital] technology”*.⁶

No concessions should be granted to free-to-air licensees in respect of content requirements. Free-to-air networks have been allocated extra spectrum free of charge to digitally transmit their programs and to create new or ‘secondary’ channels. Use of this valuable public asset must provide the maximum possible benefit to Australian audiences, this dependent on strong content regulation.

Pay-TV operators sought relaxed content regulations given initial financial outlay and slow consumer take-up of Pay TV. Free-to-air channels are, however, one step ahead with successful businesses and additional marketing and spin off opportunity through established channels. Multichannelling essentially enables broadcasters to create new free-to-air channels. These new channels need not be ‘second rate’ or peripheral to ‘main’ channels, but have potential to successfully and productively co-exist and compete with current free-to-air (and Pay) channels.

Current speculation that multichannelling will result in reduced advertising revenue (currently argued by some free-to-air broadcasters) cannot justify concessions being granted to free-to-air broadcasters in respect of compliance with content regulations.

⁵ Television Broadcasting Services (Digital Conversion) Bill 1998 and Datacasting Charge (Imposition) Bill 1998, Explanatory Memorandum,p.1

⁶ Ibid,p.5

Whilst the move to multichannelling is likely to result in audience fragmentation, experience in the UK and the United States is that fragmentation has not led to significant reduction in advertising revenue.⁷ According to the Australian Competition and Consumer Commission (“**ACCC**”) report to Senator Alston entitled *Emerging Market Structure in the Communications Sector* “multichannelling may actually create new avenues of revenue and allow free-to-air broadcasters greater scope to maximise their content rights”.⁸

The ACTF does not oppose the relaxation of current prohibitions on multichannelling ON THE CONDITION that maximum levels for content regulation specified in the AUSFTA be applied to digital multichannelling.

Other uses of Digital Spectrum

It is vital that content broadcast via a digital subscription service offered by free-to-air broadcasters be regulated. Presently subscription television operators (who have paid for their licence) are required to spend a minimum of 10% of total program expenditure on Australian drama (the “**Scheme**”). Free-to-air broadcasters (who have been loaned spectrum free of charge) offering subscription television services must also be required to meet content requirements imposed under the Scheme.

The Scheme currently allows operators to ‘make up’ expenditure shortfalls incurred in any given year in the following financial year (the “**Make-Up Provision**”). The ACTF strongly opposes the application of the Make Up Provision to free-to-air subscription services. The Make-Up Provision as currently designed is flawed, and is not being used by operators in the “spirit” with which it was intended. Overall operators have failed to meet the 10% quota in any financial year of the Scheme’s operation, and the size of the shortfall is increasing each year with the total shortfall to be made up jumping from \$8,246,506 in 2001/02 to \$10,117,658 2002/03⁹. The Make-Up Provision presently allows for shortfalls to continue indefinitely and undermines the effectiveness of the Scheme. This is unacceptable in a situation where free-to-air broadcasters are using a public asset (ie.spectrum) free of charge. Free-to-air subscription channels must be made to comply with the 10% quota every year, to avoid similar shortfalls being incurred.

Free-to-air broadcasters using digital spectrum for subscription services must be required to meet 10% expenditure quotas currently in operation for subscription channels. The Scheme’s Make Up Provision however should not apply to free-to-air broadcasters and free-to-air broadcasters operating subscription services should be made to comply with the 10% quota every year.

Conclusion

It is crucial that use of spectrum granted to free-to-air broadcasters free of charge is used in a way that is culturally and socially beneficial to Australians now and in the future. The screening of quality Australian content is one of the most significant means by which Australian audiences and society benefits from free-to-air television. The availability of inexpensive foreign productions, especially from the United States

⁷ “*Emerging market structures in the communications sector*”, A report to Senator Alston, Minister for Communications, Information Technology and the Arts, Australian Competition and Consumer Commission, 2003, p.65

⁸ Ibid.

⁹ “*Pay TV channels shortfall on drama spend builds*”, Media Day, Monday 24 May 2004,p.1

puts the survival of Australian content at risk, and strong content regulation is necessary for Australian content to be broadcast in both an analog and digital environment. As Australian free-to-air broadcasters move toward digital programming and the cessation of analog, current content requirements imposed under the Standard must be applied to digital networks at the highest possible level, to protect the current Standard from being diluted and ensuring maintenance of Australian content in a digital world.