



The following is the edited text of a paper given by **Peter Webb**, ABA Chairman, to the 10th Australian Cable & Satellite Television Conference & Exhibition in Sydney, on 6-8 February 1996.

## Current and future issues in the Australian regulatory environment

Nineteen ninety six seems destined to be an extraordinarily interesting year, if only for the reason that it is the year that precedes 1997.

Of course, this does not quite overshadow the fact that we are presently in the middle of a federal election campaign and I have to say to you that nothing I say today represents the views of the Government.

The ABA is an independent statutory authority and the views I express represent, as usual, the views only of the ABA, not those of any political party.

In 1997 a number of matters of crucial importance to participants in the cable and satellite businesses will occur.

Of some of these we are already aware.

They include:

- the statutory ban on the allocation of satellite subscription television licences, other than for licences A, B and C, will end, and the ABA will be able to allocate any number of such licences;
- the statutory ban on advertising on pay TV will expire;
- the limits on cross-media ownership of the existing satellite subscription licensees will cease;
- the legislation to give effect to the government's recently re-formulated telecommunications policy will be given effect;
- AUSTEL will be abolished and will merge with the ACCC, in so far as its competition role is concerned, and with the SMA, in so far as its technical role is concerned;
- the definition of carrier will be changed to include anyone who controls access to infrastructure facilities, i.e. facilities that provide services which are significant to the extent that they should be subject to mandatory interconnectivity;
- a carrier must provide interconnection of network facilities to networks of other carriers; and

- an industry access forum is to be established with the ACCC and which will be responsible for developing the basis for carrier access undertakings for infrastructure and codes of practice for consumer issues.

The *Broadcasting Services Act 1992* also specifies two matters that the Minister must review prior to 1 July 1997.

They are both found in s. 215 of the Act, which requires the Minister, before 1 July 1997, to

- (a) conduct a review of the television broadcasting industry to assess the national benefits that would accrue if more than three commercial television broadcasting services were permitted in licence areas, and
- (b) conduct a review of Australian content on subscription television broadcasting services, including into the feasibility of increasing to 20 per cent the level of expenditure required under s. 102.

Section 102 of the Act provides

Special condition relating to Australian content

102. 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.

### **Sixth channel review**

Draft terms of reference for the sixth channel review (the s. 215(1) review) were circulated by the Minister in late 1995 to the membership of the Broadcasting Industry Advisory Council (BIAC), with a 31 January 1996 return date.

On 20 January the Minister formalised a direction to the ABA to conduct an inquiry which will inform part of the review. However, terms of reference for the Ministerial review were not finalised prior to the calling of the election,



ABA Chairman, Peter Webb

but the Minister is obliged by law to conduct the review.

Any future Minister will therefore need to consider the national benefits that might accrue from a fourth commercial network in order to complete the review.

We had been working towards the production of an issues paper on the matter, and that paper would be likely to canvass a number of issues, including the following.

- Given the present, albeit temporary, occupation of the sixth channel in some parts of Australia by community television interests, what claims, if any, do they have on the channel?
- What are the national benefits that would accrue if more than three commercial television broadcasting services were permitted in licence areas?
- How are these national benefits to be identified and assessed?
- What alternative uses for the sixth channel might be possible, and what national benefits, if any, would such uses accrue?
- What effect would the introduction of digital terrestrial television broadcasting have on the national benefits accruing if more than three such services were permitted in licence areas?
- What significance will emerging satellite technologies have on the television broadcasting industry over the next twenty years or so?
- What effect will the introduction of

pay TV into Australia have on these national benefits?

- How, if at all, will the role of Australia's national services (ABC and SBS) be affected by any such changes?

The responses of the industry, including the independent production industry, interest groups, relevant government agencies, community groups and individual Australians to the issues posed will be most instructive.

From a consumer point of view, the prospect of a fourth commercial service will seem very appealing.

At least it will seem appealing to over fifteen million Australians who have access to three commercial services.

But the one and a half million Australians who have access only to either two services (1 million) or one service (1/2 million), will likely see this prospect through jaundiced eyes.

The handful of Australians (fifty thousand) who have no access to any commercial television services might also be underwhelmed by it all.

A fourth commercial service for the highly populated areas of Australia would only serve in their eyes to pronounce the differences in service levels that already exist.

In truth, if one could be confident that a fourth network would represent a one-third increase in viewing satisfaction over that which 91 per cent of Australians now enjoy, the case for moving forward would be strong. Indeed, any increase in viewing enjoyment might well justify a fourth network.

The production industry would certainly welcome the opportunity, on the face of it, to create more Australian programs, although one can easily anticipate a call for a review of the Australian content standard as a corollary of any decision to increase networks from three to four.

Advertisers are likely to see the obvious advantages in the scope that might exist for the creation of a larger commercial television advertising 'pie'.

In a paper prepared by the Bureau of Transport and Communications Economics in late 1992, the distribution of advertising expenditure in the main media was surveyed over the years 1965 to 1991.

The paper noted:

The 1991 share of advertising expenditure held by the print media is 7.5 percentage points below their 1965 share (56.8 per cent) while television's share was 10.9 percentage points above its 1965 share (23.4 per cent).

However, most of the shift appears to have taken place in the two decades between 1965 and the mid-nineteen eighties.

In 1984, television's share of advertising expenditure was 34.52 per cent, virtually identical to the 1994 figure.

Through the years 1971 to 1994 the average annual growth rate in current dollar terms of the total of advertising expenditure has been 11.79 per cent, and the expenditure level on advertising in Australia moved from \$416m in 1971 to \$5414m in 1994, an increase of over 1300 per cent.

While the advertising pie was growing at an annual rate of 11.79 per cent, television's share was growing at 13.44 per cent.

The figures should augur well for future growth and robustness. But it would also be only reasonable to anticipate that quite formidable start-up problems would have to be dealt with by a putative fourth commercial service.

On the advertising front, for example, there will be adverse implications in the growth of the advertising 'pie'.

In order to be competitive with the Seven, Nine and Ten networks, a fourth commercial service offering an additional 13 minutes an hour of non-program matter, most of which is taken up by advertising, would need to offer programming of a standard commensurate with that offered presently by the three networks.

Where would this programming come from? How does a newcomer get access to other programming which will be as attractive as that which is presently on offer, particularly, for example, sporting programs?

It will be especially difficult to grow the audience size with programming of lesser quality, and it will be equally difficult to grow the advertising pie beyond current growth rates.

One of the unknown factors also at work in the mix is the effect that the advent of pay TV will have on commercial television revenues.

Although pay TV providers are not allowed to advertise, this ban falls away on 30 June next year — only 17 months away.

As well, audiences who are seduced by pay TV away from network television will disappear from the rating figures, thereby perhaps eventually reducing the ability of the networks to charge as much for the apparently smaller audiences it will seem to be delivering to advertisers.

Of course, pay TV providers are now free, pending an appeal in the Federal Court, to retransmit the networks' channels free of charge, and the networks are understandably resentful of this.

So the networks are coming to grips with increased competition already for advertising revenue and audiences.

We should not forget that, just over thirty years ago, two commercial services that had had the field to themselves for a decade were joined in competition by a third, and nobody would now say that was a bad development which should now be overturned.

The ABA's inquiry will be taking the long, but reasonable, view about viability and we will be very keen to see some economic modelling about the future of the sector from those who wish to make submissions to the inquiry.

## **Pay TV Australian content review**

This review relates to the levels of Australian program content on pay TV.

The obligations of the pay TV industry to Australian content levels has been confined to drama channels only, and was set at the level of 10 per cent of expenditure by the licensee on that channel.

The ABA last year released some draft guidelines on how this statutory provision might be interpreted, and the ABA is close to finalising revised guidelines.

But the Parliament has had second thoughts about the matter and the review which the Minister must conduct is now expressed in much broader terms.

Again, the ABA will conduct an open and consultative inquiry into the matter.

The free-to-air broadcasters might be likely to petition for an increase in the obligations of the pay TV industry with respect to Australian content levels.

The pay TV industry might be anticipated to be likely to respond with the suggestion that the siphoning list be abolished, so that it can have exclusive access to a particularly desirable programming commodity.

There will be a clash between those who argue that pay TV should be the vehicle whereby the most diverse range of foreign programming can be brought to Australians in the cheapest possible way, and those who want to 'Australianise' pay TV so as to reduce the adverse cultural effects they see in unbridled foreign programming.

Industry promotion and protection is also sure to get a run.

### **Digital terrestrial television broadcasting**

Digital is the new generation of television technology.

In television a move of terrestrial broadcasting to digital would allow facilities such as wide screen cinema-like picture format and quality, multi-programming capabilities and inter-active programming.

Many more services may be carried in the same spectrum space as currently used by analog broadcasting systems.

The space currently occupied by one commercial television service could be used for:

- three or more standard quality channels;
- a single high definition channel;
- up to ten news or movie channels of VHS quality; or
- different combinations of each of these services.

If the current networks were to be given the opportunity of utilising their allocated spectrum to operate several channels at the one time, the consequent growth in advertising opportunities would be manageable and relatively seamless.

The digital television debate is developing in different ways around the globe.

The Minister for Communications and the Arts, the Hon. Michael Lee, gave some indication last year about a possible direction for Australia.

Speaking at the annual conference of the Federation of Australian Commer-

cial Television Stations in October last year, Mr Lee said,

I am pleased that the ABA's digital specialist group has considered the analysis of DTTB by broadcasters in the united states (us) and has identified high definition services as a key element of the strategy....

To treat DTTB as a way of simply

sion commission on the basis of how quickly bidders propose to roll out digital coverage, their proposals for investment to promote the early take up of digital services and on the variety of television channels they propose to provide, rather than by way of a price-based allocation system.

**The overall objective of regulation is not only to ensure that broadcasters continue to meet their varying cultural obligations but also that the regulation of Australian content on television contributes to the continuing development of the Australian audiovisual industry, and positions it to play a vital role in the information society.**

delivering more services would seem a short sighted approach to this opportunity to make a fundamental change to the way in which services are delivered to the home....

From what I have learned so far on what digital will provide, I am generally inclined to support the view that the DTTB channels should be made available initially to you, the incumbent broadcasters, as your support will be essential to the early adoption of the technology....

In June last year the ABA released the first report of the DTTB group, which contained a number of preliminary views of the group. Since the publication of that first report, a number of other international developments have occurred. ♦

A particularly relevant development is to be found in a draft United Kingdom Broadcasting Bill, expected to become law in the northern hemisphere summer and take effect on 1 January 1997.

The Bill provides for the licensing of an anticipated 18 digital terrestrial channels on six multiplexes, or blocks of channel capacity. Each multiplex can broadcast at least three television channels.

The draft rules guarantee a place for the existing terrestrial free-to-air players. The BBC will control an entire multiplex, and ITV, channel 4 and channel 5 will each get half a multiplex.

Licenses for the other multiplexes will be allocated by the independent televi-

Licenses will be required to broadcast their existing analog channels in their entirety in digital.

Should existing broadcasters wish to develop extensive new services they will be free to contract with multiplex providers for other channels on the same basis as other prospective broadcasters. ♪

Ownership regulations for digital terrestrial television will be broadly in line with those for analogue, as set out in the broadcasting bill. The UK Government recognises that, in the longer term, a new framework for the regulation of digital broadcasting may be necessary.

In Europe the UK is the only country to have made any decision on implementation of DTTB, and the UK has eschewed the high definition television option.

UK broadcasters will not have access to sufficient capacity to deliver HDTV pictures at least until analog services are phased out, many years from now.

The fact is that no European country other than the UK seems to be interested in further opening up the spectrum to further services at this stage, so there is no ready-made market for DTTB in Europe.

Notwithstanding its inherent merits, I anticipate that digital television will, in any event, receive quite a degree of attention during the sixth channel review we will be helping the Minister conduct during this year.

## **On-line services**

Another matter that is of some significance to the communications industry will also occur on 30 June this year.

The ABA is due to report its findings about its inquiry into on-line services.

In August last year the Minister directed the ABA to investigate:

- the content of on-line information and entertainment broadcasting services, including any broadcasting services provided on the Internet, with a view to examining the appropriateness of the development of codes of practice for those services that, as far as possible, are in accordance with community standards;
- technological advances and service trends in the provision of on-line information and entertainment services by the broadcasting industry; and
- the extent to which on-line information and entertainment broadcasting services are accommodated by the operation of the Broadcasting Services Act.

The ABA has released its issues paper on the matter. We have identified a number of significant issues relating to the nature and extent of community concerns about on-line services, and identifying options for addressing those concerns.

We intend to continue to consult with industry and community groups in an effort, among others, to establish a consultative framework for the management of on-line content issues.

We have identified some of the key regulatory issues including:

- whether a code of practice is appropriate for the on-line services industry, or sections of it; and
- which services (e.g. a public WWW site v private e-mail) should be the subject of a code of practice.

The on-line industry in Australia is not yet represented by a single peak body. To facilitate industry representation, the ABA's issues paper proposes a national forum to identify stakeholders and to bring them together to discuss the issues arising in the on-line environment.

A key goal of such a forum would be the establishment of an effective consultative framework for industry participants and the public.

## **Australian environment**

The features of the Australian environment as it is radically altered by the effects of converging industries and technologies, trade liberalisation and borderless markets were outlined in a 1994 discussion paper produced by the ABA during the currency of its re-working of the Australian content standard for commercial television.

In summary they are as follows:

- firstly, free-to-air television is no longer the sole provider of audiovisual services for Australian audiences;
- pay TV, both narrow and broad, will be delivered to our homes via a number of technologies, followed by a range of broadband services able to offer interactivity in the fields of entertainment, education and information;
- broadband services offering entertainment, edutainment and infotainment will require a great deal of new content or programming to be developed; and
- opportunities will be available in a wide range of fields including interactive games and other interactive entertainment products.

We all know that, worldwide, the multimedia industry is still very much in a formative stage, and that Australia is starting from the same point as many other countries. Australia's talented and multicultural population clearly has the potential to take advantage of the opportunities on offer.

It is important to recognise that the measured approach to regulation encouraged by the Broadcasting Services Act does not mean there is no regulation applying to newly developing services.

Subscription broadcasters and narrowcasters are not relieved of their cultural obligations simply because there is no explicit articulation of these obligations through standards or codes.

Nor are they meant to be the vector by which the cultural objectives and industry development objectives placed in the Act by Parliament are put at risk.

The overall objective of regulation is

not only to ensure that broadcasters continue to meet their varying cultural obligations but also that the regulation of Australian content on television contributes to the continuing development of the Australian audiovisual industry, and positions it to play a vital role in the information society.

We have indicated that the development of Australian content in the on-line services environment could meet a number of objectives.

The development of a co-ordinated approach to encouraging content on the on-line services has commenced with the establishment, flowing out of *Creative Nation*, of the Australian Multimedia Enterprise Ltd (AME).

**‘It is important to recognise that the measured approach to regulation encouraged by the Broadcasting Services Act does not mean there is no regulation applying to newly developing services.’**

The ABA is examining other options which might also encourage the development of Australian content in the on-line environment.

The on-line environment is much more complex than the quite definable commercial and pay TV sectors.

For example the question, ‘what will constitute Australian content in the on-line environment?’ is going to be difficult to answer.

## **International issues**

There has been some growing debate in the past couple of years about the prospect of a global regulator to keep pace with competition issues.

One shouldn't underestimate the potential for governments these days to link arms and march together so as to make or enforce intranational or domestic policy flow from their international cooperation.

My own view is that talk of the death of domestic legislative power or of national sovereignty is very premature.