

initiative and investment in new services, generating new employment opportunities

- Protection of the public interest

Obviously, duplicating existing regulatory regimes is not an acceptable answer. In addition, we need to maximise our use of existing legislation such as that relating to trade practices, defamation, consumer protection, obscenity and blasphemy.

So far as VAEIS are concerned, I am confident that the policy framework which has been adopted is a reasonable, pragmatic solution. The services are exciting and innovative applications of state of the art communications technology - and the adoption of a self-regulatory framework for both terrestrial and satellite applications is no mere coincidence. With the FDU report, too, the same trend is there - to prune existing regulations back as a means of making the regime more flexible and more appropriate to modern circumstances.

It is not only the domestic environment which provides regulatory challenges, we are seeing a trend towards the internationalisation of business activity. Companies are being bought and sold across national boundaries - a globalisation of mergers and acquisitions. This globalisation is occurring in finance, advertising, communications and entertainment. Technology is increasingly ensuring that no country can be comfortably isolationist. The associated legal issues - such as copyright, national sovereignty, content regulation - have already received considerable attention.

The world economy is becoming increasingly oriented to the production of services. Technology now enables worldwide networks to develop which link services, such as banking, with investment advice and credit rating services. Any service which can be reduced to electronic information can now be traded instantaneously anywhere in the world.

Conclusion

Farsighted technically literate lawyers and lawmakers are needed to

develop regulatory frameworks designed to promote co-operation in an emerging international economy.

In meeting these challenges, the focus should be on the goals we are trying to serve. In achieving our objective of minimum regulation, whether by means of self-regulation, some legislative provisions or through deregulation, the policy goals should remain of paramount importance. To meet those policy goals through a minimum of regulation is my Department's objective.

GUIDELINES FOR PROVISION OF VIDEO AND AUDIO ENTERTAINMENT AND INFORMATION SERVICES

Preamble

Set out below are the VAEIS guidelines issued by the Minister for Communications.

"1. On 2 September, 1986 the Minister for Communications announced the policy framework for the introduction of Video and Audio Entertainment and Information Services. This announcement foreshadowed the development of guidelines setting out content and licensing requirements for these new services, which would form the basis of a self-regulatory code of practice to be observed by service providers. The Minister for Communications has now determined the Guidelines which are to apply.

2. For the purposes of these Guidelines, the following definitions apply:

- VIDEO AND AUDIO ENTERTAINMENT AND INFORMATION SERVICES (VAEIS) are transmissions of programs by telecommunications technology on a point to multipoint basis to identified categories of non-domestic environments. VAEIS may be funded by advertising revenue and/or charge for service and/or lease of equipment.

- NON-DOMESTIC ENVIRONMENTS include hotels, motels, registered clubs,

hospitals, educational institutions, shops, government, commercial and industrial buildings, coaches, trains, aircraft, and marine vessels. Domestic environments, that is, private, long-term residential dwellings, households and places of permanent residence do not qualify to receive VAEIS.

- VAEIS PROVIDER refers to the individual, group or organisation responsible for providing the content for the service and who has signed an agreement with the Commonwealth undertaking to abide by the Guidelines. With the exception of the Australian Broadcasting Corporation and such education, health and welfare bodies, Commonwealth statutory authorities and government business enterprises as may be approved by the Minister for Communications, no government department, statutory authority, agency or company set up by government may be a VAEIS provider.
- END USER refers to an individual, group or organisation which has made arrangements with a VAEIS provider to receive VAEIS and/or equipment capable of receiving VAEIS.
- BROADCAST includes both radio and television broadcasts unless otherwise specified.
- AUSTRALIAN means a person who was born in or is ordinarily resident in Australia.

3. VAEIS are regulated in three ways:

(a) VAEIS providers are subject to relevant Commonwealth, State and Territory legislation, in particular, concerning copyright, gaming and betting, defamation, obscenity and blasphemy, classification and exhibition of films and video program material, trade practices, privacy and consumer protection.

(b) special conditions of

licence and/or contract.

(c) an agreement with the Commonwealth to comply with a set of Guidelines issued by the Minister for Communications.

4. VAEIS can be delivered by one or a combination of several technologies, such as Multipoint Distribution Systems, AUSSAT satellite, or Telecom's network. These Guidelines, which form the basis for a self-regulatory code of practice for VAEIS providers, will apply to all VAEIS regardless of the delivery method.

5. Radiocommunications licences issued to VAEIS providers will be subject to conditions covering the encoding of transmissions, identification of categories of end users, specification of the purpose of the service, and the technical parameters within which VAEIS is required to operate.

6. Those VAEIS providers who enter into contracts with Telecom will be subject to arrangements to those listed in paragraph 5 above.

7. VAEIS are communications services providing innovative types of programming and formats. The standards to be adopted in the provision of VAEIS are set out below. Given the specific nature of some VAEIS, some standards may not apply in all cases. Queries about the Guidelines or their applicability to particular services should be addressed to the First Assistant Secretary, Radio Frequency Management Division, Department of Communications, PO Box 34, BELCONNEN, ACT 2616.

8. Complaints concerning program and advertising content can be directed to the VAEIS provider, the Secretary, Department of Communications, or the Advertising Standards Council, as appropriate.

Standards

9. VAEIS will be restricted to people present in the non-domestic environments of end users. This condition is not meant to exclude limited provision of facilities for the pur-

poses of management and monitoring by the VAEIS provider.

10. VAEIS providers of entertainment services will make particulars of all program content to be supplied, including program classification in the case of video material, readily and regularly available to all end users.

11. Where the content of their service is similar to material that is currently subject to Australian Broadcasting Tribunal (ABT) program and advertising standards, VAEIS providers will observe the spirit and intent of these standards. More particularly, the standards to be observed include those listed in the attachment.

12. VAEIS providers will ensure that the Media Council of Australia (MCA) advertising code requirements are fulfilled.

13. Since the ABT and MCA standards change from time to time, it is the obligation of VAEIS providers to keep themselves informed of any changes, and to observe those changes.

14. VAEIS providers will not transmit AO programs at times other than those applying to free-to-air television except where arrangements have been made to ensure that the programs are not accessible to persons under the age of 18. Films or other material that is classified "R" or "X" will not be carried under the authority of VAEIS licence or contract.

15. VAEIS providers will not transmit advertisements for alcoholic drinks or advertisements relating to betting or gambling at times other than those applying to free-to-air television except where arrangements have been made to ensure that they are not accessible to persons under the age of 18. Advertisements soliciting business concerning forecasts of results of sporting events may not be transmitted at any time.

16. VAEIS providers will not transmit advertisements for, or for the smoking of, cigarettes, cigarette tobacco, or any other tobacco products at any time.

17. If, during an election period, a VAEIS provider transmits election matter reasonable opportunities will be afforded for the transmission of election matter to all political parties contesting the election.

18. VAEIS providers will ensure that the services are identifiably Australian by maintaining levels of Australian content appropriate to the nature of the respective service. Australians will be employed as far as possible in the performance, production and presentation of programs and advertisements. Where drama (including movies, plays, telemovies and serials) is a substantial component of a service, VAEIS providers will ensure that a reasonable balance is maintained between foreign and locally produced material.

19. VAEIS are not intended to remove from free-to-air broadcasting profitable areas of programming already available to the general public. VAEIS providers will not exercise any rights they may have to such programs in such a way that would preclude their availability for viewing by the general public.

20. VAEIS providers will maintain a complete recording of all material transmitted for a period of six weeks after transmission so that it may be recalled for inspection should the need arise.

21. All video entertainment services for which radiocommunications licences have been issued will be transmitted in B-MAC.

22. In providing the facilities and material for VAEIS, VAEIS providers will not participate in, or facilitate, arrangements that would be inconsistent with the spirit and intent of the Guidelines.

23. VAEIS providers will make available to the Minister for Communications, within six months after 30 June each year, a report of their compliance with these Guidelines and (on a commercial-in-confidence basis) an audited balance sheet and profit and loss account, and a statutory declara-

tion stating gross earnings during that year.

24. The Guidelines may be amended from time to time in accordance with Government policies after a period of consultation.

**Australian Broadcasting Tribunal
Standards relevant to the provision
of VAEIS**

Interim Television Program Standards
(for video programs):

- . General Program Standards (2)
- . Program Classifications (3b, 10, 11)
- . Not Suitable for Television (9)
- . News Programs (15)
- . Contests (16)
- . Interviews and Telephone Conversations (17)
- . Production of Advertisements in Australia (18, 19)

Interim Television Advertising Conditions
(for video programs):

- . Children and Advertising (5a, 5b)
- . Advertising for Cinema films, Video Tapes and Video Discs (6a, 6b)
- . Advertising of Products of a Personal or Intimate Nature (8a)
- . Policy Statement POS07 on "Advertising Matter Relating to Cigarettes or Cigarette Tobacco"

Radio Program Standards (for audio programs):

- . Prohibited Matter (2, 3)
- . Encouragement of Australian Artists (4)
- . News Programs (5)
- . Contests (6)
- . Interviews and Talkback Program (7)

Radio Advertising Conditions (for audio programs):

- . General (2)
- . Australian Advertisements (3)

For the purpose of VAEIS, the term "licensee" should be read as "VAEIS provider".

**THE RADIOCOMMUNICATIONS ACT AND
TELEVISION PROGRAMS NOT TRANSMITTED
FOR RECEPTION BY THE GENERAL PUBLIC**

It is my intention to offer some thoughts in response to the question "How far can the Minister go to control content of programs transmitted pursuant to a licence granted under the Radiocommunications Act?".

The Radiocommunications Act ("the Act") was assented to in December 1983, but only proclaimed to come into effect in August 1985. It replaced the Wireless Telegraphy Act which was first enacted in 1905.

The Act is not ordinarily legislation that one includes in the bundle of law referred to as "media law" - often it is only given a passing reference in the context of technical matters.

Let me remind you of the background to the Act and the matters that that legislation addresses.

The constitutional basis of the legislative power of the Federal Parliament is the power to make laws for the peace, order and good government with respect to "postal, telegraphic, telephonic and other like services" (51(v)). In 1935 the High Court of Australia, when broadcasting was regulated under the Wireless Telegraphy Act, held that the Commonwealth power extended to the control of broadcasting. The Court placing a heavy emphasis on the notion of a "message". That emphasis persists in the definitions to be found in the Act.

This concern about "messages" may be illustrated by the definition of "radiocommunication" - that means:-

- "(a) radio transmission; or
- (b) reception of radio transmission,

for the purpose of the communication of information between persons and persons, persons and things or things and things."

This leads to my favourite definition - s5(1) provides:-