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No Guts, No Vision: The Politics of Media Diversity in Australia

Peter Coroneos analyses some of the implications of the Government's approach to datacasting, digital TV and streaming on the Internet.

The digital television amendments to the *Broadcasting Services Act* passed by the Senate in late June spelt the kiss of death for the development of a multi-billion dollar datacasting¹ industry in Australia, and will do nothing to arrest the widening of the information divide both regionally and more generally. It also opened the door to extending the monopoly of the traditional broadcasters into the Internet space, through a review that could have seen streamed² audio and video content over the internet deemed broadcasting. Since no new broadcasting licenses will be issued until 2007 – some 40 internet years from now – the implications of such an outcome for industry are quite clear and quite chilling.

The good news is that our industrial strength lobbying in the two weeks after the legislation passed stemmed the haemorrhage of business confidence by stimulating a rapidly convened Ministerial review, which was over in a matter of days, rather than the 18 months it could have taken. And thankfully the "review" found that streamed content available on the Net should *not* be considered broadcasting. But of course, we will continue to keep up the pressure until the necessary amendments turn the Minister's finding into law and so provide the industry with the certainty we so desperately need. Nothing less will do.

HOW DID WE GET HERE?

But let's go back and ask a couple of key questions about how and why we ever got into this ridiculous situation to begin with. Starting from first principles, Australians are entitled to ask: by what mandate the Government can use spectrum which belongs to all of us to

favour the commercial interests of the free to air broadcasters ("FTAs") at the expense of everyone else?

Fairly spurious arguments were put by the Government that the FTAs needed some compensation for the investment they have to make to go digital. Interestingly, the same concessions were not made to other potential users of the digital spectrum who also have to invest millions in developing a broadcast capacity.

The Government further argued that FTAs have an obligation to broadcast Australian content, so somehow we are protecting content creators by protecting the FTA cartel. On close examination, this argument also fails. Firstly, the obligation exists only in relation to content for which there is market failure eg. drama and children's programming, not all content. Secondly, any content creator who wants to produce for television these days has to find overseas distribution backing before they even embark on production, because the ever diminishing licence fees that our local FTAs are paying will not alone cover the

investment. Thirdly, datacasters would probably have been quite happy to agree to minimum content rules provided they could compete with the networks on an equal footing. So too would any fourth commercial TV broadcaster. The fact is, opening up the airwaves to competition is the best opportunity for stimulating the production of Australian content that we could ever have.

Of course, the more modes of content delivery there are, the less control governments have on what the public sees. This has not been lost on Asian observers who see Howard's agenda in more sinister terms, if not from our perspective, certainly from theirs. As Lim Say Boon of the South China Post wrote just days after the legislation passed:

...[t]his is Mr. More-Liberal-Than-Thou who not that long ago deigned to let his crisis-hit Asian neighbours in on the virtues of an open, competitive modern economy. This time around, there is little Mr. Howard can teach his neighbours about transiting [sic] to a New Economy that they couldn't learn from Beijing - circa 1989.

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Worse, Mr. More-Liberal-Than-Thou is sending a frightening message to his Asian neighbours - with copies to every politically thin-skinned government in the region - about how even a liberal democracy like Australia can justify Internet censorship for commercial purposes, let alone for social and political reasons.

Internet Industry Association members have been outraged and in total disbelief of the cynicism underlying the policy. At the whim of Government, "convergence" has taken on a whole new meaning. It seems to describe the Government's vision of the future and the opportunity for competition in the new media. Both are now narrowing to the size of a small dot on a screen once the power is switched off.

Datacasting was the single biggest hope for reinventing Australia as a new economy - we could have leap-frogged the US in both penetration and advanced deployment of broadband services. We could have had almost the entire Australian population online within three years. That possibility is now about to evaporate.

The legislation has undoubtedly sent a negative signal to the international investment community. Pity the Australian dollar and the effect on interest rates. This Government had a choice - and it chose the old economy over the new. The only winners here will be the old economy television broadcasters - at least until we have the bandwidth to deliver similar and better content over the Net. But of course investment in bandwidth depends on a regulatory environment that supports confidence.

LOSERS: THE AUSTRALIAN COMMUNITY

Australians in regional areas have struggled with slow and expensive access. There is a widening gap between the information rich in the city and the information poor in the regions. People in the bush have every right to be very, very angry over the death of datacasting which could have provided alternatives to the closure of bank branches and the loss of other services in the bush. While technically they can still receive these, the business case for fast rollout of the enhanced technologies is now dead in the water. Now they will just have to wait until traditional broadband gets to them.

Our members who are investing in satellite will help bridge the gap, but of course they will only keep investing as long as they know there will be no further restrictions on what they can transmit. And as long as FTAs continue to dictate broadcasting and media policy in Australia, that uncertainty will remain.

Datacasting provided the chance to provide every Australian family with a television set with Internet access, through a backchannel built into a multifunctional box. Now they will just get TV - with a few more bells and whistles maybe - but still only TV. Data is the killer application of digital TV - this legislation has killed the "killer app".

A more open policy would have provided Australia with sufficient critical mass of online users to kick-start an e-commerce explosion which might otherwise take years to occur. Indeed, there was a strong commercial case for giving set-top boxes away just to get more of the market online. This legislation torpedoed the business case for such a play and condemns the majority of Australians to a slow and arduous climb up the data slope to the 21st century economy.

LOSERS: THE INTERNET INDUSTRY

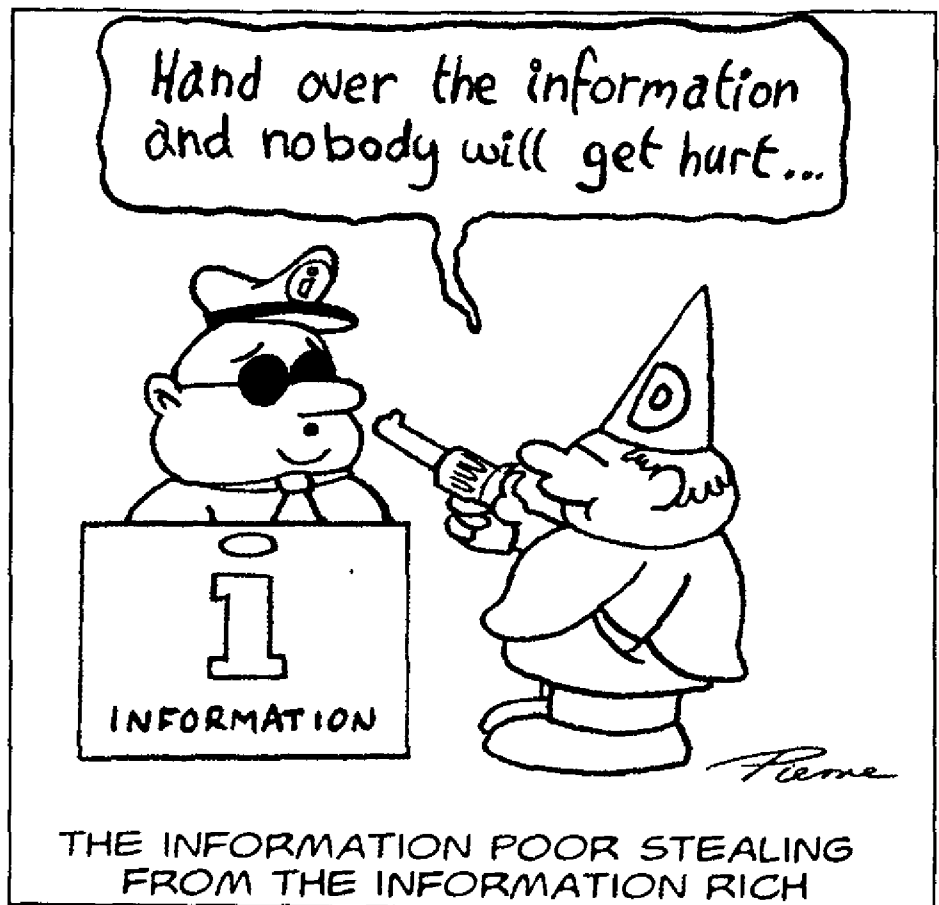
On the industry side, the losers will be the startups and content developers who dreamed of unparalleled opportunities for pioneering developments, and those who saw the possibility of broadening the diversity of media control and delivery in Australia. We were about to become a test bed for the development of datacasting technologies for export into countries like India and China which, like Australia, have poor communications infrastructure in their remote areas. That opportunity will now probably be lost.

The patently artificial constraints on the type of content that can be datacast would emasculate the commercial case for investment in the new medium. Potential competitors to free-to-air broadcasters now have no incentive to invest in either broadband content development or delivery via spectrum. We have already seen all the main prospective datacasters abandon their planned trials. Theirs is a rational response to an irrational policy.

It gets worse. Not only can't you deliver most genres of video content over spectrum, but the Government has signalled the possibility of a ban on audio and video streaming over the traditional Internet. You don't have a review by the ABA on whether this might breach the spirit of the new law unless you want to leave open the opportunity of banning it. How the Government would ever implement this is hard to fathom, but the damage that could be done by even trying should be enough to worry every ISP in Australia and anyone else with aspirations to deliver broadband content over non-spectral media.

The breadth and intended effect of these policies are indefensible, even on the basis of preserving the Government's decision to not issue any further television licences. The measures are a hugely disproportionate imposition on the emerging media compared to the risk to the incumbents' businesses.

The Federal Opposition is not blameless in this debate, having supported the general thrust of the Government's legislation in 1998 which gave the FTAs free use of spectrum for eight years, while everyone else had to pay. And it was Labor's review amendment in the legislation which triggered fears that the datacasting restrictions would extend to Net based streaming, which does not use broadcast spectrum³. Labor has been silent lately hoping the Government will



take all the heat on this issue. But we have not forgotten and at the appropriate time (read: in the lead up to the next election) we will be looking for iron clad commitments from the alternative government on exactly how committed they really are to the Internet revolution. Remember they also supported last year's content regulation legislation.

In truth, the best thing to really do with this highly corrupted piece of legislation, the *Broadcasting Services Act* is to throw it out entirely and start afresh. It has become so complex and full of compromises that its workability will be a real issue. Industry players in other leading information economies are not encumbered by the artificial barriers to entry we see here. Whichever way you look it, the legislation really just represents more impediments to competition, content development, investment and innovation.

In the online world we talk about old economy companies being "Amazoned" by new startups who can innovate, free of the legacy of offline investments. This principle operates on a national level too. This legislation tries to artificially limit technological convergence by regulatory means. This is not in the long term national interest, and will ultimately prove futile as everything moves to the Internet.

It need not be this way - but it will take some enlightened and courageous intervention to avoid the wreckage that otherwise lies ahead as technological convergence continues inexorably. From our side, the pressure will stay on until every last politician has committed to supporting the information revolution, or at the very least, doing no harm to it. So we are looking for vision and guts - not an unreasonable expectation for leadership one would have thought. Whether we get it depends on whether our decision makers can extricate themselves from the grip of the television moguls, and how soon our industry can assume the same degree of ballot box pull. Stay tuned.

1 'Datacasting' is broadly defined as the delivery of interactive digital content including internet content to television sets using broadcasting services band (BSB) spectrum.

2 'Streaming' refers to the delivery of packets of internet content in a way that the user experiences an uninterrupted flow of information. It is most commonly used for delivery audio and video content whether in real time or on demand.

3 Proposed section 216E requires the minister to "cause to be conducted a review of whether, in the context of converging media technologies, streamed audio and video content obtainable on the Internet should be regarded as a broadcasting service".

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