



Transborder satellite broadcasting: A case for regional co-operation?

What is our capacity in Australia to deal with transborder satellite broadcasting? Without being drawn too deeply into the technical aspects, **Gareth Grainger**, the ABA's general manager Policy and Communications, examines Australia's regulatory framework.*

In the bewildering array of national regulatory regimes for broadcasting and telecommunications, two features stand out conspicuously. Transborder satellite transmissions are a crucial element of the region's communications future and the content of material carried by satellite is causing concern in most countries of the region.

Australia's broadcasting regulatory regime provides the following guidance:

- A person must not provide a commercial television broadcasting service in

Australia without a licence from the ABA.

- A person must not provide a subscription television broadcasting service in Australia without a licence from the ABA.

- A person must not, before 1 July 1997, provide a subscription television broadcasting service with the use of satellite without a licence.

- Significant fines of up to \$2 million per day are provided for in respect of breach of these laws.

- The ABA may direct the person providing such unlicensed services to cease providing the service.

- Various conditions are placed on different categories of licensed providers of broadcasting services under the ABA's licensing regime, including

rules regarding content of material carried.

- Only three satellite subscription licenses are to be granted providing up to a total of ten channels of television broadcasting services before 1 July 1997.

- On or after 1 July 1997 the ABA will be able to allocate other subscription television broadcasting licences that use a satellite as a means of service delivery.

- The *Broadcasting Services Act 1992* therefore does not contemplate that anyone will be able to provide any form of satellite subscription television broadcasting service to receivers in Australia other than the three licensees A, B and C before 1 July 1997.

- Most satellites that deliver services to Australian receivers are and will be located outside of Australian territory.

- The provision of a broadcasting service takes place in the jurisdiction where a service is received, not only in the jurisdiction of the place that the physical act of providing the service takes place, that is, the place from which the service is 'up-linked'.

- Therefore, as long as the 'broadcasting service' is received within Australian territory, and the person in control of the service intends to provide it here, the provisions of the Act can be enforced against foreign persons who broadcast from outside Australia.

Enforcing Australian regulations and laws against people or companies that are not located within Australia or have no assets in Australia is not a straightforward process. The most effective way of countering this difficulty is to procure the voluntary compliance of satellite carriers and overseas broadcasting service providers with Australia's regulatory regime.

Other countries in the region, such as Singapore and China, have proscribed the use of dishes to receive transborder transmissions. In Australia, the Minister for Communications has made clear that this approach will not be taken—that we will not have 'dish police'. Other countries in the region express serious concern and yet have found no apparent national solution.

The conundrum for Australia is that the

* This text is part of a speech given by Gareth Grainger at the NSW Young Lawyers' 'Harmonising Asia-Pacific Law' conference held in Sydney in November 1994.

address program content and complaints handling, will be the basis for self-regulation by the community radio sector. The codes now replace ABA radio program standards.

To be registered, the ABA must be satisfied that the codes of practice provide appropriate community safeguards, are endorsed by a majority of broadcasters and the community has been given adequate opportunity to comment on the codes. The ABA is presently considering the final version of the community radio codes of practice for registration.

During the process of consultation with the community broadcasting sector, community safeguards have been strengthened over a range of issues, including the adoption of non-discriminatory programming policies, community involvement, dispute resolution procedures, a code governing volunteer staff and complaints handling arrangements.

The community sector has demonstrated its continuing commitment to Australian music. This is a commitment not mandated by legislation, but one which reflects the sectors long-held support for local performers and new Australian music. This willingness to experiment also reflects a traditional strength of the sector.

It is not motivated by commercialism and can therefore provide programming that meets directly the needs of the community it serves.

The code of practice contains a sponsorship policy which protects the integrity of programming. The CBAA and its members have seized this opportunity for self-regulation in a positive way. The codes reaffirm the spirit of community broadcasting, and reflect the objects of the Act.

What is important in a system of self-regulation is that it ensures access for the diversity of views within the Australian community. In community broadcasting, this aspect is even more important because of the close relationship the sector enjoys with the community.

The contribution that the sector has made to the Australian community in providing opportunities for the involvement of groups who would otherwise be denied access to the media is undoubtable. This is a fundamental feature of the sector and reflects the government's objectives set down in the Act to promote program diversity for Australian audiences. □

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ABC is already using a neighbouring transborder satellite carrier to project its Australian origin signal throughout the region.

Given these difficulties one may well ask what solutions exist. The European Community since 1993 has had a directive on transborder cable and satellite transmissions to govern the position. This directive overrides national regulatory approaches. The EC directive places

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primary regulatory responsibility on the country of origin of the satellite broadcast transmission. It is too early to tell whether this approach will be successful.

In the Asia-Pacific region these issues are being discussed in two particular forums:

- the Asia-Pacific Broadcast Union (ABU), based in Kuala Lumpur; and
- the Asia-Pacific Telecommunity.

These forums are looking at the negotiation of voluntary codes of practice for satellite carriers and broadcasters. The ABA has sought to be involved in these discussions as part of its increasing focus on international developments. However, in going down this path, we acknowledge its difficulties and potential pitfalls. The view of what is suitable material to be broadcast is very different in Australia to what it is in China. A great deal of sensitivity and understanding will need to be exercised. Most countries have taken the view that any code of practice should be voluntary and should be focussed on complying with the regulatory regimes of the various countries into which material is broadcast. The situation with transponders should allow the flexibility to accommodate this outcome. The negotiation of these voluntary codes seems likely to take a considerable amount of time.

The absence of more formal and open intergovernmental forums for negotiating these agreements creates difficulties, for example, the ABA can only be an associate, not a full member of the ABU.

Communications industries will be a vital part of the life of the Asia-Pacific regions in the coming century. They will provide employment and they will provide profit. Most importantly, they will build bridges between our many countries and cultures. They have the capacity to enhance our relationships. They



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have the capacity to harm our relationships.

The pace of change in these industries is so rapid that it is difficult for governments to keep up at a national level. Internationally, there is a fear that somehow the industry, and its biggest operators, has eluded regulatory control. Despite the burgeoning array of transborder satellite services there is little evidence that this is so. Countries which determinedly want to keep out the world have shown themselves able to do so. However, it is equally clear that we all have much to gain by acknowledging the realities of the communications industries.

The ABA looks forward with enthusiasm to participating in the growth of communications in our region and taking part in the debate about voluntary codes of practice for transborder satellite broadcasters and carriers. □