



AUSTRALIAN CHILDREN'S
TELEVISION FOUNDATION

Submission to the Department of Broadband,
Communications and the Digital Economy

Content and access: The future of
program standards and captioning requirements
on digital television multi-channels

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The Australian Children's Television Foundation (**ACTF**) is pleased to have the opportunity to respond to the Department of Broadband, Communications and the Digital Economy Discussion Paper, *Content and access: The future of program standards and captioning requirements on digital television multi-channels*.

The ACTF is a national not for profit children's media production and policy hub. The ACTF performs a wide range of functions in children's media; as a voice in policy matters; as a distributor of and investor in Australian children's television series; and as an instigator of new, innovative and entertaining children's media.

Executive Summary

The transition in free-to-air broadcasting from a selection of analogue core stations to a digital multi-channel environment offers unprecedented opportunities for audiences and commercial free-to-air broadcasters (**FTAs**). The digital switchover poses a challenge to the Government not only to ensure that high levels of quality Australian children's content are maintained, but to exploit the multi-channel environment to achieve better outcomes for the Australian child audience.

Children's television in Australia has struggled to reach its full potential in the analogue commercial free-to-air environment. Despite a regulatory framework that mandates minimum content quotas and the provision of considerable direct Government funding in its development and production, it has consistently failed to reach audiences on the FTAs befitting of the high quality of its production.

Children will watch Australian children's television where it is made accessible, but the scheduling priorities of the FTAs has effectively marginalised these programs. The recent success of the ABC3 launch confirms the strong appetite Australian children have for high quality Australian children's television¹.

The Discussion Paper proposes several options to regulate broadcasting following digital switchover. These options should be taken as a starting point to guide the first few years following digital switchover. As FTAs experiment with their business models and scheduling, Government will have the opportunity to review their performance and outcomes. The ACTF looks forward to participating in the ongoing debate concerning regulation of the digital multi-channel environment.

The new digital environment requires regulation that is nuanced to the operational and commercial realities of broadcasters as well as the habits and expectations of audiences. The Children's Television Standard (**CTS**) that applies to the analogue broadcasting environment needs to be adapted to the digital multi-channel environment to improve the outcomes for Australian children. The regulatory framework must work towards ensuring audiences have the best available content, and provide incentives and flexibility for FTAs incentives to value the broadcast of high quality children's television.

In respect of the Discussion Paper, the ACTF confines its recommendations to a discussion of the CTS and children's television generally. Accordingly, the ACTF makes the following recommendations:

¹ With the launch of ABC3 we are finally seeing the promise of children's television in Australia. However, the following figures may not be entirely representative as access to digital television is not yet universal. The ABC3 launch on 4 December 2009, was seen by an average audience of 192,000 viewers, peaking at 222,000 across 5 cities. The first night's program attracted a free-to-air share of 49 per cent of the target audience of 5 to 12 year olds. Source: ABC Media Release, 7 December 2009.

- the existing CTS should be aggregated across each FTAs digital multi-channels (as outlined in Option 4). This will allow FTAs the flexibility to establish viable children's television destinations in their scheduling and benefit child audiences.
- a tradable quota scheme (as outlined in Option 5) could be considered to provide incentives for FTAs that wish to establish niche children's programming and to salvage the quota of children's television programming from FTAs who invest minimally in children's content. Such a scheme should be confined to the commercial FTAs.
- innovative strategies that provide FTAs incentives for creating local content, such as a scheme that offers a rebate off the licence fee for every dollar spent on local production (or ever dollar spent in excess of the minimum quotas) should be considered.
- the Government should commit to a further review of the implementation of content standards following the transition to digital to ensure that high levels of Australian content and children's television programming have not only been maintained, but are also accessible to audiences, particularly the children's audience.

Introduction

The new world of digital free-to-air multi-channel broadcasting is already upon us. The traditional orthodoxy of core free-to-air analogue broadcast channels, which for so long seemed permanent and immovable, is already a thing of the past. FTAs now have unprecedented flexibility to explore a range of programming possibilities with their additional digital multi-channel spectrum.

The business models that have sustained FTAs for decades are already being challenged and tested. While subscription television services have for many years provided niche channels targeted at specific audiences, including children, FTAs have both been constrained by, and relied on, technical and regulatory limitations that required all programming to fit within one channel.

Multi-channelling provides more opportunities for FTAs and greater flexibility in their scheduling. But it also provides great challenges to their existing business model. New content is expensive and whilst the number of channels and hours of programs may increase dramatically, revenue is unlikely to increase at the same rate. For this reason, these new opportunities may not be opportunities the FTAs wish to embrace and they may not necessarily bring about the outcomes desired by the Government and the community.

These include continued access to high quality children's television programs for child audiences. Regulation needs to ensure that Australian children have the opportunity to view well produced stories about them and their community that they find engaging, educative and entertaining.

A brief overview of issues facing Children's Television

In light of the low value traditionally placed on children's television by FTAs, market forces cannot be relied on to ensure the continued broadcast of locally produced children's content.

The experience of the CTS shows that even with a quota in place, FTAs will minimise their commitment to the broadcast of children's television. Without the CTS there would effectively be no children's television on commercial free-to-air television.

The analogue broadcasting environment created many challenges for children's television in Australia. In a world flooded by well produced but cheaply available foreign (predominantly American) content, the temptation to licence foreign material for a price that is a fraction of the cost of their production has proved irresistible for broadcasters. Successive Australian Governments have therefore recognised the importance of Government intervention in ensuring that Australian child audiences are able to access audiovisual stories in their own voices and accents that reflect the communities in which they live.

Government intervention takes the form of development and production funding via Screen Australia, state film and television screen agencies, as well as the Australian Children's Television Foundation. Through the establishment of the CTS, FTAs are required to meet minimum content quotas, while Pay TV operators must invest 10 percent of their total program expenditure on local production (although this does not mandate children's programming). The *Commercial Television Industry Code of Practice* specifies particular timeslots where only G classified programming may be broadcast.

Despite this intervention, Australian children's content has struggled to adequately reach Australian child audiences. This is not because of the quality of the programs being made. After all, Australian children's television programs are known internationally for their high quality, are broadcast all around the world and are demonstrably popular with international audiences². Rather, in the congested analogue spectrum, FTAs have marginalised the scheduling of children's television programs so that they are inaccessible to the majority of children. They have also failed to invest in any meaningful promotion and publicity to attract audiences.³ FTAs have not regarded children's programming as a commercial opportunity, but simply as a necessary evil to be endured in exchange for a broadcasting licence.

FTAs have been able to meet their minimum obligations under the CTS, yet the outcomes for children's audiences have been woefully inadequate. An opportunistic and miserly approach to children's television programming saw the bare minimum of Australian programs run. And when they have been scheduled, it is not uncommon for series to be interrupted by sporting events or abandoned at a whim, having achieved the minimum annual quota, despite quotas applying on a rolling 3 year basis.

The result was that child audiences have a high regard for Australian children's television programs⁴, but struggle to access it through commercial free-to-air broadcast.

The resistance by the FTAs towards minimum content quotas for children's programming continues. Following the announcement of the revised CTS that took effect on 1 January 2010, FreeTV announced 'The relative community benefit of the CTS is declining as child audiences fragment and move to unregulated media environments'⁵. What this position fails to recognise is that in a fragmented media landscape, well branded and established

² Over the years successive Australian children's programs broadcast on the BBC such as *Round The Twist*, *Noah & Saskia*, *Mortified* and *Lockie Leonard* have all found themselves in the top 10 of most watched children's programs in the UK, as published by *Broadcast* magazine.

³ The ACTF extensively outlined the key issues facing children's television in its submission to the *2007 Review of the Children's Television Standards*.

⁴ The strong presence of Australian titles in the top 10 DVD purchases since 1998 can be seen in Screen Australia's 'Get the Picture', *Top 10 retail video children's titles, ranked by units sold, 1998-2008*, <http://www.screenaustralia.gov.au/gtp/wvtopdvdkids.html#Rat61597>

⁵ FreeTV Australia, Media Statement, 1 September 2009.

destinations that are able to reliably deliver high quality programming to demanding audiences become more important than ever before.

What FreeTV Australia appears to be arguing is that not only should it no longer be obliged to broadcast children's television, but that the new digital media landscape somehow requires less Australian content. It is understandable for FTAs to be motivated strictly by their profit margins and their bottom line, and to attempt to alter the regulatory environment to best suit this. However, it is a far more compelling proposition for the FTAs to be obliged to support a modest amount of Australian children's television production in return for the additional spectrum and commercial opportunities granted to them by Government.

For the time being, free-to-air television remains the dominant form of media consumed by children. According to Screen Australia, virtually every Australian household has one or more television sets (99.7 per cent) while 68.8 per cent have two sets and 31.2 per cent have three or more⁶. By way of contrast, there were 2,358,719 pay television subscribers at June 2009, or approximately 28 per cent of Australian households⁷. The Australian media landscape is undergoing rapid transformation with the emergence of new technologies and new delivery platforms. The eventual roll out of the National Broadband Network is likely to transform the environment further. However, these figures clearly establish the centrality of free-to-air television to Australian audiences. It confirms the appropriateness of regulating commercial free-to-air television to ensure Australian audiences have access to locally produced children's programming.

FTAs have over the years relied on a range of arguments to limit the amount of children's content they must broadcast – that it is uncommercial and unviable, that children 'do not like' local productions. With the advent of digital multi-channels, these claims are even less tenable as there are potentially more opportunities for FTAs to schedule children's programming.

Role of the Public Broadcasters

It is instructive to consider for a moment what public broadcasters contribute to the broadcasting environment, and how critical this contribution becomes in a multi-channel environment.

Public broadcasters have an important role in commissioning and broadcasting content that the market will not provide. They provide quality content that prompts debate, achieves cultural outcome, questions and holds up to society the state of the nation. All these objectives are by and large ignored by the commercial channels and their pursuit of profit.

Public broadcasters are obliged to deliver their services to meet their charter, rather than simply maximising profit. They have an inherent obligation to provide programs that contribute to a sense of national identity, programs of an educational nature and programs that reflect the diversity of the entire community rather than just the broadest demographic. A public broadcaster has a responsibility to cater for the Australian child audience, irrespective of regulation.

Public broadcasters measure program success in terms other than ratings or revenue, such as educational benchmarks and audience engagement, which are increasingly important in a

⁶ Get the Picture, Free-to-air television in Australia, <http://www.screenaustralia.gov.au/gtp/wftvanalysis.html#Rag12222>

⁷ Get the Picture, Subscriber numbers, total and by operator, 1995–2009, <http://www.screenaustralia.gov.au/gtp/wptvsbsxsops.html>

multi-channel, multiplatform world. FTAs are inherently unmotivated to value material other than through the profits they make.

FTAs have traditionally provided a comprehensive mix of programming, offering drama, sport, comedy, news and current affairs. In the digital multi-channel environment, unless main-core channels are mandated to continue providing a mix of services, there is the possibility that commercial channels will no longer fulfil this role.

With digital switchover, the role of the public broadcaster therefore becomes critical. The Government recognised the importance of the ABC in the new media landscape by providing an additional \$163 million in funding for new initiatives in the 2009 budget. As Mark Scott, Manager Director of the ABC, has identified, the public broadcasters fulfil the role of the town square in a world of new and diverging media platforms and technology⁸.

Just as Government has recognised the important role that public broadcasters play in cultural and civic life, Australian audiences are entitled to expect more from their public broadcasters than from commercial FTAs. The expanded role of public broadcasting should not be considered as a replacement or a rival to commercial free-to-air services. Rather, the Australian community has a legitimate expectation that public broadcasters should deliver programming, to a high standard, in niche areas such as documentary and children's content that the market will simply not provide. While these genres have been long neglected by the market, and will most likely continue to do so, that is not a reflection of their importance to Australian cultural life.

ACTF response to the Discussion Paper

The ACTF supports aggregating the CTS across all the multi-channels and recommends consideration of a tradable obligations scheme to provide flexibility for FTAs to achieve the best outcome for child audiences.

Australians want a vibrant and active production sector, and want to see Australian content on their commercial free-to-air television. Australians consider children to be a very special audience to whom the broadcasters owe a social and cultural obligation. Providing broadcasters with a flexible regulatory framework in which to provide their services balances their legitimate concerns as to the high costs of production, and increasing competition from other sectors (including competition for advertising revenue and pressure on their existing business model) with the high expectations of community and Government.

Maintaining 'core' channels

Maintaining the notion of 'core' channels will not bring about the best outcomes for children's audiences.

One of the advantages of the multi-channel environment is the flexibility it broadcasters. Where a broadcaster was formerly confined to broadcasting all its content on one analogue channel, the ability to spread programming across a range of channels could potentially give broadcasters the opportunity to establish niche programming, fine tuning their scheduling to different audiences.

In the existing analogue environment, children's television programming faces significant competition from morning news/variety programming as well as afternoon news services that have, over the years, encroached earlier into television schedules. The multi-channel

⁸ Why Public Broadcasting Matters More Than Ever – Commonwealth Broadcasting Association Lecture 2009, Australia House, London, 9 September 2009: http://www.abc.net.au/corp/pubs/documents/public_broadcasting_matters_20090909.pdf

environment has the potential to provide targeted niche programming blocks for children's television. FTAs would have the freedom to establish children's programs at time slots that were previously congested by the competing demands of adult programming.

Children's television programming must also work around the scheduling of children's activities by parents, school activities and extracurricular activities. For example, although children's time slots are scheduled from 4pm to 8.30pm under the CTS, the reality is that the earlier part of this timeslot faces strong competition from other activities, while the later part is given over to adult programming. Greater flexibility in scheduling across more than one multi-channel may increase access for child audiences.

Whether broadcasters will take up this opportunity is uncertain. For example, the launch of Channel 10's 'OneHD' sports channel would not appear to have provision for children's programming. However, the Seven Network has established a children's block on its '7TWO' multi-channel.⁹

Aggregating the CTS standard across the digital multi-channel environment

The Australian children's television landscape has changed dramatically with the launch of ABC3. Prior to ABC3 the free-to-air television programming schedules were, apart from the ABC, largely bereft of children's programming. Children who have access to digital television can now turn to ABC3 from 6am to 9pm for a steady source of entertaining, educational and engaging content tailored to their age and interests.

This does not mean that the FTAs no longer have a role to play in children's television. On the contrary, FTAs have a pivotal role in ensuring that the sources of children's television content remain diverse. Competition between the ABC, FTAs and Pay TV will drive quality and diversity of content. Such competition and diversity is critical in ensuring high standards of programming are maintained.

The international experience demonstrates that competition for the children's audience drives quality and service. In the UK, which arguably offers the highest quality children's television in the world, 18 dedicated children's channels are available to the majority of homes with children¹⁰. Alongside this the comprehensive free-to-air broadcasters target 11 million children. The result is a comprehensive selection of high quality children's programming.

Aggregating the CTS standards across the multi-channel environment provides FTAs with the greatest flexibility in managing their schedules to achieve their own commercial objectives, but to also schedule viable children's block destinations that are uninterrupted by other programming. Even with multi-channels the prime time schedules of FTAs are likely to be very competitive. By allowing the FTAs to aggregate the children's content quota across their multi-channels, they are more likely to establish coherent children's programming destinations. Only by establishing children's programming destinations that are attractive to audiences, rather than the current practice of splintering and under resourcing children's programming, will FTAs have any chance of realising the commercial potential from these slots.

While levels of Australian content will be maintained under this option, it will result in a quantitative dilution of Australian content across the free-to-air offering. However, if FTAs are

⁹ The programs scheduled for Monday, 11 January 2010 are hardly an inspiring collection of quality children's television: *Yin Yang Yo!*, *Digimon Data Squad*, *Combo Ninos*, *Mickey Mouse Clubhouse*, *Avenger Penguins*, *Counter Duckula*, *Power Rangers Operation Overdrive* are a good example of the commercial merchandising driven section of the industry. However, it does indicate a willingness to experiment with scheduling and to provide for audiences that may be considered secondary to the main audience watching *Sunrise*.

¹⁰ Ofcom, *Terms of Reference – the future of children's programming*, 13 February 2007

able to take advantage of the flexibility offered and develop viable children's television destinations, then the effective dilution will be offset against the qualitatively better outcomes achieved for child audiences.

The success of dedicated subscription children's television channels indicates that well resourced, managed and publicised children's channels can be a competitive proposition. Greater flexibility will encourage FTAs to view the minimum quota of Australian content set out under the CTS as an asset, rather than simply a regulatory obligation.

Implementing a tradable obligations scheme

A tradable obligations scheme was raised in the Children's Television Standards Review discussion paper released by ACMA in June 2007. This scheme was ostensibly an attempt to make workable the commercial broadcasters' general unwillingness to be subject to local children's content regulation.

In its submission to the 2007 Review, the ACTF strongly opposed the proposed scheme as it contemplated including public broadcasters. In a single analogue channel environment, it is difficult to see how commercial FTAs would have had any incentive to trade, other than to the public broadcaster. If the commercial FTAs did take advantage of the opportunity to trade, and then did so with the public broadcaster, it would have resulted in a less diverse and ultimately less competitive environment for children's television.

However, following the launch of ABC3 and several multi-channels, and with digital switchover imminent, the broadcasting environment has changed significantly. In this new environment, the ACTF provides qualified support to the notion of a tradable obligations scheme.

Such a scheme may enable the commercial FTAs to reallocate amongst themselves the children's programming required under the CTS to specific multi-channels where that content is scheduled and publicised in a manner that would increase audiences. The scheme, when combined with the additional spectrum offered by multi-channels, would allow a broadcaster to achieve a level of critical mass of children's content that may be attractive to audiences and offer better returns for commercial FTAs.

However, as public broadcasters and Pay TV channels are not subject to reciprocal local content quotas, they should be excluded from the operation of such a scheme.

Despite their success, Pay TV channels have limited audience reach and do not approach the accessibility of free-to-air television. Government should ensure that the minimum levels of children's content that it has mandated to be available to free-to-air audiences should not be corralled into Pay TV channels.

Public broadcasters should be excluded from a trading scheme as they do not currently have a minimum content requirement with which they could reciprocate. Also, the potential for all Australian children's programming to be consolidated at the ABC is an undesirable outcome. Allowing the commercial FTAs to consolidate their children's content and to develop their own commercial children's multi-channel would potentially offer stronger competition all round and push up the levels and quality of children's content in all three sectors: commercial FTAs, public broadcasters and Pay TV. Government policy should be to increase diversity and encourage competition, rather than lessen it.

Ultimately, a trading scheme that successfully reallocates children's programming to commercial FTA's that are responsive to child audiences recognises that a one size fits all policy, where every broadcaster must meet the same quota despite having different

commercial agendas, may not necessarily result in the best outcomes for audiences. To this end, the ACTF supports consideration of a tradable obligations scheme and would welcome the opportunity to consult with Government on the details of such a scheme.

Incentives for FTAs

The digital multi-channel environment could potentially bring about a change in approach by the free-to-air broadcasters. The additional spectrum, if it were combined with greater flexibility, may allow them to experiment with the commercial returns available from scheduling children's programming. The outcome, however, is far from certain. Past experience suggests that commercial broadcasters will pursue programming that brings in the highest amount of advertising revenue for the least amount of expenditure on programming.

In addition to the funding currently provided for audiovisual development and production, the Government should consider innovative incentives to encourage greater levels of production. The ACTF endorses a model such as that proposed by the Media, Entertainment and Arts Alliance whereby broadcasters receive a rebate off their licence fees for every dollar spent on Australian production, or every dollar spent in excess of the minimum quota or sub-quota levels. Such a scheme could be administered through the existing arrangements in place at Screen Australia to administer the producer offset. Such a scheme would need to be carefully put together to ensure that it delivers the desired outcome.

Ongoing Review

Given the massive transformation of the broadcasting environment currently underway, it is unfeasible to expect Government, stakeholders and the FTA's to arrive at a regulatory framework that successfully identifies and addresses each of the challenges posed by switchover to a digital multi-channel environment.

The timing of this review, and the timeframe permitted for responses, has not allowed stakeholders much time to provide considered responses to the issues at hand. More extensive data on the performance of the multi-channels is required for a considered response. However, rapid changes to the broadcast environment means that audience figures collected in an analogue broadcasting environment may have little bearing on the future. Figures will also change once the analogue signal is finally switched off and those households that are more reliant on free-to-air television (for example, households that do not subscribe to Pay TV) will then be required to purchase digital set top boxes¹¹

It is a moveable feast and the regulatory regime must strike a balance between the FTA's legitimate commercial interests, the community's interest in maintaining high levels of Australian content, as well as the specific interests of the child audience. With the National Broadband Network roll out just around the corner, regulation of free-to-air broadcast must be mindful of the potential impact of high speed delivery of television-like services via the internet.

Australian audiences will be best served by a commitment by Government to monitor the regulatory framework that it puts in place, combined with a readiness to adapt and change as the need arises. Mechanisms should be established to allow the Government and community to continue to have a say about the nature of the evolving broadcast environment.

¹¹ As of the July – September 2009 Quarter, 56% of households in Australia have converted their main set to digital TV, up by three percentage points from the previous quarter. Source: *Digital Tracker Report on quarter, July to September 2009*, Digital Switchover Taskforce, Department of Broadband, Communications and the Digital Economy.

The FTAs may protest that without establishing a firm and permanent framework they are unable to effectively operate their businesses. However, the FTAs have benefited considerably from the bequest of additional spectrum that has transformed the broadcasting environment. The FTAs must exercise patience, and acknowledge that in exchange for the additional spectrum that they have been given, the Government has a role to play in making adjustments to that environment for the wider benefit of the Australian community.

The ACTF recommends that the Government schedule a review, 18 months after the switchover is complete, to assess the performance of children's television across the multi-channels and to determine whether adjustments to the regulatory framework are required.