Where are we heading?

The role of the regulator

The media and communications marketplace has changed dramatically over the past decade. Globalisation, the computer and the Internet have been powerful forces for change.

The marketplace that we regulate looks for certainty from the Government and its regulatory bodies but also needs us to recognise that emerging business opportunities require a quick and flexible response from us. It is often a tough challenge to manage both these requirements.

The challenge is to manage compliance in a way that is outcome oriented, encourages efficiency and allows innovation and is fair and consistent.

And this is in a world where uncertainty is greater than ever.

Our regulatory mechanisms have to be adapted so that we do not stifle the dynamism of the marketplace. So we try to mix and match the regulatory tools we use to the particular circumstances facing us.

Industry tools for managing uncertainty

We have a number of tools available. Of course we also use sanctions when things go wrong but today I want to focus on how we try to make sure things go right.

Industry codes of practice are the underpinning of our regulatory framework and reinforce the direct responsibility of producers/service providers to their customers.

They are most effective when you have a relatively known set of players in the market, who anticipate having an ongoing presence and who have an investment in their brand name. They depend on there being a general agreement about the standards to be met by the sector and where it can largely be left to the producer to manage the way in which those standards are achieved. They are sometimes more intrusive than this, but that is the objective.

Recognising the characteristics of the industry, the codes for the broadcasting sector also have the industry as the first port of call for complaints with the ABA generally considering complaints after they have been to the producer/service provider.

Guidelines

Guidelines go hand in hand with codes of practice to do just what they say – provide guidance on how we are likely to interpret some aspect of a code or legislation.

They are often used to provide definitional clarity, especially in those areas where it may not be readily apparent how the legislation will work in practice and where compliance may be difficult for the industry. But importantly, they are not binding, and we will accept persuasive arguments to justify other approaches to compliance.

Some of guidelines we have used have flowed from concerns industry has expressed about their difficulty in understanding where we are going in an area, others have been at our initiative.

Documentary guidelines

Let's look at the documentary guidelines – a vexed area where one person's doco is another's travelogue, and the question 'Is *The Colony* reality TV or a doco?' generally starts a debate.

Why does it matter? The Australian Content Standard defines documentary as 'a program that is a creative treatment of actuality other than a news, current affairs, sports coverage, magazine, infotainment or light entertainment pro-

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gram'. Commercial television broadcasters must screen 20 hours of documentary programs per year in order to meet their quota requirements.

The documentary guidelines are designed to provide guidance for broadcasters and the production industry on the programs likely to meet the test for documentary. Importantly, we also provide examples of programs that fall into one of the other non-fiction formats such as reality programs or reconstructions.

In devising its guidelines, the ABA consulted with television broadcasters, the production industry, and film funding and policy agencies. We issued a draft set of guidelines, and called for comments which we then took into account in settling the final guidelines.

The advantages of this approach are that it brings some amount of certainty to

the industry without ruling out other interpretations, and is more flexible than legislation, standards or codes. It does not make those borderline decisions any easier but it does narrow the area of contention.

Consumer information

When access to a service explodes; when new, more mobile platforms are used to deliver the content; when the access becomes more diffuse; so we use more consumer information approaches. The use of computers and mobile phones by children is a good example.

The 'always on' nature of mobile services means that the risk to children is 'always present'. The ABA recognises that since parents are limited in how directly they can supervise their kids' use of these devices, it is more important than ever that kids are taught how to protect themselves from things such as bullying, harassment, spam, and people making inappropriate contact, as well as the possibility of children accessing unsuitable content. Both parents and their children need to be prepared.

We have produced a series of Cybersmart Kids safety resources designed to help parents teach their children how to use mobile phones and the Internet safely. Just recently, we released a brochure on mobile phone safety which is being distributed to Australian police force school liaison units, parents associations, teachers associations and community groups and is available on our website (at www.aba.gov.au/internet/education/index.htm).

The ABA's mobile phone safety initiatives are endorsed by the Australian Mobile Telecommunications Industry.

We work closely with NetAlert which has particular responsibility for Internet education for children.

Cybersmart kids

The ABA's Cybersmartkids website, www.cybersmartkids.com.au, is a good example of our integrated approach to a community awareness and education campaign about Internet safety.

This is a website for families providing advice and assistance about a range of Internet safety issues. Again it is promoted by police school liaison officers, some state education departments and community groups and our website.

Co-regulatory rules for Internet content

And for the Internet – unlike for broadcasting – we do receive complaints directly. This is a response to an industry sector which has a very large number of often small players, in which the material comes from many sources and the Internet service provider generally has limited control over the content.

The ABA's complaints hotline enables members of the public to report offensive

Internet material. Since 1 January 2000, the ABA has investigated more than 2800 complaints about Internet content.

This gives us an assessment of what is happening out there. In effect, it represents 'our shortcut' into regulating the content of this sector, because the Internet itself is too large and diffuse to regulate in the same manner that other industries can be regulated.

Transparency

Transparency for us is more than just a 'nice thing'.

As discussed earlier, the regulatory scheme we administer relies on the service provider having responsibility for implementing in its own way the community standards which are to be met. For that to operate effectively, there has to be understanding about what those standards mean in practice and how the regulator will interpret them. To deliver that we need to be as open as possible about why we reach particular decisions.

How do we try to put this into practice?

In summary, our approach to implementing a transparent process is:

- we will pretty much see anyone from the industry at anytime
- public submissions provide wider opportunity for input
- we issue media releases about almost all of our projects
- currently, we publicly explain our breach findings. Explaining our non-breach findings may also be a valuable step we could take, and
- we seek out industry views.

For if we expect you to put community standards into practice in your own ways, we must be able to have an open dialogue when we decide that those standards have not been achieved.

This cannot always guarantee a successful outcome, but it gives us all a better chance.

Trials of new technology

Trials provide an opportunity for participants and the regulator to get a 'look and feel' for the technology in a developing market context.

You may undertake trials of new technology to gain information about the operational viability and marketability of new technology. They give you an opportunity to test systems and models and determine whether there are any issues in relation to the use of the technology in the Australian setting.

For us, trial information also provides data that feeds into the development of codes of practice and industry guidelines as well as assisting us in responding to consumer needs (whether this is for infor-

mation about the technology itself or to ensure that adequate community safeguards are in place).

A good example of a trial that presented a range of new regulatory challenges was the community television trial. What did we learn from it that has been important for this new field of television?

- The financial life of the sector is very difficult and we need to be aware of the viability of our current policy settings.
- The opportunity for licensees to sell air time is not an opportunity to become a de facto commercial operation.
- Content must reflect community involvement if it is to provide a new kind of television.

Other recent examples of trials of new technology are digital radio and digital television datacasting. The digital radio trial is playing an important role in resolving a number of spectrum planning issues around the availability of VHF and L-Band spectrum (in the major metropolitan areas) that are raised by the introduction of digital radio into Australia.

Changes in broadcasting regulation

Convergence and the ability to access content on a range of platforms offers tremendous advantages to consumers, providing them with greater choice about what they watch or listen to, how and when.

New players are emerging. New products are coming forward. And new business models and alliances are being formed – for example, the alliance between Foxtel and Myer to promote PDR.

Convergence, with the economic stimulus generated by globalisation, has created a number of challenges for regulators, who have traditionally worked with strictly defined categories of services and applications (in other words, where the separation between content and carriage was easily defined). As convergence has changed broadcasting regulation forever, there is a real potential for overlap and inconsistency in legislation, while some

new applications may fall outside the scope of existing schemes.

ACMA

The creation of ACMA recognises the changing nature of that media and communications environment. New digital technologies allow previously distinct sectors to compete across increasingly convergent markets, using a range of different delivery platforms.

In this context, maintaining two separate regulators, both dealing with similar issues but focusing on different sectors of the media and communications industry, is neither practical nor effective. As I noted earlier, it would add to the uncertainty which already exists in the market.

Of greater concern, maintaining the existing regulatory arrangements could create regulatory inconsistency.

Establishing ACMA will enable a co-ordinated regulatory response to converging technologies and services and to the long-term management of spectrum.

It is important to note that the merger of the ABA and the Australian Communications Authority will not be accompanied by substantive regulatory changes. The benefit of ACMA however, is that it will be strategically placed to address the policy issues that arise when the media and communications industries intersect.

A 'future aware' regulator

ACMA will be operating in a regulatory environment that is highly dynamic, unpredictable and varied. It is likely to be a regulator defined by its 'awareness of those new realities' implicit in the broadcasting/telecommunications marketplace.

As a result of convergence, regulatory agencies' overwhelming reliance on the 'traditional model' of regulation – where the legislation referred to community standards, content-related safeguards and

strict definition of categories were implemented using a command and control model – will decline.

In terms of dealing with illegal material, ACMA is likely to adopt a direct form of regulation where it will ensure compliance with the Act. Under this approach, the criteria for a breach of the Act (or a code of practice) are well-defined and the consequences are well-understood.

In contrast, dealing with offensive material is becoming harder to regulate as consumers are increasingly being exposed to content in environments which vary in the degree to which they are regulated. In these cases, ACMA, like the ABA before it, will need to engage with the relevant providers so they take responsibility for ensuring that adequate

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community safeguards are in place. This is particularly important in those cases where a new technology/product is not well-understood by the consumer. In these cases, consumer awareness and education strategies will be important.

The tools we use and the way we use them will increasingly need to be purpose-matched to the issue. This will be taking place as ACMA also grapples with the big regulatory policy isssues. Questions such as:

- what is meant by Australian content in the digital world?
- what should be the framework for planning the spectrum?
- how do geographically based broadcast licences fit when the same content is available on less bounded platforms?
- how do you fit platform-based codes of practice together when the same content is carried on different platforms? and
- what does community access broadcasting mean in that world?

The challenges facing ACMA will be large and novel but there will be exciting opportunities for the industry and the regulator. Good luck to us all.