Censorship, community standards and the digital age

Christina Spurgeon and Sally Stockbridge argue that the ABA needs to maintain its emphasis on market-based responses to community standards about broadcasting rather than capitulate to political pressure from more traditional content prohibitions

As a nation, Australia presently faces the convergence of broadcasting, online services and other media, with a distinct lack of compatibility of regulatory practice in matters of content regulation. At the 1997 "Cultural Crossroads" conference we decided to explore our common interest in this problem. This informal collaboration of a commercial television network program classifier and a media academic, with a history of public interest advocacy, has been enjoyable and productive.

Over the past year we have commenced a "mapping" exercise of program classification regimes and practices in the emergent and convergent multichannel environment. Broadly, we argue that the Australian Broadcasting Authority's (ABA) market-based approach to interpreting "community standards" has generally worked in the interests of television audiences. To date, qualitative and statistically valid quantitative audience research has been used to inform co- and self-regulation of many matters of content regulation which resist black letter law treatment. In our view, the ABA's approach is also in the "national interest" if we understand this to be the particular developmental strategy known as the "information" or "knowledge" economy. This is because it is sufficiently flexible to accommodate the rapid development of niche media services and markets which are, at least to some extent, inevitable in a multichannel media environment. We do not argue here that all the content-related problems of technological convergence can be addressed by the ABA approach. For example, we have yet to closely review the interface between online media and broadcast television, so for the moment our argument extends only as far as pay TV and narrowcast services. But our sights are trained on the implications for program content and classification which might follow from the decision that broadcast TV will migrate from an analogue to digital transmission platform in the not-too-distant future.

It is important to speak out in support of the ABA's approach to date on community standards now because we have experienced, recently as well as historically, "moral panics" (Wilson & White, 1997) over electronic media content; violence and sex and nudity being the chief issues for debate in parliament and in the press. As a consequence of a recent moral panic which we have also studied and briefly report upon here, we perceive the ABA to be under considerable political pressure to shift to a traditional, prohibition model for establishing the thresholds of acceptability for TV content. We think this would be a regressive development and will commence with an international comparison of recent developments in program classification regimes for television in support of our argument.

International comparison

Australia stands out as the most heavily regulated English-speaking jurisdiction when it comes to television content. Its classification systems, including television, predate most others and are heavily controlled and currently among the most conservative, especially where depictions of sex and nudity are concerned (Stockbridge, 1996).

The British Standards Commission recently released its Codes of Guidance for broadcasters based on its community standards research (BSC, June 1998). These suggest that there should be a relaxation in the regulation of sexual depictions and nudity. They also indicate support for a greater degree of parental responsibility after the watershed of 9pm. When commenting on subscription services, the U.K. government argues that, rather than detailed regulation, effective self-regulation will predominate (see http://www.dti.gov.uk). This brings the U.K. into line with other general trends in the development of new media content regulation in Australia (see Dwyer and Stockbridge) and the U.S. and Canada.

The ABA is the regulator of industry codes of practice including broadcast television and radio and pay TV. The ABA is also on track to become the code authority for Internet content. It oversees unresolved complaints against broadcasters. As a statutory regulatory authority, the ABA encompasses most of the areas that Richard Collins and Christina Murroni advocate should be amalgamated in the U.K. into a single authority (Collins & Murroni, 1996: ch. 8). It provides a single regulatory agency approach and helps ensure that specific political considerations and patronage do not shape regulatory decisions. These authors persuasively argue that as long as this type of regulatory body is allowed to operate at arms length from any government of the day and is permitted to make judgements about community standards on the basis of sound research, then both industry self-regulation and the public interest can be effectively accommodated.

In the U.S. and Canada, the movement towards digital broadcasting has been accompanied by processes put in place, for example, content classification schemes with onscreen symbols from 1997/8, to enable the operation of V-chip technology (Albiniak, 1988; Electronic Cottage, 1998). Neither Canada nor the U.S. had a comprehensive

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classification system for TV content prior to 1997/8.

These developments are designed to link an enhanced self-regulation regime with a mandate to facilitate parental involvement and responsibility in the protection of their own children, in ways that suit their individual perceived needs. The thinking here is that classification, not censorship, enhances self-regulation and that the V-chip will facilitate parental control over access to programming while retaining the rights of adults to access non-child-centred material. The U.K., Canada and the U.S. have all emphasised the need for parents to play a greater role in deciding what their children will view. In Canada and the U.S., the V-chip is considered to be the best method for enabling parents to achieve this. The V-chip and digital broadcasting are now set to coincide.

In Canada, the voluntary content codes are administered by the Canadian Broadcast Standards Council; an independent council created by the Canadian Association of Broadcasters. This body also administers an apparently well-functioning complaints mechanism, while retaining industry self-regulation. The Canadian Radio-television and Telecommunications Commission (CRTC) oversees regulation and advocated a classification system and the V-chip. In the U.S., the Federal Communications Commission (FCC) approves the broadcasters' voluntary TV classification scheme that is linked to V-chip technology, then it bows out.

Australia has the longest standing and most comprehensive television classification system in the English-speaking world. In this respect, it appears to be ahead of the rest of the Western world. But most jurisdictions surveyed have lower levels of censorship attached to depictions of sex and nudity than Australia, with the U.K. presenting the clearest mandate for loosening censorship in this area based on their recent community standards research. All jurisdictions, like Australia, have responded to community demands to tighten up on violence on broadcast television.

Traditional and market-based approaches to content regulation

The fact that the Australian approach to regulating television content involves a high degree of government intervention on a comparative international basis did not see the light of day in our most recent moral panic. For about three months in the middle of 1998, the print media made hay with a comment by the then Minister for Communications, the Information Economy and the Arts (now "Information Technology"), Senator Richard Alston, that he did not want to see the development of an electronic "Soddom and Gomorrah" in this country. We refer to this particular moral panic as the "Digital/Life" panic, after the headline of an *Australian Financial Review* editorial published at its height (*AFR* 1/7/98). Part of our work involved an analysis of more than 100 press reports published in metropolitan and regional Australian newspapers between May 28 and August 28, 1998, which formed a part of this panic. Numerous threads of debate and knots of confusion were created, unravelled and rearranged in this panic. We report here our analysis of one of those threads to illustrate the differences between, and implications of, traditional and market-based approaches to content regulation in a multichannel environment.

Played out in the "Digital/Life" panic was a contest between competing traditional and market-based approaches to using "community standards" as the guide to establishing thresholds of acceptability in mediated communication practices. Community standards figure in Australian broadcasting and censorship law as an indicator of where, on a "sliding scale" lines between acceptable and unacceptable media content are drawn (Flew, 1998:93). Traditional methods of deciding thresholds of acceptability can be informed by selective use of complaints data, submissions and expert opinion but ultimately rely upon the judgements of wise heads, often politically appointed, to government agencies. Market-based approaches, such as those used by the ABA, go one step further than this and apply established audience research methods to test the assumptions which arise from the traditional approach to ascertain community standards. To date, the ABA's market-based approach has provided an important "reality check" of traditional assumptions about the operation and management of media power and has provided media industries, audiences and regulators alike, with a more accurate impression of actual community standards of acceptability than traditional methods alone.

In our view it is important that the ABA continues to take a market-based approach to ascertain community standards. Among other things, this is because traditional approaches increase the uncertainty, costs and risks of investing in programming. In the case of commissioned programs the risks are increased further because the pressure to ensure that program costs are amortised in the initial broadcast are also increased. For example, networks might become increasingly reluctant to amortise costs for Australian drama over an initial run and two repeats, as is current practice, because there may be no guarantee that these programs will comply with altered thresholds of acceptability in the future. This is one hypothetical example of how, in the extreme, traditional approaches to ascertaining community standards can be "anti-media" in their effects: that is, they could inhibit the development of new media products and services, especially Australian content.

We also found in the "Digital/Life" panic a relationship between actions at the party-political and executive levels of government which is consistent with a previously identified historical pattern of content regulation and policy-making (Dwyer and Stockbridge, forthcoming). Specifically, the trajectory from welfare state to industry self-regulation of media content is generally maintained. Nevertheless, as Jock

Given, director of the Communications Law Centre, observes, features of a traditional welfare state approach to governing electronic media are being re-asserted in the regulation of TV. Partly as a result of the particular way in which digital television broadcasting technology has been developed, opportunities have been created, "to reinvent traditional notions of the public interest in media and communications services for the digital age" (Given, 1998:38). We take strategic advantage of this "rediscovery" of the public interest objective of broadcasting regulation to develop the case for market-based approaches to determining community standards (and ultimately the public and national interest) in preference to traditional approaches. Market-based approaches are more in keeping with the developmental strategy that current and previous national governments have been promoting: the information economy. This wealth creation strategy relies upon increased production and consumption of media and communications services, especially those provided by means of convergent digital communications platforms.

The 1992 reforms of broadcasting legislation and wider reforms of communications law are another important part of the background to the "Digital/Life" panic. These gave form to a policy view of national economic development which, among other things, explicitly aimed to increase the number of media and communications services and, simultaneously, disperse regulatory responsibility for the content of electronic media away from government to industry agents. A new system of self-regulation for broadcasters was established in 1992.

Self-regulation was generally consistent with actual industry practices which had developed around former Australian Broadcasting Tribunal TV programs standards. Though hotly contested in scope and detail, the new arrangements broadly reflected the reality that much of the content of Australian media is self-regulated. Broadly speaking, it was a system of content regulation which was workable within the market limits of industry and the resource limits of government. The areas of exception to self-regulation are Australian and children's TV. These continue to be regulated by ABA program standards. The reasoning here is that the commercial television market might otherwise fail to produce these program streams. To pick up on an important point made at last year's Key Centre conference by Richard Collins, these program sources and types have been identified as being of a distinctive, "merit good" economic character, which means the state can legitimately provide for them by direct or indirect means (Collins, 1997). Australia is not alone in providing for merit good media content by these means.

Post-1992, the main opposition to self-regulation has arisen in a countervailing trend, particularly in the development of Australian censorship laws in state and federal jurisdictions, to increase the scope and depth of traditional approaches to determining prohibitions upon electronic media content. In the 1998 "Digital/Life" moral panic, we saw the spectacle of these traditional and market-based regulatory strategies clashing. We are responding to this development by calling into question the suitability of traditional approaches alone to regulating content in the public interest, when market-based approaches directed at the same ends (the public and national interest) might be more likely to succeed. In addition to audience research of the type which the ABA has engaged in, other strategies come to mind: they are the maintenance of sectoral diversity and direct funding assistance for program types which the government deems to be in the "public interest".

Finally, it is important to note that there are numerous risks associated with market-based methods for ascertaining the limits of community acceptance of media content. These include the general problems of empirical social scientific research, the results of which can mistakenly be taken to actually be social reality, when in fact they are only a representation of complex social relations concerning the operation and management of media power. Put another way, it is vitally important that the agency that has responsibility for ensuring electronic media programming and scheduling practices are generally consistent with current community standards - the ABA - is allowed to do this work at arms length from government.

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