



Oz Content Paper Shifts The Focus

The Australian Broadcasting Authority's eagerly awaited discussion paper for its review of the Australian content program standard (TPS 14) has come up with some controversial suggestions for possible amendment to the existing standard.

Among these are:

- counting New Zealanders as Australians for the purposes of defining an Australian program;
- allowing ABC and SBS programs (and later, pay TV programs) re-run on commercial television to count as first-run programs under the standard;
- linking program quality more directly to cost.

In a less controversial proposal, following pressure from interest groups the ABA paper floats the idea of a specific requirement for first release Australian 'P' (preschool) programs. The ABA also appears to look kindly on a possible increase in the requirement for first release C drama, pointing out that despite the 'relatively small' current obligation on broadcasters, they are meeting only the minimum requirement.

Reading between the lines, it is even possible that the ABA might support an increase in the overall quota for Australian content (currently set at a modest 50 per cent of all transmission, including repeats).

Background

The current review had to take place within two years of the establishment of the ABA in October 1992. Its aim, according to the ABA, is to see where existing regulation can be revised and improved, not to be a wholesale re-examination of the principles underlying the regulation of Australian content. (Nor could it be, since the regulation and the objects underlying it are firmly embedded in the Broadcasting Services Act.)

The ABA records that throughout 1993 and the early part of this year, it undertook discussions with 'many interested parties' on Australian content and the performance of the current standard, though the paper does not detail the nature and scope of these discussions or specify participants. The influence of the networks and the producers is apparent in some of the suggestions for change, and in the areas where the ABA sees 'room for improvement'. These include:

- greater simplicity in outlining the mechanisms embodied in the standard (the networks have complained from the outset of the standard about administrative complexities in implementing it);
- greater flexibility for networks and producers to compete in a globalised industry (translated as softer requirements on eligibility as an 'Australian' program);
- reassessment of the aim of encouraging specific program types (an implicit recognition that the networks will not show social documentaries or attempt anything truly innovative);
- consideration of international treaty obligations (there has been significant pressure from Canberra and elsewhere on this issue).

On the question of the transmission quota, the ABA has faithfully recorded a recommendation by Network Ten that the current quota period be extended to permit Australian programs beginning before midnight to qualify. Ten's argument is based on the fact the current quota does not recognise its live broadcasts of Australia's international Rugby Union matches!

Watering down or modifying the standard to satisfy ambit claims by the networks is a path the ABA should take with extreme caution. It is worth recalling that the networks strenuously objected to the original transmission quota and achieved a reduction on the initial proposal. Yet as this paper points out, all stations have exceeded the quota in each year since the standard was imposed.

Some History

The public interest in this inquiry is that viewers should receive an assured level of identifiably Australian programs which recognise the diversity represented in the Australian community and which are developed under Australian creative control.

ABT, Oz Content, Vol.1, p.28, Reasons:
An Australian Look for Commercial
Television

The Australian content television standard was finalised by the ABT in 1989 after a protracted process, lasting over five years, which involved background papers, submissions, consultations, public hearings, conferences, draft standards, responses and adjustments. The final report of the ABT's inquiry into this issue ran to four volumes. While there were criticisms of the final form of the standard no-one could claim that the ABA's predecessor gave insufficient thought to the question of Australian content on television, or failed to test its proposals thoroughly on those most affected by them.

In this whole process, the ABT's eye remained steadfastly fixed on the cultural objective as the primary objective of this regulation. While the Tribunal had to be realistic about the financial capacity of licensees to meet any standard it might impose, and while it acknowledged that the standard could provide a significant underpinning to the local production industry, it was firm that the main game was ensuring that what was on the screen was culturally relevant to Australian viewers, not providing a safety net for the production industry.

The ABA is working in a very different, post-BSA, environment. Just how far things have shifted is clear from the ABA's statement (p.6 of the discussion paper) that, although the objects of the Act 'suggest (sic) that the

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ABA's role in developing standards is primarily a cultural one',

the development of an efficient broadcasting industry is dependent on the contribution by the film and video production industry in producing programs for television. The ABA therefore, in pursuing the fulfilment of the objects of the Act, also has a role to play in industry development. (CU's emphasis).

Throughout the discussion paper, a subtle shift of emphasis is apparent, so that the interests of the networks and the production industry are placed on a more equal footing with the interests of the Australian viewing public. This is apparent in proposals which attempt to frame notions of cultural value in increasingly quantifiable terms - for example equating program quality with the licence fee paid (the higher the fee the greater the quality).

Defining 'Australian'

As far back as the period leading to the finalising of the standard by the ABT in 1989, a major bone of contention on the part of film funding authorities and the production industry has been that official co-productions, and other co-productions and programs which meet the test of Australianness for 10BA tax concessions do not automatically qualify as Australian under the TPS14 criteria.

Graham Richardson, when Communications Minister, reportedly considered directing the ABT to make all co-productions eligible under the standard; his successor, Kim Beazley, ordered an ABT inquiry into the issue. The ABT inquired then held its ground, to the chagrin of some sectors of the industry and, probably, Canberra.

Another contentious area has been that of international agreements, in particular the concern that the transmission quota for Australian programs on television might be in breach of international trade agreements such

as GATT; and of implementing Australia's obligations to New Zealand under Closer Economic Relations (CER) arrangements.

It is a tricky situation for the ABA, since s.160(d) of the Act obliges it to act in a manner consistent with Australia's international treaty obligations. There is a view in the ABA that these constraints have already compromised the cultural ideal of the standard.

The ABT's stated rationale for excluding official co-productions from eligibility was that automatic eligibility would be contrary to the central aim of the standard - that drama which contributes to the score 'is identifiably Australian and developed for an Australian audience'.

Defining Australian and determining an appropriate system to determine an Australian factor for drama programs has required considerable consultation. The problem has been twofold, on the one hand to ensure that viewers get drama specifically made for them, accurately depicting the Australian way of life; and on the other to provide a definition which will allow sufficient flexibility to provide for the creative potential of Australian drama without allowing gratuitous non-Australian elements to be introduced due to overseas finance. (ABT op cit Vol 1 p 33)

The ABA has come up with two options, the first of which - no surprise here - would see possession of a 10BA certificate as an automatic qualification for the standard.

The test for 10BA certification would be no guarantee of Australian cultural relevance of the kind the ABT was seeking when it established the standard. The co-production *Green Card*, a film in which not a single visible element was culturally relevant to Australia, has often been cited as justification for the ABT's stand on this issue.

At the very least, if the ABA's suggested approach is adopted, there should be some kind of safety net to avoid the situation of another culturally irrelevant film being classified as 'Australian', an outcome which makes

a mockery of the fundamental objectives of television regulation for Australian content, at least as envisaged when the standard was devised. Perhaps a panel of independent arbiters, similar to those which operated some years ago to mediate in disputes between SPAA and the then Actors Equity over imported actors, could be established to consider these cases.

The second and even more contentious proposal is that the existing 'creative elements' test should be restructured to bring it broadly in line with the test for Australian content in advertising. While this would neatly solve the CER problem, it would also mean that any citizen or resident of either Australia or New Zealand would be regarded as an 'Australian'. Moreover, it would be possible for a program to be accepted as Australian without an Australian actor, writer or director, since this test requires the program to satisfy only six out of a total of nine criteria.

Diversity Score 'Fails'

The current standard offers licensees incentives (but does not set quotas) to screen programs in categories which were perceived as being under-represented on commercial television, such as social documentary, the arts and new concepts. The paper presents analysis of screening statistics for these program types and concludes that the diversity program concept has failed to achieve its objective. It questions whether any standard should attempt to encourage diverse programming by mandating particular program types.

The ABA could, it says, either 'try to revise the categories or abandon the diversity program concept'. This is a half hearted and defeatist response, and ignores a third possibility, which would be to accede to longstanding production industry demands to set a specific quota for the kind of documentary programs at which Australia excels and which rarely if ever find a place on commercial television.

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ABC/SBS Programs to Count

The fine hand of the commercial networks is nowhere more clearly visible in the ABA discussion paper than in the suggestion that ABC and SBS programs re-screened on commercial channels should count as first run Australian programs for quota purposes.

CU understands that one justification for this proposal is that it would encourage the commercial networks to contribute to the cost of investment in new series and programs which the national broadcasters do not have the resources to fund.

Among a number of possible grounds for rejecting this proposal are:

- It would inevitably reduce the overall production of Australian programs, since the networks could acquire programs from the national broadcasters instead of commissioning, purchasing or producing their own.
- ABC/SBS programs, which should at least attempt to be innovative and 'different', could be increasingly tailored to fit the requirements of sales to networks.

Presumably the production sector will strenuously object to this proposition, with its implicit reduction in available work for them. The national broadcasters themselves could object to this proposal, but pressured as they are these days to generate income from all possible sources and to grab every entrepreneurial opportunity that arises, nothing can be certain.

Summing Up

Overall, the discussion paper is disappointing. There are few signs of original or creative approaches to identified problems, or of strategic thinking.

No doubt the ABA felt constrained by the necessity to conduct this review in a context of rapid change to the broadcasting environment. A few paragraphs on page 10 referring to new program and content opportunities

from broadband developments acknowledge the radical changes taking place, and suggest the influence of the ABA chairman wearing his other hat as chairman of the Broadband Services Expert Group.

In a touching display of faith, the paper says here that 'subscription broadcasters and narrowcasters are not relieved of their cultural obligations simply because there is no explicit articulation of these obligations through standards and codes', and emphasises the need for enhanced commitment to Australian content across all audiovisual sectors if Australia is to continue to produce 'unique and individual products which reflect its cultural identity and diversity and can compete with producers in other markets'.

Perhaps the lesson for the regulator in its review of Australian content regulation is to tread softly. Nothing in this paper suggests that TPS 14 is an unmitigated disaster in need of radical overhaul. A few modest amendments and changes around the edges might be enough to hold the line on

Australian television content until the impact of new services can be fully assessed.

Or to borrow a theme from the opponents of a republic of Australia: If it ain't broke, don't fix it!

The ABA has called for submissions by 2 September, a time frame which will place under-resourced industry groups under considerable pressure to prepare a response on such an important and complex issue. Representatives of interest groups such as MEAA, SPAA, ASDA, AFC and the CLC have met in Sydney to consider whether they can agree on certain basic principles which would allow at least a partial joint submission.

After some lobbying, the ABA is to follow the practice of its predecessor and establish a public file for submissions and other relevant information. The file will be available only to people in Sydney and Canberra, since ABA no longer maintains offices in other States, and submitters can opt to keep part or all of their contribution confidential. □

For copies of the paper, ring Andrew Poole (02) 334 7845.

