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Australia's representative to the International Music Council



Music Council of Australia

Senator Stephen Conroy
Minister for Broadband, Communications and the Digital Economy
[By email multichannels@dbcde.gov.au](mailto:multichannels@dbcde.gov.au)
January 14 2010

Dear Minister

RE: Review of multi-channels

The Music Council of Australia appreciates the opportunity to make a submission in response to the Discussion Paper *Content and access: The future of program standards and captioning requirements on digital television multi-channels* released by the Department of Broadband, Communications and the Digital Economy in December 2009. It thanks your officers for the extension of the deadline.

The Music Council of Australia is the national peak music sector body. Its 50 members are drawn from across the breadth of this diverse sectors, representing key national music organisations and various interest groups in the creation, performance, production, dissemination and infrastructure of music – from early childhood music education to digital production, from country music to opera. It is Australia's representative to the International Music Council, based in UNESCO, Paris.

The Music Council considers that the advent of digital broadcasting affords Australia a once in a lifetime opportunity. Scarce spectrum can now be utilised to offer enhanced program choice for audiences. This choice must include increased opportunities to access Australian programs, as well as greater competition in the market. These opportunities should not be wasted.

The Australian Content Standard ensures Australian audiences have access to reasonable levels of Australian programs.

Television was first broadcast in 1956 and Australian content quotas were introduced in 1960 with a specific drama quota introduced six years later and increased over time. Today the Australian Content Standard mandates an overall content quota for programs broadcast between 6am and midnight with subquotas for drama, documentaries and children's programs.

In 1974 community and FM radio were introduced and in 1975 the Government initiated a review of Australia's broadcasting system. *Australian Broadcasting: a report on the structure of the Australian broadcasting system and associated matters* found the value of a broadcasting system lay in its capacity to serve the diversity of community interests.¹ SBS was established in 1978 in recognition that the cultural diversity of Australians whose first language was not English brought needs that were not being adequately addressed in the broadcasting system of the day.

The importance of having access to programs from one's own culture was again recognized in 1984, when the Federal Government formed a task force to report on Aboriginal broadcasting and telecommunications policy. Approximately 50 recommendations contained in the subsequent report, *Out of the Silent Land*, were adopted. Chief among them were recommendations addressing concerns about the impact the launch of Australia's first communications satellite, AUSSAT, bringing broadcasting to remote Indigenous communities for the first time, would have on those communities.² The introduction of white culture television programs was feared as 'cultural nerve gas', paralleling Inuit fears a decade earlier where it had been dubbed 'neutron bomb television'.³ The Broadcasting for Remote Aboriginal Communities Scheme (BRACS) was consequently established in 1987. Like the content standard for television reaching mainstream Australian audiences, the pervasive power of television was recognized with the concomitant need to have access to programs emanating from and reflecting one's culture. Today, NITV has joined the ABC and SBS in the public broadcasting sector.

The Explanatory Memorandum to the Broadcasting Services Act 1992 explains the philosophy behind the Government's continued imposition of Australian content regulation:

The rationale for this provision is that it is widely accepted that television is a powerful medium with the potential to influence public opinion and that television has a role to play in promoting Australians' cultural identity.

It further makes clear that:

... it is intended that commercial television broadcasters broadcast Australian programming which reflects the multi-cultural nature of Australia's population, promotes Australian culture and identity and facilitates the development of the local production industry.⁴

The objectives set out in the Broadcasting Services Act 1992 include providing "a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs ... to encourage diversity in control of the more influential broadcasting services; and to promote the role

¹ *Australian Broadcasting: a Report on the Structure of the Australian Broadcasting System and Associated Matters*, The Green Report, Postal and Telecommunications Department, Canberra, 1976

² "Indigenous Media" in *Voices From the Land – 1993 Boyer Lectures*, Australian Broadcasting Corporation, 1993, ABC Books, Sydney, page 23

³ Fesl 1985 & Kuptana 1987 respectively cited in Broadcasting Inquiry Report, Productivity Commission 2000, page C.8, see online at http://www.pc.gov.au/__data/assets/pdf_file/0003/26598/broadcst.pdf

⁴ To reflect the multi-cultural nature of Australia's population, the actors employed on local productions should be drawn from across the diversity of ethnicities. The most recent study known to the Music Council is Marion Jacka: *Cultural Diversity in Australian Television Drama*, (Creative Industries Research and Applications Centre, Queensland University of Technology, Brisbane, 2002). This showed that between 1992 and 2002, representation of Indigenous actors increased from 0 to 1.1% (2% in general population) and of NESB actors from 2% to 25% (24%). However, among the NESB actors were none from Asia or Africa.

of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity".⁵

The broadcasting policy objectives of Government are also found in the charters of the ABC and the SBS.

The pervasiveness of television and television-like services is only going to increase with the advent of multichanneling and the development and construction of the National Broadband Network. The need to guarantee Australian audiences have access to programs that reflect Australia's cultural diversity and character will become even more important as the offerings available to audiences expand exponentially.

The Discussion Paper posits:

Mandatory standards help preserve a minimum level of Australian content on commercial television. But the most highly rated drama program in Australian history, *Underbelly*, was an Australian production and *Packed to the Rafters* consistently achieves higher rating [sic] than its internationally-produced competitors. These successes suggest that commercial broadcasters will continue to provide Australian-produced programs and that Australian audiences will continue to want to see Australian stories on television.⁶

The Music Council considers it unarguable that Australian audiences will continue to want to see Australian stories on television – ratings over decades attest to that. However, the Music Council considers that it is the existence of the content standards that enables the production of such popular programs rather than broadcasters responding to audience preferences.

The fact that content regulation was necessary in the first place is significant. Subsequent developments might have demonstrated that regulation is now redundant. However, the fact is that the networks have only rarely exceeded the overall content quota and very rarely exceeded the subquotas. It is the reason successive Governments increased the quotas over time. Despite high ratings, the networks have only barely, and rarely, broadcast levels of Australian programs in excess of the mandated minimum. Where recently there has been no regulation, programming of local content has been minimal.

A quick glance at the levels of Australian programs on Australia's current commercial free to air multichannels makes this clear⁷. The Media, Entertainment & Arts Alliance has analysed local content levels on the three commercial free to air multichannels and has found that Go! airs only 3.2 per cent, SevenTwo 15.1 per cent and One HD 14.3 percent of Australian content between the hours of 6am and midnight. Further, much of this

⁵ Broadcasting Services Act 1992, Section 3 (1), see online at http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/bsa1992214/s3.html?query=responsive%20to%20audience%20needs

⁶ *Content and access: The future of program standards and captioning requirements on digital television multi-channels*, Digital Switchover Policy and Regulation, Department of Broadband, Communications and the Digital Economy, Canberra, December 2009, Page 6, see online at http://www.dbcde.gov.au/__data/assets/pdf_file/0018/123561/Multichanneling_Discussion_Paper.pdf

⁷ *Compliance with Australian Content Standard and Children's Television Standards*, Australian Communications and Media Authority, 22 May, 2009, see online at http://www.acma.gov.au/webwr/aba/tv/content/requirements/australian/documents/2008_acs_&_cts_compliance_report.pdf

programming is not new. Clearly, in the absence of regulation, broadcasters will opt for the cheaper alternative of overseas programs.⁸

This market place reality is further evidenced by the behaviour of the free to air commercial broadcasters in respect of New Zealand programs. In the wake of the High Court of Australia decision in *Project Blue Sky v Australian Broadcasting Authority* on 28 April 1998, the broadcasters argued that, notwithstanding the Court finding New Zealand produced programs should be counted as Australian for the purposes of the Australian content standard, it would not result in any loss of opportunity for Australian programs – the commercial free to air broadcasters would not broadcast New Zealand originated programs as there was no demonstrated audience appetite for New Zealand programs in Australia, implying those who had supported the Australian Broadcasting Authority in its challenge as hysterical, fighting a threat that did not exist. For nearly a decade following the decision, they did not broadcast New Zealand originated programs. However, as the most recent Australian Communications and Media Authority compliance data shows, in 2008 16.5 per cent of documentaries broadcast by the Seven Network were New Zealand programs and 6.5 per cent of drama programs broadcast by Network Ten were New Zealand programs.⁹

Fifty years of broadcast history in Australia has consistently demonstrated that in the absence of content regulation the market place will not deliver levels of Australian content consistent with the Government's social and cultural objectives. Consequently, the Music Council considers it essential that content regulation be applied in a multichannel environment to the maximum level possible given the constraints imposed on its capacity to do so by concessions made in the Australia United States Free Trade Agreement (AUSFTA).

Quite obviously the media landscape is changing rapidly and will continue to do so, especially given that the National Broadband Network will allow IPTV and other television-like services. While much has been said in the media about the fracturing of the advertising market, free to air commercial broadcasting in Australia remains highly profitable¹⁰, including by reference to international peers. Additionally the sector was effectively delivered a windfall at the end of last year with the changes to Free TV Code of Practice that increased the amount of advertising allowed an hour. As Crikey observed,

The new code will give the commercial free-to-air networks (including SBS), the ability to raise hundreds of millions of dollars a year in extra ad revenues for each of the three years starting January 1, 2010

... the changes on ad content and promotional material could eventually generate an extra 5-10% of revenue a year.

⁸ At consultative meetings called by DFAT in association with the negotiation of the Australia United State Free Trade Agreement, film industry representatives claimed that television stations rent US programs for one sixth to one tenth of the cost of producing an Australian program.

“Since the mid-1990s, local productions have generally accounted for more than 60 per cent of TV drama spending in Australia.” (<http://www.screenaustralia.gov.au/gtp/mptvdramaspending.html>). Compare this with the percentage of commercial TV drama time given to foreign productions to extrapolate the comparative hourly costs.

⁹ *Compliance with Australian Content Standard and Children's Television Standards*, Australian Communications and Media Authority, 22 May, 2009, see online at http://www.acma.gov.au/webwr/aba/tv/content/requirements/australian/documents/2008_acs_&_cts_compliance_report.pdf

¹⁰ *Broadcast profit margin before tax of Australian commercial television stations, 1957/58–2005/06*, Screen Australia, see online at <http://www.screenaustralia.gov.au/gtp/wftvisprofit.html>

The networks have had a big win, especially on the extra ads for their new digital channels, which will develop into low-cost gold mines.¹¹

Certainly, any problems facing Australia's commercial free to air television broadcasters in what is an increasingly volatile advertising market pale into insignificance when compared with those confronting Australia's print media in its pursuit of keeping and expanding its paying readership in an internet world dominated by freely available online publications. Indeed, the advent of multichanneling is likely to be more of a benefit than an impediment for the viability of the commercial free to air broadcasters. As the Productivity Commission pointed out in 2000:

An increase in the number of services offered by each broadcaster (multichannelling) could allow broadcasters to target more effectively those groups that advertisers wish to reach. This already occurs to a limited extent in the radio industry, where a person may control two stations in the same licence area ... Advertisers see this process as an important means of effectively targeting their message.¹²

The ratings successes of Go! demonstrate Australian audiences continue to prefer viewing television programs free to air. Although in its infancy, Go! has already achieved ratings that have topped those of subscription television. It would be anomalous, not to mention unfair, if subscription television were to be expected to compete with both free to air commercial television and within a free to air multichannel environment where new channels coming on line do not have to bear production costs to meet social or cultural obligations imposed upon them in recognition of the commercial benefits that accrue when audiences can access their programming free to air.

The Music Council also considers that the free to air commercial broadcasting industry has had a unique and lengthy period in which to prepare for an environmental change – namely the advent of multichannelling. The former Government originally set the date for analogue switchoff as 1 January 2009. The lack of an effective roadmap for switchoff resulted in that deadline passing. The current schedule now sees switchoff commencing in regional areas from 1 July 2010, thence progressively across the country with final switchoff being achieved by 1 January 2013. At the time work commenced on the transition to digital, it was possible to envisage a future where all multichannels would be regulated in the same manner as the free to air broadcasters are today. That possibility of on-going reasonable access to levels of Australian content was dashed in the negotiations for the AUSFTA. The United States' ambitions to prevent content regulation in a digital future were fortunately constrained to some small extent. Nonetheless the levels of Australian content that might have been required of the free to air commercial broadcasters in a multichannel environment are dramatically less than might have been the case had Australia not signed the AUSFTA.

The Music Council considers that imposing the Australian content standard on those few multichannels that can be regulated without offending the AUSFTA is the very minimum that Australian audiences deserve.

Option 1: Specify that one digital multi-channel must continue to meet all program standards.

¹¹ *New code will have TV networks rolling in the dough*, Glenn Dyer, in *Crikey*, 21 December 2009

¹² *Broadcasting Inquiry Report*, Productivity Commission, March 2000, page 144, see online at http://www.pc.gov.au/_data/assets/pdf_file/0003/26598/broadcst.pdf. We would note that a diversity of interest to advertisers does not necessarily explore or exhaust the diversity as defined from other vantage points – for instance, advertisers are interested in segmentation by age – but of the ‘mainstream’ audience.

The Discussion Paper proposes consideration be given to only one standard definition digital multi-channel being required to continue to comply with the current content quotas.

While supporting the position that what has been called the 'core' or 'primary' channel continues to be regulated, the Music Council believes 'secondary' or 'non-core' multichannels should be regulated to the maximum extent allowable under the AUSFTA. To argue that this might impinge upon a network's capacity to deliver niche programming on multichannels is disingenuous – they will be able to do so in any event. The AUSFTA allows only the following:

Multichannelled free-to-air commercial television broadcasting services

- Transmission quotas for local content, where more than one channel of programming is made available by a provider of free-to-air commercial television broadcasting services. Such quotas may not exceed 55 per cent of the programming on an individual channel of a service provider transmitted annually between 6:00 a.m. and midnight and may not be imposed on more than two channels or 20 per cent of the total number of channels (whichever is greater) made available by that provider. No such transmission quotas shall be applied to more than three channels of an individual service provider. Subquotas for particular program formats (e.g. drama, documentary, children's) may be applied within the transmission quotas in a manner consistent with existing standards.
- Transmission quotas for local content in relation to advertising, where more than one channel of programming on a particular service is made available by a service provider of free-to-air commercial television broadcasting services. Such quotas may not exceed 80 per cent of the advertising time on an individual channel of a service provider transmitted annually between 6:00 a.m. and midnight and may not be imposed on more than three channels made available by that provider.¹³

To require only the 'core' or 'primary' channel to comply with the Australian content standard would amount to a dramatic diminution of Australian content across the channels on offer and lead to a marginalization of its presence. As argued above, to not extend the obligations of compliance to the maximum extent possible would not be consistent with bipartisan Government support for the need for free to air broadcasters to acquit social and cultural objectives, responsibilities that accrue with access to spectrum that enables delivery of programming free to air.

Option 2: Bring forward the date at which exemptions for program standards and captioning requirements end

The Music Council supports bringing forward the date at which exemptions for program standards end.

As observed above, the extraordinary low levels of Australian programs on the existing multichannels, and the woefully low levels of new Australian programs, indicates that in the absence of regulation, Australian programming is likely to remain negligible on multichannels, other than possibly in respect of sport.

It is noted that the Discussion Paper suggests doing so might bring "additional cost and administrative burdens", "may also discourage commercial broadcasters from providing certain types of program content or even establishing new digital multi-channels" and that it "could prove difficult in the time available".

¹³ Australia United States Free Trade Agreement, see online at http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/non-conforming_measures/Annex_II_combined.pdf

The Music Council is not persuaded by any of these objections. Any expansion of a business is likely accompanied by additional cost and administrative burdens. The bigger a business the more likely it is to need a larger workforce and consequently a larger payroll; the higher the turnover, the more burdensome will be accounting for GST, and so on. This objection simply ignores the greater access to audiences that multichannels will bring to the broadcaster and the dramatically enhanced potential to deliver advertising free to air to viewers. Increased costs and administration is a small price to pay for the business dividends that will accrue and a small price for access to valuable spectrum. Further, as noted above, the amount of "Non-Program Matter" (advertising) allowable hourly has recently been increased from the standard 13 minutes to 15 and 16 minutes – expanding the revenue base considerably. Finally, as noted above, the transition to digital was originally planned within a much shorter timeframe than has eventuated. It is not as though there has been an inadequacy of notice. And with the restrictions imposed by the AUSFTA the obligations that were likely to be imposed have been dramatically reduced from what the broadcasters should have been anticipating at the turn of the century.

Option 3: Allowing broadcasters to apply for exemption from program standards for particular multi-channels

For the reasons set out above, the Music Council cannot support this option.

Option 4: Aggregate all programming shown across all digital television multi-channels

The Music Council cannot support this proposal. It will serve only to marginalize Australian content.

Option 5: Introduce a tradable obligations scheme

The Music Council can see that there might be some merit in a tradable obligations scheme set within firm parameters. Providing the overall content standard is imposed on multichannels to the extent possible under the AUSFTA, programming requirements under the subquotas could potentially be subject to a tradable obligations scheme providing such a scheme did not apply to the 'core' or 'primary' channel nor involve trading obligations with public broadcasters – the ABC, SBS and NITV.

Finally, central to the Broadcasting Services Act 1992 IS the need to reflect Australia's cultural diversity and identity – the telling of stories about Australians, for Australians, by Australians. Fundamental to this is the need for a strong Australian industry.

The Australian Content Standard defines "Australian" quite broadly. Of all sectors of the industry, the sector most likely to lose work within the existing regime is the music sector. Many programs, across all genres and including advertising, utilize existing music and minimize the need for commissioning original music. Programs can be produced with only a minimal use of original Australian music and be counted as eligible Australian programs. If the dividend from the transition to digital is to accrue to Australia, it must to the greatest extent possible benefit the Australian industry and Australian audiences.

Thank you again for the opportunity to present this submission. As always, we would be pleased to respond to requests for more information or elucidation.

Yours sincerely

Dr Richard Letts AM

Executive Director