

CONFERENCE REPORT

CENTRE FOR MEDIA AND TELECOMMUNICATIONS LAW AND POLICY SEMINARS

THE UNIVERSITY OF MELBOURNE LAW SCHOOL LAUNCHED ITS CENTRE FOR MEDIA AND TELECOMMUNICATIONS LAW AND POLICY IN OCTOBER WITH THREE ONE-DAY SEMINARS COVERING AUSTRALIAN CONTENT, NEWS REPORTING AND SPECTRUM MANAGEMENT.

AUSTRALIAN CONTENT: NEW RULES AND POLICIES?

DAY 1 - 30 OCTOBER 1993

BY DEB SIMS, PROGRAMS DIVISION, ABA

This seminar posed the question: What are the right policies and laws to address the rapidly changing audiovisual and broadcasting environment? The seminar provided an opportunity for the issue to be discussed and for ideas to be put on the table. The ABA considers the seminar an invaluable stimulus to debate on the current standard.

The four sessions were: the issues we face; fresh approaches and new directions; funding issues; and how to change the rules.

Brian Johns, ABA Chairman, opened the first session by setting the broad framework of issues we face in sustaining Australian programming into the next century. After outlining the historical rationale for Australian content regulation Mr Johns stressed that, given the changing environment, there is no single solution to the problem of ensuring programming which reflects our cultural values and identity. (See p.15).

Debra Richards, ABA Director Programs, reported on the material contained in the two ABA *Trends and Issues* papers released at the seminar. She gave some of the responses to the ABA's research into attitudes to Australian programs which found Australian characters and lifestyles were a strong reason television viewers choose to watch Australian programs. However, production quality, subject matter and program type were more important factors in choosing what to watch on television than simply whether a program was Australian or not. (See p.18)

With the 15 December Uruguay Round deadline approaching, Jock Given, AFC Policy Adviser, reported on the status of the GATT negotiations. He

reminded seminar participants that the General Agreement of Trade in Services (GATS) is only one of 15 agreements being negotiated within the round. While the draft GATS will accommodate Australia's official co-production program, it is vital that audiovisual services are not part of Australia's offer.

Kim Wilson, Chairman of the Music Industry Advisory Council, urged participants to open up their perspective on the issue and to look for models in other industries and to position the production industry within government industry policy. He cited the Department of Industry and Regional Development's Audio Visual Task Force as an initiative that the production industry should investigate.

Bruce Gyngell, Executive Chairman Nine Network, discussed the impact of pay TV. He said while Australian culture was allowed to manifest itself on television this would not be the case with pay TV which will be mainly US movies and live sport and which will damage the cultural development of Australia. He indicated that he had yet to see evidence that Australians want pay TV.

Mr Gyngell also said that only 15 per cent market penetration by pay TV would diminish the money going to free-to-air broadcasting and so have a negative impact on the quantity of Australian programming. He is convinced, however, that by the end of the century Australian programs will make up 100 per cent of prime time, 6 p.m.-11 p.m. because US programs are not delivering audiences. Australian programs get the ratings and attract advertising revenue.

Mr Gyngell suggested that the points scoring system of TPS 14 should be

made easier, more accessible and the drama quota should be reconsidered. As an example, Nine's 13 part mini-series 'Snowy' was made in that format so it would receive a quality factor of 3.5. The format rendered the program eligible for funding, without which Nine could not have done the series. He considered that despite being a high quality production the audience support is not there - if viewers miss a week they give up on the series. A second series of 'Snowy' would need to be done as a series, with self contained episodes rather than a continuous story.

According to Bob Weis, President, Screen Production Association of Australia, the way to sustain Australian production is via export and co-production. Other countries, such as China, do not want to see our version of their universe, nor do they want to see our version of our own universe. He warned that chasing exports often meant diluting cultural relevance.

Mr Weis also expressed concern that the cultural argument for Australian content may be considered unfashionable. The changing technology and introduction of new services changes the relationship between producers and the five Australian television networks. Television will be able to speak directly to an Australian audience while in other media and entertainment systems US and Japanese interests control copyright and the structure of delivery and will therefore be programming their own material. He believes that the producers and networks should work together and should not see their interests as divergent or those who control the software, the programs, will be the winners.

Chris Lovell, Chairman, Australian Film Finance Corporation (FFC), advocated looking for answers before considering the legal framework for Australian content regulation. He said that TPS 23, Australian Content in Advertising, which requires at least 80 per cent of advertising on television to be Australian, mitigates against the industry infrastructure and allows for cultural imperialism in the form of imported advertisements.

He explained that the FFC needs to get a return on its funds and requires productions to have overseas presales. Overseas participation inevitably raises the question of cultural versus dollar imperatives. Foreign actors often form part of the trade-off, with differing results. For example, he commented that foreign actors worked better in 'Stark', *Spotswood* and *The Last Days of Chez Nous* than in *Gross Misconduct*.

Mr Lovell suggested that a TPS 14 test using the 'wholly or substantially made in Australia' criteria of the 10BA definition should be allowed. Except for official co-productions, TPS 14 should not allow a program to be filmed outside Australia and it is not enough to require post production to be substantially undertaken by Australians. The standard should specify that post production must be done in Australia.

To receive funding from the FFC, an eligible film must have a 10BA certificate. Mr Lovell expressed concern that the 10BA 'wholly and substantially' test is being liberally applied to allow post production to occur in New Zealand. He expressed concern about some animated programs that have been classified as C drama (Australian children's drama) and recommended a reappraisal of how the Australian factor test for C drama is applied. He also believed that TPS 14 should also be applied to pay TV.

David Hill, Managing Director ABC, outlined the ABC's commitment to quality Australian programming. He indicated a strong ABC was one way of ensuring an Australian cultural objective for broadcasting and pointed out

that the ABC screens 40 per cent more Australian content in prime time than it did in the mid 1980s. He claimed the ABC has an important relationship to the production industry, citing the production of such programs as 'Brides of Christ' and 'Phoenix' not being produced by commercial television. Mr Hill said the ABC makes its own budget go further through co-production and that such arrangements were vital.

Mr Hill claimed the ABC's new Australia Television International service could act as a showcase for Australian programs into Asia.

Sean O'Halloran, Director Broadcasting Policy, The Seven Network Limited, put forward Seven's suggestions on how to change the current Australian content rules. He said that the current high level of Australian programming on commercial television is market-driven, not quota-driven. It is the result of viewer preferences, competition and the improved outlook for the networks.

He put the view that a standard homogenises programming across the three commercial networks and freezes programming in time, not recognising changing viewer preferences. For example, the high point for drama has passed with a clear demand for infotainment and comedy programs.

Quotas do not make stations spend more on programming overall, rather they shift funds to quota effective programs. The previous standard increased the requirement for drama to 104 hours. As drama increased, variety programs decreased, so that in 1989, when determining TPS 14, the ABT found variety under represented and included it as a diversity category.

Mr O'Halloran considered that the ABT had done a reasonable job in balancing difficult and competitive policy interests in formulating TPS 14 during the final phases of the Australian content inquiry in 1989.

His suggestions for revision of TPS 14 included revoking the 50 per cent transmission quota. He said the drama minimum within the overall drama/

diversity score should be reduced and the diversity score increased to provide greater flexibility for the networks to choose between different types of programs. The drama minimum should be set at 400-500 points rather than 850 points.

The quality factor should be revised to more accurately equate with the amount spent on production. The distinction between the rate of production of continuing programs should be abandoned. For example, 'A Country Practice' received a quality factor of 1.1 while 'E Street' received 2.2, both should receive the same factor.

The diversity quota should be extended to include a comedy category and an infotainment category. He considered that the new concept category has not worked and should be replaced by a recognition of the first series (13 episodes) of all new programs given that any new program involves substantial risk, as recognised by the inclusion of the 'new concept' category. The Australian factor test should also be reviewed to eliminate undue emphasis on 'marginal' factors such as soundtrack editing.

Helen Mills, Director Communications Law Centre, expressed regret that broadcasting legislation no longer includes the public process under which the ABT operated. She also referred to the *Broadcasting Services Act 1992* which provides for amendments by Parliament to standards or codes. She expressed concern that there has been a retreat from policy on some issues and called on the forum to get back to the policy basics with regard to essential issues such as Australian content, cultural diversity and national identity. She also noted with regret that the Act did not carry over the requirement for 5 per cent Australian music compositions on radio.

Ms Mills emphasised the need for the ABA to be sure of its objectives in its assessment of TPS 14, whilst being flexible and adaptable to the changing environment.

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