

Australian Broadcasting Corporation

submission to

**Department of Broadband, Communications
and the Digital Economy**

**Response to the Discussion Paper “Content and access: The future
of program standards and captioning requirements on digital
television multi-channels”**

January 2010



Introduction

The Australian Broadcasting Corporation (ABC) welcomes the opportunity to comment on the Department of Broadband, Communications and the Digital Economy (DBCDE) discussion paper: *Content and Access: The future of program standards and captioning requirements on digital television multi-channels*.

The ABC is established as a statutory corporation under the *Australian Broadcasting Corporation Act 1983* ("the ABC Act"). The ABC Act, which includes the ABC Charter, sets out the basic functions and duties of the Corporation. With a responsibility to reach all Australians, to ensure participation in the national debate and to provide access to range of information, entertainment and other programming, the ABC seeks a presence on all major electronic media platforms.

In addition, the Corporation has a central role in sustaining and contributing to Australia's culture, providing education, entertainment and civic and cultural engagement. The ABC Act states that the functions of the Corporation include broadcasting programs that "contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community ... [and] broadcasting programs of an educational nature"¹.

Policy Objectives

The ABC believes that broadcasting program standards should continue to operate in conjunction with other policy settings to achieve important cultural objectives. The *Broadcasting Services Act 1992* ("BSA") includes a number of objectives² that are directly relevant to consideration of the provision of program standards and captioning requirements, including to:

- * promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information;
- * provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and
- * promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity.

¹ 1 Australian Broadcasting Corporation Act 1983, s.6.

² S 3 Broadcasting Services Act

The existing public policy objectives and the resulting framework were designed for a broadcasting environment and structure that has undergone dramatic changes. While these cultural and social policy principles of diversity and localism were developed in an analog media environment, their relevance is not diminished in an increasingly complex media landscape.

As in the analog environment, the digital media environment also poses a challenge in ensuring reasonable levels of Australian content are available for Australians to access when, where and how they want. The ABC believes it is important to confirm a commitment to the availability of high levels of quality Australian content in a fast-developing multi-channel and multi-platform digital environment. In the absence of program standards, it is likely that a significant level of Australian programs would not be produced or broadcast.

Policy Framework

This submission argues that the public policy framework should be maintained to ensure the Australian community continues to have access to high levels of Australian content, especially through delivery mechanisms such as broadcasting. This framework has involved such policies as content standards for commercial free-to-air television, drama content rules for subscription services, federal and state government direct and indirect support and funding for national broadcasting.

In seeking “views on how program standards and captioning requirements should apply to commercial broadcasters’ digital multi-channels during and after the phased, region-by-region switchover to digital television”³ the review “will also consider the digital multi-channels offered by the national broadcasters”. The ABC notes the review does not examine the actual standards or existing captioning requirements, but “how and to what extent” such standards and requirements should apply to digital multi-channels. The current application of program standards and captioning requirements is limited to commercial free-to-air “main channels”. The standards impose significant requirements on commercial free-to-air broadcasters to deliver high levels of Australian content on their core television broadcasting service during the “simulcast period”.

The program standards imposed on commercial free-to-air broadcasters are not applied to the ABC. However, s6(2)(a)(ii) of the ABC Act requires that the Corporation “take account of ... the standards from time to time determined by the ACMA in respect of broadcasting services”. Accordingly, the ABC maintains an awareness of the requirements of the Australian Content Standard (ACS) and the Children Television Standards (CTS). In some cases the ABC maintains a close parity with the commercial program standards. For example, the ACS transmission quota requires “that Australian programs must be at least

³ *Content and Access : The future of program standards and captioning requirements on digital television multi-channels discussion paper*, DBCDE, December 2009

55 per cent of all programs broadcast in a year by a licensee between 6am and midnight⁴. Over the past five years, ABC1 has broadcast an average of 55.2 per cent Australian content. In other aspects ABC1 has exceeded the standard; with more children's and pre-school programs broadcast than required under CTS requirements and greater levels of Australian documentary than required by the ACS, while drama levels have been significantly less than the ACS requirements.

The ABC operates three digital television services: ABC1, ABC2 and ABC3; additionally, it simulcasts ABC1 in HD. In 2008/09, ABC2 reported strong growth and improvement in average audience reach. For the week ending 20 June 2009, ABC2 achieved its highest ever five city average weekly reach of 2.1 million people and made a significant contribution to the take up of digital television.

The ABC commissions and produces significant levels of diverse and high quality Australian content on its television services. In 2008/09, the ABC transmitted 5,157 hours of Australian content on ABC1 and 2,687 hours of Australian content on ABC2. In 2009/10, the ABC expects to transmit 40 per cent first run Australian content on ABC3.

The production and screening of Australian audio visual content is an important part of the Australian cultural landscape. Australian screen, and particularly television, content reflects and helps to shape Australian identity and allows Australians to tell their own stories. ABC Television for the most part uses a co-production model in commissioning new local content.

Although program standards set by the ACS do not apply to the ABC, the Corporation is nonetheless part of the broadcasting and screen production sectors. Changes to program standards may have flow-on effects to the rest of the broadcasting industry and on the production industry as a result of changes in demand for local production.

The ABC is concerned to ensure that any changes recommended by the review of the program standards take into account the potential impact on present and future levels of demand for locally produced content and the ABC's ability to access local content.

Tradeable Obligations Scheme

As noted in the current discussion paper and canvassed in the ACMA Children's Television Standards Review in 2007, one option to meet children's program requirements is through a tradeable obligations scheme. This discussion paper also refers to the potential for a tradeable obligations scheme for both Australian content and children's program obligations.

This discussion paper notes specifically that such a scheme may include the national broadcasters. The ABC has previously noted issues regarding a tradeable obligations

⁴ Part 5, Transmission Quota, Broadcasting Services (Australian Content) Standard 2005.

scheme and would seek discussions if there is further consideration of options. For example, in its submission to the ACMA CTS review the ABC noted that “to be effective, the scheme would need to countenance a system where broadcasters paid (cash or in kind) not to broadcast children’s content.”⁵

The ABC further submitted, “[a]s the ABC Act provides the opportunity to engage in appropriate, commercial activity within these constraints, it would provide an in-principle basis for the Corporation’s engagement in a tradeable obligations scheme. The ABC Act provides, however, that there can be no external imposition in relation to broadcasting. ... However, the Corporation believes the idea warrants further consideration in the future, especially as other digital services become available. The ABC would wish to participate in the consideration of any workable tradeable obligations systems that might be proposed.”⁶

The tradeable obligations option highlights a major issue confronting the delivery of Australian content – adequate financing for original content production. In developing the tradeable concept or other approaches, the key element of any framework will be to ensure underlying policy rationales are not compromised and therefore, also to ensure that adequate funding is directed to producing quality content on a range of platforms.

ABC Independence

As the ABC is not subject to the ACS it does not have content quota obligations to “trade”. If the ABC were to be included in such a scheme, it might be more accurate to describe any quota transaction with the ABC as a “buy out” of the commercial licensee’s obligations. Such an arrangement would raise a number of issues, related to the ABC’s independence and non-commercial nature.

The independence and non-commercial nature of the ABC is embodied in legislation and the ABC’s Editorial Policies. ABC arrangements with producers of broadcasting programs ensure that it retains editorial control through appropriate contractual mechanisms. Any arrangement the ABC may enter into with a commercial third party would need to guarantee the ABC’s integrity, independence and control over programming and editorial decisions. In developing any proposal for a tradeable obligation scheme, the same concerns would need to be addressed and the ABC’s independence safeguarded through appropriate and transparent arrangements.

With nothing to “trade”, the ABC may only serve as an acquirer or transmission destination (in effect a commercial licensee may acquire transmission time) of content for which the commercial sector could not derive adequate revenue. In and of itself, this one-sided dynamic may or may be perceived to place undue pressure on the ABC to enter into programming deals which it may not have otherwise. In acquiring “qualifying” content from a commercial licensee, the ABC would need to retain full editorial control as well as control over scheduling decisions. This may have implications for the functionality of any

⁵ ABC submission, ACMA Children Television Standards (CTS) Review, 2007

⁶ ABC submission, ACMA Children Television Standards (CTS) Review, 2007

proposed scheme that relied on, for example, the stipulation of transmission hours if the ABC chose not to transmit, or not to transmit in full, a program it had acquired from a commercial licensee.

Funding Contribution from Commercial Broadcasters

Any tradeable obligation scheme that included the ABC would need to ensure that ABC funding was not used to subsidise the development of content by a commercial licensee to meet its content obligations. For both acquired and commissioned content, the commercial licensee would need to be responsible for fully funding the program. Any contribution from the ABC would reduce the ABC's ability to invest elsewhere and would ultimately reduce the total investment in production from the commercial sector.

Guidelines would need to be developed to ensure that the level of support and investment flowing through to the independent production sector was not reduced as a result of a tradeable obligation scheme. Any "buy-out" of programming obligations would very clearly need to produce content that was in addition to the content that the ABC would already be commissioning out of its own dedicated television programming budget.

The ABC would also be concerned to ensure that any flow through of funding from the commercial sector was not at the expense of the ABC own appropriation or could be seen to affect the ABC's ability to put forward new funding proposals to Government.

As specialist channels evolve, it is likely that particular aspects of the standards may not be applicable to certain niche channels; for example, it makes little sense to apply the children's drama rules to a documentary channel or the drama requirement to a factual or sports service. If further work is undertaken on tradeable obligations, it should consider how to ensure transparency of operation. It should also consider whether obligations could operate across different aspects of the current standards.

Program Standards and Digital switchover

It is relevant to note that as this current review is undertaken, switchover has not yet begun.

The Review notes that "once digital switchover is completed in a particular licence area, all digital multi-channels provided to that area will need to comply with program standards and caption requirements". The ABC believes that this outcome was structured at a time when the BSA envisaged a single national switchover date. In 2008, however, the Government introduced a rolling switchover program, commencing in mid-2010 and ending in 2013.

The ABC believes that it is not practical or reasonable to introduce program standards or new captioning requirements that would apply differently in different coverage areas.

For example, the current legislative wording would require services in the Mildura/Sunraysia area to apply the standards from the middle of 2010, while adjoining coverage area services would not be required to apply the standards.

The ABC believes the practical approach is to introduce revised arrangements for the application of program standards for digital multi-channels at the end of the switchover period in December 2013. This provides a manageable and practical approach for broadcasters and a period of time for further consideration of the form and application of standards in a more developed multi-channel environment.

Captioning

While the ABC understands the primary focus of this review to be multi-channel services operated by the commercial broadcasters, it notes that the captioning rules for digital television services set out in Clause 38 of Schedule 4 of the BSA apply equally to the national broadcasters. It is thus necessary to consider the potential impact on the ABC that might result from changes to those rules.

Although the captioning rules set out in the BSA impose requirements on free-to-air broadcasters, these are significantly exceeded by commercial broadcasters and the ABC as a result of commitments made in relation to the Disability Discrimination Act. For example, the ABC currently captions almost 90 per cent of all programs broadcast between 6am and midnight.

A core defining characteristic of public broadcasting is universality of access. The ABC recognises it is important for all Australians to have access to the content that the ABC provides. In keeping with that belief, the ABC has consistently increased the amount of captioning available on ABC1 and has adopted an approach for captioning its multi-channels that is consistent with its approach to captioning on the main channel. The ABC captions ABC1 at levels well above those required by the negotiated agreement with the deaf and hearing impaired community and the Human Rights and Equal Opportunity Commission, to address complaints under the *Disability Discrimination Act 1992*. For November 2009, the ABC captioned 89 per cent of its programs between 6am and midnight on ABC1. The ABC also captions its ABC2 services at near the same levels as ABC1 and is aiming for captioning levels on ABC3 to be in excess of 80 per cent.

As a public broadcaster the ABC takes an approach to captioning that reflects its role in the Australian community. There have been some suggestions that 100 per cent of programming should be captioned over time. As outlined in its submission to the Media Access Review of June 2008 (Attachment A), the ABC has committed to achieving, over time, an outcome where effectively, 100 per cent of the television schedule is captioned, while noting that this commitment must be balanced against available and likely resources and the need to deliver other services to the community. As also outlined in its submission to the

Media Access Review, the ABC believes that a consultative framework to consider in detail matters such as levels of captioning and technical issues associated with captioning should be established.

Conclusion

With regard to captioning, the ABC believes that a consultative framework including all major stakeholders should be created to assess the costs and benefits of delivering captioning services on digital multi channels. The ABC also believes these issues can be further considered in the DBCDE's current Discussion Report, *Access to Electronic Media for the Hearing and Vision Impaired*.

The broadcasting sector plays a vital role in supporting local content production. Program standards underpin the consistency of that role. It is important to the ongoing viability of local production that changes to standards maintain the level of investment in local content. Consequently, it is important that the application of program standards to digital multi-channels should occur at the completion of the digital switchover period. Of the options canvassed in the discussion paper, the ABC is keen to ensure that if there is development of a tradeable obligations scheme, there is opportunity for a comprehensive review addressing the issues that flow from such a proposal.

Providing Australian audiences with high levels of Australian content on television has been an important cultural policy objective for more than five decades. Policy makers in the 1960s recognised that the new media development of the time (analog television) would not of itself guarantee choice and diversity of local content that reflected and presented the development of Australian identity and culture. A robust policy framework was developed to ensure the Australian community had access to high levels of locally produced programs. The contemporary challenge is to get the right policy mix in place in the rapidly developing digital media environment.