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emerging global broadcasting environment.

### **PROGRAMMING REGULATION**

The ABA has received more than one thousand applications for transmitter licences for open narrowcasting radio services since October 1992 and has allocated licences to approximately four hundred operators.

This represents an increase in the number of services over the 1992 level of about one hundred per cent. These provide a range of services from open narrowcast tourist radio to language based television programs. These services are expected to cover gaps in the market and meet audience needs. And, like pay TV, they should complement traditional broadcasting services.

The class licensing system is designed to encourage innovation and an efficient use of broadcast technologies.

The Broadcasting Services Act clearly precludes narrowcast services from merely duplicating commercial or community broadcasters. There are substantial fines and an effective complaints mechanism to uphold these rules. As with broadcasters, narrowcasters' programming will be regulated by their own codes of practice, developed with the ABA.

Narrowcasters will contribute to the multiservice environment by enhancing competition and offering Australia's diverse communities a greater choice of programs. In this way they will also add to the opportunities available to Australian program suppliers.

We can expect significantly more open and subscription narrowcasting services to be available. Such services can be expected to provide more specialised programming for narrower and more clearly defined niche audiences, specific ethnic groups, both domestically and internationally.

### **CONCLUSION**

Historically, television has been the single most successful creator of an audience for Australian culture.

To continue building an Australian identity, Australians need to build on this celebration of Australian culture by broadcasters.

It is my hope that by the year 2000 prime time viewing on free-to-air television will be predominantly Australian content.

But the real question is - how does the industry respond to that challenge in the new global communications and multiservice environment?

That is, to make sure there is substantive participation in the interna-

tional marketplace, while we maintain and foster our unique cultural identity and strengths.

While the Government has set up the regulatory framework for this environment it is important that the industry itself takes a degree of responsibility particularly through broadcasting programming decisions.

This Government is committed to promoting the role of broadcasting in developing and reflecting a sense of Australian identity, character and cultural diversity. This goes hand in hand with facilitating the development of a broadcasting industry that is efficient, competitive and responsive to audience needs.

As I have said, it is through broadcasting that most Australians experience their own culture. The results have been outstanding. The Government has now created an environment that encourages an array of new broadcasting opportunities. The range of fresh ideas for creative programming formats is practically limitless.

The challenge for the industry is to grasp these new opportunities and take advantage of them, develop them, and stake their place in both the Australian and the emerging international communications environment.



## **PAY TV NEW AUSTRALIAN DRAMA GUIDELINES**

**BY DEBORAH SIMS, PROGRAM SERVICES, ABA**

Section 102 of the *Broadcasting Services Act 1992* places a special condition on subscription television broadcasting (pay TV) services:

Each subscription television broadcasting licence is subject to the condition that, if the licensee provides a service devoted predominantly to drama programs, the licensee will, for each year of operation, ensure that at least 10 per cent of the licensee's program expenditure for that year in relation to that service is spent on new Australian drama programs.

The ABA's role is to implement the new Australian drama minimum expenditure condition for pay TV licensees. As part of this role the ABA has

released *Guidelines for the implementation of the pay TV 'new Australian drama' licence condition*.

### **SCOPE OF ABA GUIDELINES**

There are only two areas which the ABA can address in its guidelines for the implementation of the requirement on pay TV licences. These are:

- making the ten per cent expenditure requirement work by addressing accounting and program rights issues which could undermine its effectiveness; and
- defining what new Australian drama program means for the pay TV condition.

The guidelines are a statement of the ABA's view as to the interpretation of

the obligations imposed by the condition. They provide guidance on how different practices relate to the licence condition and specifically address issues such as:

- buying and selling program rights;
- related party transactions;
- the basis on which program expenditure figures should be calculated; and
- definitions of new Australian drama, service devoted predominantly to drama programs and program expenditure.

The guidelines should be read in conjunction with the Act, as the source of the obligation (extracts from the Act are included in the appendix to the

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It's that computer type of addressing system that needs to be put in place before we can have a fully switched digital broadband network. Most of our current telephone network is circuit switched but we need one that is capable of switching information at very much higher rates. Telephone voice networks only require a very small amount of bandwidth as the capacities involved are around 64 kbits/sec. To provide a highly compressed movie would require at least two million bits/sec. As requirements become more sophisticated, the amount of bandwidth requirement keeps on rising.

### **What are the CFP's plans?**

There are three major areas of current work:

- 1 to develop a sketch of some network and market evolution scenarios, with particular interest in the period following 1997. This will provide a basis for us to understand what sort of environment we may be looking at.
- 2 a look at industry: how industry alliances are working, what forces are shaping them, how value adding process are changing in the information communications industries. What are new issues, particularly for competition and industry policy, what those changes might throw up?
- 3 what are the policy implications: competition policy, industry policy and social policy e.g. access and equity. What impact might these new technologies have on traditional broadcasting and what impact might they have on privacy?

We are providing some of the analytical foundations for those issues. It is a very broad field and we do not think we will be providing all the answers—but we will hopefully be able to provide some insights.

*Copies of the Communications Futures Project papers are available from Jenny Rodriguez on phone (06) 274 6016 or fax (06) 274 6816.*



## **PAY TV—NEW AUSTRALIAN DRAMA GUIDELINES**

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guidelines.) In particular, it is important to note that the Act provides the definition of 'Australian drama program' in relation to the licence condition. The definition in subsection 6(1) of the Act sets out six different criteria by which a program may be an 'Australian drama program'.

The industry is still in its early stages and pay TV services have yet to commence operation. While the ABA has sought comment on the guidelines it is not possible to identify all operational issues at this stage. Clearly therefore, the ABA expects that there will be a need for further consultation about the implementation of the new Australian drama condition as the industry develops.

### **DEVELOPMENT OF THE GUIDELINES**

In January 1993 the ABA released draft guidelines on the implementation of the 'new Australian drama' 10 per cent expenditure condition for predominantly drama pay TV services. The draft guidelines were intended to assist those bidding for licence A and licence B.

In April 1993 the ABA invited a number of organisations to respond further to issues identified from initial comment received on the draft guidelines. The guidelines were redrafted after consideration of the comment received.

In December 1993 the ABA commissioned Deloitte Touche Tohmatsu to provide advice on the second draft guidelines. The consultant's brief was to identify any problem areas in the implementation of the guidelines.

The consultant reported to the ABA in January 1994. The main conclusion of the consultant's report was that the guidelines should be simplified through the use of a cost based rather than market value based method of determining program expenditure. The consultant's report states that:

In our opinion, the concept of using market value to implement the Act has significant potential for misunderstanding and abuse of the condition.

After consideration of the consultant's advice, the guidelines were

amended by the ABA to use cost, rather than market value, as the basis for determining program expenditure.

### **SIGNIFICANT CHANGES FROM THE DRAFT GUIDELINES**

#### **1. Cost based**

The proposed guidelines use cost rather than market value as the basis for determining program expenditure. In line with the consultant's advice to the ABA, the cost based system requires that the cost by all related entities for purchase (or production) of program rights are taken into account. The consultant's report states that this approach 'would minimise any advantages that a particular corporate structure may achieve in relation to the condition'.

#### **2. Format**

The guidelines have been redrafted to be more easily read and understood by the general reader. A number of working examples have been included in the guidelines.

#### **3. Power to declare that a program is not an Australian drama program**

At the time the draft guidelines were produced, the Act was thought to provide scope for the ABA to declare any program (that would have normally qualified as an Australian drama program under any of the six criteria in s.6(1) of the Act) not to be an Australian drama program on the basis of it containing significant non Australian content. The ABA subsequently discovered that the Act only conferred this power in relation to programs in the feature film format. The then Department of Transport and Communications subsequently agreed to seek an amendment to the Act to ensure the full scope of this power.

The Minister informed the ABA on 20 October 1993 he proposed to introduce an amendment to the Act which will allow the ABA to disallow a program in any format (not just feature films) which is claimed to meet paragraph (a) of the definition of 'Australian drama program', if it has non Australian content of such significance that it should not be treated as an Australian drama

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program. The intended amendment will also remove the word 'satellite' from the definition of 'drama program' and 'Australian drama program' to reflect the fact that the licence condition applies to all predominantly drama pay TV services, not just those delivered by satellite.

The proposed guidelines have been changed to reflect the limited scope of the current provisions and to outline the Minister's proposed amendment to the Act. The guidelines also state that the ABA will update the guidelines following the amendment to the Act.

#### 4. New Australian drama definition

The definition of 'new' Australian drama program has been re-written to ensure that a program can not be claimed by more than one subscription television service in the same area of main reception. It also makes clear that drama programs previously broadcast on commercial or national television services are not considered 'new' Australian drama programs if broadcast by a pay TV service in the same area of main reception.

The use of the words 'first presentation' in the draft definition did not clearly reflect the ABA's intention that a prior cinema or video release would not prevent a program from being a new Australian drama program for pay TV. The re-wording of the definition now makes this clear.

Given that narrowcasting services are always limited in their appeal or reception the definition does not now exclude drama programs previously broadcast on narrowcasting television services from potentially being new Australian drama programs for pay TV. However, new Australian drama programming is not likely to appear on narrowcast services.

#### 5. Enforcement

As suggested by the consultant's advice to the ABA, the guidelines refer to the mechanisms available to the ABA to enforce the condition on licensees who fail to comply.

The guidelines are available from the ABA. To receive a copy please contact Deborah Sims on (02) 334 7838.



## RETRANSMISSION INVESTIGATION

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public planning process in remote areas. The ABA has decided to conduct an investigation before completing licence area plans for these areas because of the merit of the requests and because the demand for more services in these remote areas has already been identified.

'For example, the ABA has received expressions of interest from other independent and prospective service providers who say they wish to deliver new services into these remote parts of Australia,' said Mr Tanner.

Nhulunbuy and Longreach Councils have also applied to the ABA with proposals for extension of services into their respective areas.

To ensure the best long term outcome for people in remote Australia is obtained in line with the current planning process for television, the ABA has invited submissions from potential independent service providers in the relevant areas, from other interested parties and from the general public in the area. Submissions close on 8 July.

#### PLANNING

The ABA has responsibility for the planning and management of the broadcasting parts of the radiofrequency spectrum (essentially, the AM, FM, VHF and UHF frequencies). Most radio and television services in Australia are delivered using the radiofrequency spectrum.

The ABA has embarked on a national planning process for the broadcasting services bands with the object of optimising their use by broadcasters and other users, e.g. commercial televi-

sion, community radio, low power information services.

The planning process also allows the ABA to improve reception of existing national services (ABC and SBS), commercial and community services and for the introduction of new services where they are needed.

Planning decisions must balance a number of complex public interest considerations including demand and technical limitations. Thus, the ABA is conducting the planning process in an open and accountable way, by wide public consultation. Planning will progress systematically over the next two to three years Australia-wide, in accordance with planning priorities established in September 1993.

#### RE-TRANSMISSION OF EXISTING SERVICES (S.212)

Re-transmission of existing services is provided for under section 212 of the *Broadcasting Services Act 1992*.

Re-transmission within a licence area does not require ABA permission. However, the ABA's permission is required for re-transmission outside the originating licensee's service area.

Section 212 exempts a service provider from the regulatory regime of the Act. It also gives protection against legal action for services which do no more than retransmit programs transmitted by a commercial broadcaster.

The provision is not intended to stand in place of the planning and allocation of permanent licences.

The ABA must therefore consider re-transmission requests on their individual merits in light of its obligation to balance competing interests.

