

Richard Nixon ... beyond self-regulation?

Q. Mr. David Shannon: Mr. Jones I wonder if I could ask you a question about self regulation. I think there are many signs that the Tribunal is becoming more involved in the self regulation of advertising both at the stage of formulation of rules and in arbitrating as to the effect of those rules, and a recent decision of the Tribunal in relation to a Richard Nixon look alike commercial as a particular case in point. My question is simply how can it really be self regulation when the Tribunal is involved in that way as an independent governmental body?

A. Well I think there are two points to be made. First of all there is at the moment statutory regulation of advertising on the electronic medium. In other words the Act requires that

advertising be broadcast in accordance with standards determined by the Tribunal; there are standards, so in the sense there is an ultimate regulatory responsibility on the Tribunal to not only determine standards but to oversee that they are complied with. Now that the system has been blended with a form of self regulation in that the television industry has set up its own operation to deal with advertisements to assist their members in assuring that advertisements do comply with the standards and any other self regulatory codes that may operate in the area and as far as the Tribunal is concerned we have welcomed and supported this initiative and the excellent work that is being done by the C.A.D. However, I think it is an example of where many self regulatory experiences reach a stage that they can go no further and that there has to be some ultimate statutory body or responsibility where the self regulatory process can't cope with the problem. The one that you're talking about is a situa-

tion where the body operated by the industry was taking a certain view, other people involved were taking a contrary view. Ultimately, the Tribunal had to make a decision as to whether that piece of advertising was in accordance with the Act and the Standards, and the Tribunal accepted that responsibility and took the decision. But by and large matters relating to advertising in television, for example, are sorted out under the self regulatory process that operates.

Ownership

Q. Lady Duckmanton: Mr. Jones I was wondering if you could comment on your claim that cable will open up diversity in ownership and control and therefore the need for regulation may diminish. I was wondering whether you believe diversity can only be contained in regulation and whether it is desirable that the same

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Cable Inquiry Submissions

Herewith some late submissions to the Australian Broadcasting Tribunal's Inquiry into Cable and Subscription Television Services and Related Matters (previous submissions (1981) 1 CLB — 5, 6 & 8):

172 : SUPERIOR INSTALLERS, INC COUNTRY: U.S.A.; 173 : OFFICE OF ROAD SAFETY—DEPARTMENT OF TRANSPORT; 174 : TELECASTERS NORTH QUEENSLAND LTD; 175 : AMATIL LTD; 176 : BRISBANE TV LTD; 177 : DR R LORRIMER; 178 : MR S DE BELLE; 179 : YOUNG PEOPLES FORUM OF THE YOUTH AFFAIRS COUNCIL OF VICTORIA; 180 : TELEVISION BROADCASTERS LTD; 181 : DAVID SYME & CO LTD; 182 : SENATOR JOHN SIDDONS; 183 : SOVEREIGN RECORDS; 184 : TELEVISION NEW ENGLAND LTD; 185 : TRAFFIC AUTHORITY OF NSW; 186 : HARRY DOUGLAS PTY LTD/DATEC PTY LTD; 187 : WESTERN REGION COUNCIL FOR SOCIAL DEVELOPMENT AND OTHERS;

NEW MEDIA: LAW & POLICY

The long-held view that the media had a unique role in a free society and was not to be controlled like other industries is now under challenge, MARK ARMSTRONG told seminar attenders at the University of N.S.W. on 22 August,

The challengers are:

- Politicians seeking a partisan advantage;
- Bureaucrats seeking to impose uniformity; and
- Lawyers seeking to resolve policy and planning issues by the methods which the courts use.

Armstrong told the seminar "NEW MEDIA: LAW AND POLICY" that legal controls on media content should be reduced to the extent that "narrowcasting" replaces broadcasting — and to the extent that there is greater diversity of media controllers.

The law should no longer be used by government as a barrier to block media developments. Governments have a responsibility to plan and allocate natural resources. But they should not be allowed to fetter the range of considerations which make

up the public interest in freedom of speech, Armstrong and co-author Terry Buddin argue in their seminar paper: The Role of Government and Freedom of Speech.

The twelve papers delivered at the seminar will be available next month. To obtain these send a cheque for \$17.00 in favour of Law School, U.N.S.W.) to Ms. J. Trethewey, Faculty of Law, University of N.S.W., P.O. Box 1 Kensington, 2033.

For details of the authors and topics of the other papers see (1981) 1 CLB — 8, 11.

The seminar organised by the Australasian Communications Law Association (ACLA) and the Faculty of Law, University of N.S.W. was attended by more than 200. It concluded with an informal dinner at which the speaker was Mr Rod Muir.

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media outlets, which control the media at the moment, would also control cable?

A. I can't comment on that in the sense that these are matters the Tribunal has to consider in the cable inquiry; questions of cross-ownership, things of that nature. But the experience in the United States seems to be that cable is a new medium which offers the opportunity for many more services because of cable being able to carry out so many more services. So rather than just having three or four television services coming into an area the introduction of a cable system may mean another ten or fifteen through that particular cable system and that offers the opportunity for a wider spread of program content particularly perhaps in the nature of minority type programming which can add more diversity to what is currently offering.

Q. Lady Duckmanton: I think if I may just ask another question. There's no guarantee though that the same groups won't own all those ten outlets in there unless we do it by regulation?

A. Well what you're saying is you may not achieve diversity by leaving it entirely up to the market place because the market place may result in the same people owning the new medium. That is obviously a possibility and something we have to address as to whether there needs to be some statutory injection; foreign ownership is another example — whether you need some statutory requirement to achieve a certain type of ownership which is felt to be in the public interest and we have to address that issue, it's an important issue as to what extent, if cable is to be introduced, there ought to be regulation in the areas of ownership and control with a view to encouraging diversity within the system.

Interest Groups

Q. Mr. Masterman: I would like to hark back to Max Keogh's questions about the Broadcasting Tribunal's attitude to the representation of other interests before it. I don't think

lawyers, such as yourself, should hide behind the law. I also think it is undeniable that the Broadcasting Tribunal as distinct from Mr. Justice Davies and Mr. Justice Morling, has shown a hostile attitude, a defensive attitude to applications by interested groups on both sides of the spectrum that is from public interest groups, so called, and from (the) industry who appear before it. Why do you think that members from a psychological point of view, have been so defensive in their attitude to getting assistance in their inquiries from members of interest groups from both sides of the spectrum?

A. Hardly surprising that Mr. Masterman and Mr. Keogh have a similar point of view. Speaking personally Mr. Masterman, I suppose one has to be subjective about this, I don't believe that I have adopted a defensive attitude to this position or to this matter. Certainly I have been involved in a number of inquiries where we have rejected applications on the other hand I have been involved in a lot of inquiries where we have granted them. And I must say I have endeavoured to take a pretty broad approach to allow people in where I felt that their presence as a party, as distinct from their presence as a witness, was going to be of assistance to the Tribunal. And some assistance I think is gleaned from the High Court's judgment in the matter that it dealt with in terms of the same type of case being repeated in proceedings. The Tribunal does have a statutory obligation not only to carry out a thorough investigation but also to do it with expedition and we have to weight that up as well as weighing up the need for the investigation. And the way I have seen it has come back very much to the question of assistance by that particular person as a party as distinct from trying to hide behind the statute. I don't think I can say much more than that.

Q. Mr. Masterman: And you don't apologise for the Tribunal's attitude as compared with Mr. Justice Davies' attitude, in not adopting the attitude you've just described.

A. Well I think Mr. Justice Davies delivered a very comprehensive and valuable judgment on the matter in the AAT. He is dealing with a different statute to ours although there are obviously a lot of similarities. The circumstances of particular inquiries or

proceedings vary and as we endeavoured to point out in a decision we gave recently on party status in the Fairfax inquiry, it is very much a matter of looking at what the proceedings are about in determining whether you can say someone has got an interest in the proceedings, and that is what we will endeavour to do. Now if you see us adopting a more restrictive and defensive attitude than Mr. Justice Davies well so be it.

Self Regulation

Q. Ms. Julie James Bailey: I wonder whether I could pursue the issue of self regulation. I have always found it useful to define 'regulation' into two areas. One which is economic and therefore the regulation affects quite dramatically the economic base of a broadcasting company namely, the amount of advertising, Australian content, and programs which, although by definition are expensive, such as drama and children's programs. And the other area of regulation which is more along the lines which you addressed yourself to today which is in relation to the mores of society, violence etc.

The self regulation report of the Tribunal of course indicated that they accepted that the economic base regulations were ones which were acceptable. You today, however, have suggested that it's more the qualitative ones the social ones in which both the law and lawyers could be more involved, which I found interesting because it seems to me that this is an area for the sociologists rather than the lawyers. I would like you to comment on the role perhaps that those two disciplines might be taking.

A. Certainly, I gave those as examples that came to mind I didn't mean to convey the impression that they were the only areas. The role of sociologists and psychologists is very important in regulation particularly in those matters you just mentioned because you need to be as well informed as you can about what is the effect of violence as a result of television, what is the effect of advertising

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Australasian Communications Law Association

The ACLA is concerned to bring together those interested in the law in areas effecting communications such as broadcasting law, defamation, copyright, advertising, contempt of court, freedom of information, entertainment, privacy and censorship. Our current membership includes lawyers and others from commercial, national and public broadcasting, newspapers, private practice, law reform commissions, universities and elsewhere.

We recognise that the success of our Association depends on associating informally and freely with all those interested throughout Australia. We publish material from widely differing standpoints. The total independence of the Association, which includes people with a diversity of political and business connections, will continue to be jealously guarded.

We have no permanent secretariat and we do not maintain a routine of activities. Functions are organised to suit the needs of the community and the interests of members. Our activities have included seminars on overseas broadcasting law, commercial television licence renewals, defamation, and copyright. We have held luncheons for the Commonwealth Attorney-General, the Minister for Post and Telecommunications, the shadow Minister, the Chairman of Telecom, the Chief Film Censor and the ABT Chairman. The **Communications Law Bulletin** is Australia's first and only journal in the area. Our membership directory provides a means of contact between those interested in particular areas of communications law and policy.

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on children before you make regulations dealing with those matters. I think the way I saw the role of the lawyer was not so much being an expert in that respect or providing assistance in that respect, but in being able to deal with the issue, once the issue was determined, such as violence and being able to assist the client to deal with that issue. Now that may be by saying we can overcome this by having some of self regulation as distinct from statutory regulation. But of course you need to be able to show how that can be done and it's in that sense, i.e. in the sense of communicating that particular person's position, be it a television company or whether it be an industry body or a public interest group. It's in terms of being able to show what the person's position is that the lawyer can play an important role for his client. That's the point I was trying to make rather than actually being the expert like the sociologist or the psychologist dealing with the hub of the problem in the same way with economic matters you may be relying on financiers and accountants etc. to determine what the economic impact is of certain regulation. But again your lawyer can use that information to develop a certain point of view, to develop a certain proposal that can be put forward; that's the way I see it.

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