Oz Content on Pay TV

***Jock Given** reviews the ABA's recommendations*

The ABA's report on Australian Content on Pay TV recom mends only marginal changes to the policies implicit in the current arrangements. It argues that the currently unenforceable legislative scheme should be made enforceable and that a specialised accounting standard and enhanced reporting requirements should be introduced.

However, it recommends against the extension of the current Australian drama program expenditure requirement to channels other than drama channels. It also recommends against increasing the current 10% requirement to 20%, as foreshadowed in the legislation, for movie channels, although it suggests that such an increase might be reasonable from 2000/01 for non-movie drama channels.

The ABA also recommends that spending on some programs other than 'new Australian drama programs' be eligible to qualify for the expenditure requirement. It believes all spending by drama channel operators on 'new Australian programs' other than promotional material should count towards the expenditure requirement. It has rejected arguments by some members of the pay TV industry to include spending on 'interstitial' and library or repeat material. It has also rejected arguments to amend the Australian Content Standard for commercial television to allow programming already screened on pay TV (other than movies) to count towards the first release quotas on free-to-air TV.

The report is the result of seven months' work on an investigation conducted at the direction of the Minister for Communications and the Arts. Under section 215(2) of the *Broadcasting Services Act*, the Minister is required 'to conduct a review of Australian content on subscription television broadcasting services, including the feasibility of increasing to 20% the level of expenditure required under section 102'. The review was due before 1 July 1997.

Early Days

Pay TV began in Australia with the Australis/Galaxy satellite service in January 1995. The Optus Vision and Foxtel cable services followed in October 1995, with a fourth major service, Austar, now operating in regional areas. Nearly 600,000 households (about 8.5% of all households) are currently thought to be subscribing to pay TV.

The ABA report stresses that these are early days for the pay TV industry:

> 'Given the very limited experience with the current Australian drama expenditure requirement, and the start-up phase of the industry,the introduction of new long term arrangements for Australian content regulation on pay TV may be premature'. (p36)

It argues for a further review of Australian content on pay TV in 'around three years' time'.

Arguments that a more mature pay TV sector should be subject to greater regulatory 'parity' with existing free-to-air broadcasting, as proposed particularly by FACTS, are rejected. The ABA cites with approval Foxtel's argument that:

> 'Even as a fully mature market, the impact of subscription television onshaping community views will be small...[T]his concept of impact on societal thinking is one of the issues which again distinguishes subscription television from commercial broadcast television...'. (p30)

This position appears to sit uneasily with News Limited's views expressed in the media ownership review about the significant social impact of new media.

The ABA makes it clear it supports the continuation of a specific requirement for Australian produced programs on pay TV, reflecting the significantly higher cost of Australian produced programs. Regulation should be sensitive to the very specific genres and formats of particular pay TV channels.

Upping the ante

Central to the report's arguments about the appropriateness of increasing the current 10% requirement to 20% is a piece of research undertaken by the BTCE, just published as BTCE Working Paper No 31 *Australian Content on Pay TV* (see Policy File).

The BTCE and the ABA separate the discussion of movie (drama) channels and non-movie drama channels because the prices paid by the providers of pay TV services for programming are calculated in different ways. Movies are paid for on a 'per-subscriber' basis, so that the cost of movies increases with subscriber rates. In turn, the amount of money required to be spent on new Australian drama increases with subscriber growth. The ABA emphasises this natural growth in the expenditure of movie channels on Australian programs, without any increase in the 10% figure.

By contrast, other kinds of drama programs, such as series and serials, are purchased by pay TV on the same basis as free-to-air television: a fixed amount for a certain number of plays over a certain period.

The BTCE sets out a range of scenarios for subscriber numbers and program costs to assess the impact of an increase in the Australian program expenditure requirement.

The subscriber numbers scenarios range from 30% to 50% household penetration in 2004/5. The low range is an update of the BTCE's own forecast, contained in its 1995 Communications Futures Project. The high range has no particular origin at all: it is 'a BTCE scenario based on the assumption that a penetration rate of close to 50% will be reached by 2004/5'.

It's high all right. By contrast, penetration in the UK is around 20% after eight years. The penetration of cable services in the US is at 65%, although Australis' submission suggested that a more appropriate figure for comparison was 30-35% penetration of services including 'premium programming', like those offered in Australia. If current growth rates in Australia continue, we'll have about 40% by 2004/5, considerably lower than the high range scenario included in the BTCE's work. This is also Australis' estimate of market saturation in Australia (Foxtel suggests around 60%).

The BTCE is careful to note the purpose of the high subscriber number scenario, which generates the highest level of expenditure by movie channels and thus the highest level of Australian program expenditure required under section 102. It's not a 'forecast' - it's there because 'if the industry were able to accommodate this relatively high level of expenditure, then it would face no difficulty if the expenditure proved to be lower in reality'. The BTCE's own forecast of what might happen 'in reality', one assumes, is somewhat closer to the scenario based on its Communications Futures work than on the 50% worst case.

Even so, the conclusions about the impact of the Australian program expenditure requirement are significant. At a level of 10%, an average annual increase of 3.5% in the Australian industry's feature film output until 2004/5, or 1% in the total drama output, would be necessary to cope with the Australian program expenditure requirement. If increased to 20%, the film industry would need to grow at 6.7% per year and the drama industry at 2.3%. According to the BTCE, 'the available evidence indicates that the production industry would be able to meet even this level', although 'Movie channels...remain concerned about the quality of output that might result'.

The problem would come not from the production industry's capacity to meet the demand, but from the pay TV industry's capacity to finance this level of Australian program expenditure:

> 'Under the assumptions made, there is a possibility that the 20 per cent requirement could result in problems for channel providers in most of the scenarios analysed. At the 10 per cent level of expenditure, again under the assumptions made, the estimates indicate that channel providers would only have difficulties if minimum numbers for determining program costs were higher than subscriber numbers determining revenues (the medium to high scenario), or if program costs were around $95 per subscriber per year (the high program costs scenario)' (BTCE, page xx).

This highlights a crucial paradox identified by the BTCE's work - the higher the subscriber numbers (that is, the more successful pay TV is in attracting customers), the more difficult it is for the pay TV operators to spend a given proportion of their program expenditure on new Australian drama.

The BTCE also notes that in all its scenarios, the pay TV industry will be contributing a substantial proportion of the total finance of the Australian production industry - 19% of total film industry output (29% of 'Australian' film output - that is, excluding offshore projects) at the 10% level and 35% (47% of 'Australian' output) at the 20% level.

On the basis of the BTCE's analysis, the ABA concludes that a doubling of the level of obligation for movie channels is problematic for the Pay TV industry.

An important qualification to the BTCE's results comes from its own admission about the implications of rationalisation in the Pay TV industry forecasts about program expenditure:

> 'there is speculation in the press that contracts for sports and movies be renegotiated and that changes in the present system of exclusive and non-exclusive program supply would occur. The number of channels offeredmaychange.
>
> Given this uncertainty, the BTCE believes it is not possible to predict the outcome for program expenditure, and no account has been made of possible changes....'. (p 14)

If a significant reduction in movie channel program costs brought about by such rationalisations were to correspondingly reduce the amount required to be spent on Australian programs, this might be good reason to review any decisions made about the level of the obligation rather earlier than the timeframe proposed by the ABA.

'Non-movie' drama channels

Because drama programs other than movies are purchased by pay TV at prices that do not change with subscription numbers, there will not be the same 'natural' increase in program expenditure, and hence in the value of the Australian program expenditure requirement, as with movie programs/channels.

The ABA suggests that this means the level of Australian program spending by non-movie drama channels might be set independently of the level for movie channels. Although it states 'On BTCE estimates, it would seem reasonable to impose...an increase around the year 2000/01, when these [non-movie drama] channels are forecast to be in a better financial position,' it does not recommend that this future increase be decided now. It suggests instead that this approach be evaluated 'on the basis of further experience with the current requirement'.

Enforcement

A major problem with section 102 is that it is unenforceable because pay TV licensees are not the entities which actually incur the program expenditure which gives rise to the Australian expenditure obligation. (see *CU* April pp 8-9).

The ABA examines a number of models for legislative change, including class licensing and individual licensing of pay TV broadcasters and channel providers and the imposition of a special condition on subscription television broadcasting licences. It suggests that such a condition could require, for example, that licensees only broadcast programs supplied by pay TV broadcasters or channel providers registered under a registration scheme that could be introduced in the legislation.

The report includes legal advice from the Attorney-General's Department Office of General Counsel (OGC) indicating there would be no constitutional difficulty in legislating to impose the obligation not only on pay TV licensees, as at present, but on 'pay TV broadcasters' like Foxtel, Galaxy or Optus Vision (often companies related to the licensee) or on 'pay TV channel providers' like Turner International, Foxtel Management Pty Ltd, Nickelodeon or Movie Vision.

The Minister is currently considering the ABA's report.❑

Proliferating Pay:

Pay TV Channels in Australia

	October 1995	April 1997
Movies	5	7
Entertainment	7	11
News	5	6
Sport	3	6
Documentary/learning	2	3
Music	2	3
Community	-	1
Weather	1	2
Non-English language [1]	3	9
Pay per view	-	2
Home shopping	-	1
Program Guides/Montages	2	5
TOTAL	**30**	**56**

[1] Includes World Movies

Pay TV - The Numbers

Service	Subscribers	Date
Optus Vision	180,000	end March 1997
Foxtel	150,000	end February 1997
Austar	137,000	begin April 1997
Galaxy	97,000	end January 1997
East Coast	12,000	End February 1997
Total	**576,000**	**approx 8.5% of households**