

The Convergence Review Framing Paper

1. Summary

Telstra welcomes both the opportunity to provide input on the Convergence Review Framing Paper and the highly consultative approach that has been adopted by the Review Committee in general.

Telstra agrees that identifying the fundamental principles that should underpin a new policy framework is the appropriate place for the Review Committee to start its work. In performing its role, the Review Committee will inevitably confront situations in which individually desirable policy principles conflict in their application. In order to ensure that these competing interests are properly balanced by the Review Committee in a way that maximises the public interest, it is important that the all of the relevant objectives of the Review have been identified and clearly articulated.

To this end, Telstra's submission on the Framing Paper:

- Provides comment on the principles set out by the Review Committee;
- Suggests additional fundamental principles that Telstra believes should be adopted by the Review Committee;
- Provides background and data from the Australian sector relevant to the Review Committee's consideration of the application of these principles; and
- Identifies some broad policy issues raised by these principles.

Consistent with the approach set out in the Framing Paper, Telstra has not provided detailed comment on how these principles should be applied by the Review Committee at this stage.

2. Telstra's Response to the Principles Identified in the Framing Paper

Principle 1: Australians should have access to a diversity of voices, views and information

Telstra Position:

Telstra supports the adoption of this principle and notes and agrees with the benefits of a diverse media sector as identified by the Review Committee in the Framing Paper.

Discussion:

While Telstra supports the adoption of this principle, Telstra notes that as a result of the technological changes that have accompanied the process of convergence, Australians currently have access to a greater diversity of voices, views and information than at any time in the nation's history.

While traditional media players (free to air television, newspapers and radio) undoubtedly remain the dominant individual voices, and as such the dominant individual sources of *influence* in the Australian media sector, the rise of 'social media', internet enabled platforms for the aggregation and filtering of user generated content, has given Australians access to an unprecedented number of independent voices. Telstra submits that the growing significance of social media in the Australian media sector should be recognised by the Review Committee when applying this principle.

The Emergence of Social Media

The emergence of internet enabled social media as a highly influential part of the modern media ecosystem is now widely recognised by policy makers.

As the Organisation for Economic Cooperation and Development ('OECD') has recognised:

*"The Internet has altered the nature and the economics of information production as entry barriers for content creation have significantly declined or vanished and led to the democratisation of media production (sometimes referred to as the "rise or return of amateurs"), distribution costs have declined dramatically, user costs are lower, and there is much greater diversity of works with shelf space in the digital media being almost limitless."*¹

This collapse in the costs of content creation and distribution has facilitated the emergence of social media as a platform for a new model of decentralised, often amateur content production outside of the organisational and market structures that have traditionally coordinated content production².

As the OECD further describes this process:

*"Broadband access, the development of user-friendly web platforms, collaboration tools and other social networking software are enabling hundreds of millions of private and professional users to participate in the construction, development and use of Web 2.0, the participative web... (This) facilitates new forms of citizen participation in public life, the free flow of information and freedom of expression."*³

This social media driven peer production has become a significant new source of voices, views and information that is highly valued by Australian users. Incorporating tools and platforms ranging from social networking (eg Facebook, Myspace), video sharing (Youtube, Vimeo), picture sharing (Flickr, Panoramio) blogging (Blogger, Wordpress), micro-blogging (Twitter, Tumblr) and forums (eg Whirlpool, Essential Baby) social media has become a decentralised platform for diversity of voices, views and information unimaginable at the time of the passage of the *Broadcasting Services Act 1992*.

Not only has the emergence of social media increased diversity, but there is a growing body of academic literature that outlines how, in specific circumstances (particularly in areas of niche interest or specialist knowledge), the amateur peer production of information and cultural goods through social media can produce content of a *higher* quality than that produced by the professional model of production employed by the traditional media⁴.

It should also be recognised that social media is not simply generating original content for its own users, but is also having an impact on the consumption of traditional media itself.. As identified by Crawford and Lumby, social media also changes how traditional media is consumed by its users: "*audiences do not merely passively receive content,*

¹ OECD, (2007), *Participative Web and User-Created Content: Web 2.0, Wikis and Social Networking*, at 64.

² See for example Benkler, Y., (2006), *The Wealth of Networks: How Social Production Transforms Markets and Freedom*, London: Yale University Press.

³ OECD, (2008), *Shaping Policies for the Future of the Internet Economy*, OECD Digital Economy Papers: No. 148, OECD Publishing at 22. Available online at <http://dx.doi.org/10.1787/230388107607>

⁴ See for example Benkler, Y., (2006), *The Wealth of Networks: How Social Production Transforms Markets and Freedom*, London: Yale University Press and Benkler, Y., (2002), *Coase's Penguin, or, Linux and The Nature of the Firm*, The Yale Law Journal, 112 (2), at 369 - 446.

they may also be directly commenting on, altering or adapting mainstream media content".⁵ To this end, it is informative that a recent study of Nielsen found that 60% of respondents engaged in internet and television 'two-screening', surfing the web while simultaneously watching television⁶.

In effect, these social media users are adding a layer of diversity of voices and sources of information on top of their consumption of traditional media sources⁷. In practice, this dynamic is creating a feedback loop in which the supplementary content generated in social media informs and then suffuses into subsequent traditional media coverage. In this way, the increased diversity provided by a 'fifth estate' of social media even benefits those consumers who are not themselves directly engaging in social media.

Unsurprisingly given the potential of the medium, it is clear that Australians put a high value on social media as part of their media consumption habits. As the ACMA has recognised, social media is a major source of the 'increasing intensity of online participation' by Australians⁸. At present, 62% of Australian Internet users currently use social networking sites (a slightly narrower category than 'social media')⁹ with around a third of all Internet users doing so on a daily basis¹⁰. The prevalence of the use of this form of media is even more wide spread in younger demographics with 93% of Internet users under 30 using social networking sites, the majority doing so every day¹¹.

Policy Issues Raised

The Role of Users

Telstra submits that given the increasing importance of social media in the Australian media sector and the contribution that users creating content through this medium can make to Australian media diversity, more attention should be given to users as a point of policy intervention than has previously been the case.

Telstra submits that the scale and quality of the contribution that social media can make to media diversity is ultimately a function of the size of the Australian population of digitally literate citizens (ie citizens with the skills and knowledge necessary to access, understand and create content using digital media¹²).

To this end, Telstra submits that the Review Committee could examine the potential for increasing the scale and quality of social media as a source of voices, views and

⁵ Crawford, K. and Lumby, C., (2011), *The Adaptive Moment: A Fresh Approach to Convergent Media in Australia* at 10. Available online at <http://www.unsw.edu.au/images/pad/2011/May/Convergentmedia.pdf> .

⁶ The Nielsen Company, (2011), NIELSEN'S STATE OF THE ONLINE MARKET: EVOLUTION OR REVOLUTION?. Available online at: <http://au.nielsen.com/site/documents/AustralianOnlineConsumersReportMediaRelease.pdf> .

⁷ See for example Bruns, A., (2005), *Gatewatching: collaborative online news production*, New York, P. Lang.

⁸ Australian Communications and Media Authority ('ACMA'), (2009), *Australia In the Digital Economy: Online Participation* at 4. Available online at http://www.acma.gov.au/webwr/aba/about/recruitment/online_participation_aust_in_digital_economy.pdf

⁹ Sensis in association with AIMIA, (2011), *Social Media Report: What Australian people and businesses are doing with Social Media* at 4. Available online at http://www.aimia.com.au/enews/Membership/Members_Only/SENSIS_SOCIAL_MEDIA_REPORT_May2011.pdf .

¹⁰ Ibid at 10.

¹¹ Ibid at 10.

¹² ACMA, *What is digital media literacy and why is it important?* Available online at: http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_311470 .

information in the Australian media sector by examining policy mechanisms to promote the development of digital literacy/citizenship in the community.

The ACMA has already undertaken valuable work reviewing international evidence and academic literature on digital literacy programs¹³ and the Federal Government's *Digital Economy: Future Directions Paper* has similarly recognised the importance of initiatives of this kind in investing in the capacity of all Australians as content producers¹⁴.

Spectrum Allocation and Management

A notable characteristic of the proliferation of social media that raises further policy issues for the Review Committee is the extent to which this growth has occurred on mobile platforms. As social media production tools (eg cameras, social media applications) are increasingly built into mobile devices (e.g. smartphones, tablets), an increasing proportion of social media use is occurring over mobile broadband networks. According to research recently developed by Sensis in association with the Australian Interactive Media Industry Association, 34% of respondents currently use a smart phone to access social media¹⁵. The proportion is even high in younger demographic groups, with 52% of 14-19 year olds engaging with social media via smart phones. As the report recognises, the number of 14-19 year olds using smart phones to engage with social media is "the equivalent to the proportion accessing sites through a desktop and almost as much as the proportion accessing through a laptop computer"¹⁶.

This mobile social media use has been paralleled by a similarly rapid growth in the mobile consumption of traditional media sources. As News Ltd CEO, John Hartigan has observed:

"If we look at how people consume news on their mobile and the iPad, usage begins first thing in the morning – literally when people wake up. It peaks on the commute to work. It drops off through the day. And picks up again on the commute home. And continues to rise right through to bedtime. When you add all of these together you can see the scale of the opportunity. These mobile devices allow us to reach our audience from the moment they wake up to the moment they switch off the lights."¹⁷

As a result, the level of engagement between the mobile use of social media and mobile consumption of traditional media sources has been particularly intense. As Jason Wilson, an Assistant Professor in Journalism at the University of Canberra has found,

"Mobile technologies are extensively interwoven with the cultural participation of contemporary political fans that repurposes and reuses political broadcasting. Mobile devices feature prominently among the contemporary the 'tools and technologies [that] enable consumers to archive, annotate, appropriate and recirculate' (Jenkins, 2002) political media content. Political conversation, debate and humour on Twitter employs a platform whose access and use is explicitly

¹³ See for example http://www.acma.gov.au/WEB/STANDARD/pc=PC_311472 .

¹⁴ Department of Broadband, Communications and Digital Economy, (2009), *Australia's Digital Economy: Future Directions*, at 40. Available online from: www.dbcde.gov.au/digital_economy/final_report .

¹⁵ Sensis in association with AIMIA, (2011), *Social Media Report: What Australian people and businesses are doing with Social Media* at 17. Available online at http://www.aimia.com.au/enews/Membership/Members_Only/SENSIS_SOCIAL_MEDIA_REPORT_May2011.pdf .

¹⁶ Ibid at 17.

¹⁷ Speech to Future Forum of the Newspaper Publishers Association, "Technology will help us own the agenda – all day, every day" 26 August 2010, <http://mumbrella.com.au/technology-will-help-us-own-the-agenda-all-day-every-day-32229>

open to the use of mobile technologies like smartphones, tablets and notebook computers. Twitter-based smartphone and tablet applications ('apps') allow the direct upload of pictures, video and audio to the Twitter stream, as well as tweeting from a mobile phone".¹⁸

In this way, the mobile use of both social media and traditional media is becoming increasingly important in the Australian media ecosystem. This development reinforces the importance of any convergent policy framework planning for sufficient radiocommunications spectrum for mobile broadband to be made available and efficiently allocated (outlined in further detail below).

Principle 2: The communications and media market should be innovative and competitive, while still ensuring outcomes in the interest of the Australian public

Telstra Response:

Telstra supports the identification of innovation and competition as desirable outcomes in communications and media markets as a fundamental principle for the Convergence Review. Competition is generally recognised as the most efficient way of delivering the outcomes desired by consumers in any market and should be promoted wherever possible. Similarly, while all things being equal innovation should occur naturally in a competitive market, Telstra believes that explicitly recognising the importance of innovation in convergent markets is not detrimental to the work of the Review Committee.

However, Telstra does not support the inclusion of the rider "*while still ensuring outcomes in the interest of the Australian public*" in this principle and submits that this phrase should be deleted. If the Review Committee believes that the need for competition and innovation needs to be balanced against other desirable outcomes, then these other considerations should be explicitly defined and set out as separate principles. As it currently stands, this rider is so broad as to render the specification of competition and innovation as objectives effectively meaningless as a guide to the Review Committee in balancing competing objectives.

Discussion:

At the most basic level, the digitalisation of service delivery and the decoupling of services from legacy delivery mechanisms should be expected to increase competition throughout convergent industries as the borders between previously separate markets become less distinct.

As the former National Office of the Information Economy's ('NOIE') Convergence Review Report noted:

"As the capabilities of different electronic technologies converge and expand, the substitutability between traditional and digital delivery platforms is increasing. The result is growing levels of competition between delivery channels...

Competition is also being stimulated (by convergence) as traditional industry participants extend their activities into related service markets and move into

¹⁸ Wilson, J., (2011), *Playing with politics Political fans and Twitter faking in post-broadcast democracy*, Forthcoming: Convergence: The International Journal of Research into New Media Technologies. available online at <http://restlesscapital.net/wp-content/uploads/2011/05/PLAYING-WITH-POLITICS.pdf>.

*upstream and downstream markets. This places new market participants in direct rivalry for assets and customers with traditional incumbents.*¹⁹

In Telstra's view, this increase in competition resulting from the process of convergence could be expected to be particularly intense in the media sector. While the "traditional" media is still dominant in its influence, traditional players are now adopting "cross-media" strategies and entering new media sectors both in their own right and as partners to new entrants. At the same time, as a result of the internationalisation of content distribution, new media entrants are emerging with global scale and decoupling the traditionally linked content access and aggregation processes. As a result, in Telstra's view, the ongoing process of convergence has led to the Australian media sector being characterised by intense competition and rapid technological and business model innovation.

Policy Issues Raised

Impact of Regulation on innovation and competition

Given the increasing competitive intensity across previously distinct markets that can be seen as a result of the process of convergence, the ability of private actors to exercise market power in convergent markets has been greatly reduced. In this context, in Telstra's view the most significant risk to competition and innovation in convergent markets is not the potential conduct of private actors, but the competitive distortions created by unnecessary and inappropriate regulation.

In rapidly changing and constantly evolving convergent markets, unnecessary regulation runs a high risk of constraining innovation and distorting competition. As the communiqué of the 2008 OECD Ministerial Meeting on *Shaping Policies for the Future of the Internet Economy* noted:

*"Current economic regulation needs to be reviewed to ensure that it does not act as a barrier to the ongoing process of convergence and therefore prevent the development of more efficient means of delivery of existing and new services."*²⁰

The NOIE Convergence Review Report echoed this concern, noting that:

*"Regulatory risks are high in (a convergent) environment, particularly where regulation constrains the structural options available to industry. Inappropriate regulation is costly, because it prevents the kinds of structural and business innovations that are necessary to generate and capture the benefits of new technology."*²¹

As is outlined in further detail later in this submission, Telstra believes that these risks should lead the Review Committee to adopt an approach of Regulatory Forbearance when considering mechanisms for achieving Government policy objectives in this review.

¹⁹ National Office for the Information Economy, (1999), *Convergence Review* at 41. Available online at: http://www.archive.dbcde.gov.au/2008/01/convergence_review .

²⁰ OECD, (2008), *Shaping Policies for the Future of the Internet Economy*, OECD Digital Economy Papers: No. 148, OECD Publishing at 13. Available online at <http://dx.doi.org/10.1787/230388107607> .

²¹ National Office for the Information Economy, (1999), *Convergence Review* at 41. Available online at: http://www.archive.dbcde.gov.au/2008/01/convergence_review .

Principle 3: Australians should have access to Australian content that reflects and contributes to the development of national and cultural identity

Telstra Response:

Telstra supports this principle.

Discussion:

Telstra accepts the promotion of content that contributes to the development of national and cultural identity is a necessary objective for the Convergence Review.

However, Telstra notes from the discussion of this principle in the Framing Document that the Committee appears to be implicitly of the view that such content must 'look like' the traditional kinds of content that have previously been supported by policy interventions (ie relatively high production cost drama and documentary programming).

The Framing Paper appears to accept that the primary policy issue raised by this principle is the ability of Australian produced content to compete with 'lower cost' internationally created content in a global market for content distribution. Telstra recognises that many producers in these traditional industries have argued that convergence has undermined the ability of local content creators to compete in convergent markets with international providers who are able to spread their content production costs across larger home markets. The empirical evidence of these claims should be considered and tested by the Review Committee.

However, Telstra submits that the technological change accompanying the process of convergence, and the blurring of the lines between content consumers and content creators in convergent markets may in fact have increased Australians' access to content that reflects and contributes to the development of national and cultural identity.

While the size of the Australian market hasn't changed, as a result of convergence, the costs of content creation and particularly content distribution have collapsed, lowering the production threshold for the creation of local content, particularly via social media.

As ACMA have recognised:

"Factors such as ongoing technological innovation, the declining costs associated with internet access and the growth of high speed internet services are reducing traditional barriers to the dissemination of information. This in turn has encouraged the creation of new sources of online information, avoiding the costs associated with traditional publication and marketing channels."²²

Rather than being a threat to the viability of locally produced content that contributes to our national and cultural identity, Telstra submits that the technological change that has accompanied the process of convergence has in reality been a boon.

As the OECD has recognised, social media:

²² Australian Communications and Media Authority ('ACMA'), (2009), *Australia In the Digital Economy: Online Participation* at 13. Available online at http://www.acma.gov.au/webwr/aba/about/recruitment/online_participation_aust_in_digital_economy.pdf .

*"empowers individuals to "tell their stories", to produce cultural goods such as music and video and to transform the information and media content environment surrounding them"*²³.

...

*The development of (social media) may increase availability of specialised local and minority content in diverse languages. With lower access barriers and increased demand for content downstream and lower entry barriers in supply upstream, the creation of cultural content and identification of new creators could potentially be enhanced."*²⁴

While social media may look different to the output of traditional forms of media production, it is clear that a diverse range of cultural content is being produced via this new medium. As Crawford and Lumby have recognised:

*"the proliferation of platforms, tools and high-speed access has resulted in many Australians uploading content to a wide range of online spaces. This can include photos (on services such as Flickr, Picasa and Instagram), video (YouTube, Vimeo), and music (MySpace, SoundCloud), and documents (in online storage spaces such as Google Docs)"*²⁵

There is significant evidence that Australians are making use of this new medium to participate in cultural creation and consumption. A 2009 survey commissioned by the Australian Council for the Arts found that 31% of Australians aged 15 and over 'used the internet to research, view or create any kind of music, writing or artistic performance'.²⁶ Similarly, the ARC Centre of Excellence for Creative Industries and Innovation has found that nearly half (46.5%) of Australian internet users now post and share pictures with friends online (nearly twice as many as did so in 2007), with 16.3% doing so on a weekly basis.²⁷ This study found a similar growth in the number of users posting and sharing videos online (growing from 4.8% in 2007 to 11.7% in 2009).²⁸

Not only are an increasing number of Australians becoming involved in the creation of cultural content as a result of the process of convergence, but an increasing number of Australians are consuming this content.

Statistics recently released by Youtube show that in the second week of March 2011, 24 year old Sydney-sider, Natalie Tran's low cost online video productions attracted 876,106 views in one week alone. As Mumbrella has pointed out, this represents more viewers than popular free to air television shows like Customs (876,000), ABC's Sunday News (872,000), RPA (868,000), The Mentalist (863,000), RBT (856,000) and Top Gear (818,000)²⁹.

²³ Organisation for Economic Cooperation and Development ('OECD'). (2007), *Participative Web and User-Created Content: Web 2.0, Wikis and Social Networking*, at 64.

²⁴ *Ibid* at 73.

²⁵ Crawford, K. and Lumby, C., (2011), *The Adaptive Moment: A Fresh Approach to Convergent Media in Australia* at 9. Available online at <http://www.unsw.edu.au/images/pad/2011/May/Convergentmedia.pdf> .

²⁶ Australian Council for the Arts, (2010), *More than bums on seats: Australian participation in the arts*. Available online at: http://www.australiacouncil.gov.au/_data/assets/pdf_file/0004/71257/Full_report_More_than_bums_on_seats_Australian_participation_in_the_arts.pdf .

²⁷ Ewing, S., and Thomas, J., ARC Centre of Excellence for Creative Industries and Innovation, (2010), *CCi Digital Futures 2010: The Internet in Australia* at 34. Available at <http://www.apo.org.au/sites/default/files/CCi%20Digital%20Futures%202010.pdf> .

²⁸ *Ibid* at 35.

²⁹ Burrowes, T., Mumbrella, 17 March 2011, *Natalie Tran: Bigger than free TV*. Available online at: <http://mumbrella.com.au/natalie-tran-bigger-than-free-tv-41924> .

This content is being produced by Australians, for Australians and in Telstra's view, is clearly reflecting and contributing to the development of national and cultural identity.

Policy Issues Raised

Adapting the Policy Response to Recognise New Forms of Content

As Telstra has noted above, the technological change accompanying the process of convergence has created new forms of *'content that reflects and contributes to the development of national and cultural identity'*.

Telstra notes that traditionally, policy intervention with respect to local content has focused on the promotion of high cost television drama production. While it should be recognised that free to air television remains the dominant medium of cultural influence in Australia, the increasing scale and quality of social media in Australia should be recognised when considering this principle.

In light of this, Telstra submits that the Review Committee should critically assess the impact of convergence on the level of access to Australian content that develops national and cultural identity, taking into account the emergence of new forms of content, before considering whether policy mechanisms are required to promote this content. Telstra further submits that should the Review Committee determine that policy intervention is required to further promote this content, that it consider the role that social media may play in realising this objective.

As discussed in Telstra's response to Principle One of the framing paper, recognising the increasing importance of social media might lead the Review Committee to provide further attention to providing the right conditions for high quality, low cost amateur content creation (such as digital literacy/citizenship initiatives), rather than more traditional, high cost forms of content.

It might also lead the Review Committee to consider how other Government policy mechanisms could be used to stimulate this kind of social media driven content creation. As the OECD has noted, public cultural institutions can play a key role in this respect:

"Cultural policies and institutions such as museums, musical conservatoria, and other cultural and educational institutions may also encourage innovation around (social media) with the public policy objective of fostering creativity and cultural expression."³⁰

The potential of cultural institutions to facilitate this kind of cultural creation via social media was recognised in the final report of the recent Gov 2.0 Taskforce that identified a number of initiatives of this kind already being undertaken by Australian institutions:

"The National Library of Australia (NLA), National Archives of Australia (NAA) and a number of Museums such as the National Museum of Australia (NMA) and Sydney's Powerhouse Museum have engaged Australia's citizenry in contributing their own time and content to enrich and improve national historical collections of text and visual material."³¹

"Australia's cultural institutions, such as the National Library of Australia (NLA), the Powerhouse Museum in Sydney, the Australian War Memorial and the NAA,

³⁰ Organisation for Economic Cooperation and Development ('OECD'). (2007), *Participative Web and User-Created Content: Web 2.0, Wikis and Social Networking*, at 74.

³¹ *Engage: Getting on with Government 2.0 | Report of the Government 2.0 Taskforce* at xii.

Available online at

<http://www.finance.gov.au/publications/gov20taskforcereport/doc/Government20TaskforceReport.pdf>.

*have all have made extensive parts of their collections freely available online. They are using web 2.0 tools and engaging the community to improve their collections... The result has been spectacular.*³²

In Telstra's view, there is much that the Convergence Review could do to productively promote the creation of Australian content that reflects and contributes to the development of national and cultural identity, however in doing so, the Review Committee must recognise the importance that new forms of content are playing in Australia's media sector.

Impact of the Internationalisation of Content Distribution on Regulatory Frameworks

Telstra submits that determining the appropriate policy response to content sourced from outside Australia is a key challenge for the Convergence Review. As has already been recognised, the technological changes accompanying the process of convergence has led to the internationalisation of many industries and nowhere is this development more apparent than in the internationalisation of content/intellectual property distribution.

In a modern convergent market, local content and intellectual property creators and distributors compete with internationally based providers in many markets. For example, as the ACMA recently identified:

*"The mobile applications market functions on both a national and global scale, and this has implications for regulation in Australia. The app stores analysed for this paper are all based overseas, which is representative of the market as a whole at this time. App developers are also based in multiple international jurisdictions."*³³

Telstra submits that a similar observation could be made about the providers of online video, music, e-books and most other forms of cultural content.

This internationalisation of content has serious implications for both Government and industry participants. As Crawford and Lumby have identified, while:

*"...nation state governments clearly have a remit to enforce the laws of their country and to protect public policy priorities when it comes to cultural and social parameters. Their ability to enforce this remit is restricted due to the sheer volume of media content as well as the decentralisation and vast number of media producers."*³⁴

The reduced capacity of nation states to *enforce* regulation against international actors creates a serious risk that local providers, who are more easily caught by the regulatory reach of Government, could be indirectly competitively disadvantaged by regulatory intervention.

³² *Ibid* at 46–47.

³³ ACMA, (2011), *Emerging Business Models in the Digital Economy— The Mobile Applications Market Occasional Paper* at 15. Available online at http://www.acma.gov.au/WEB/STANDARD/pc=PC_312545 .

³⁴ Crawford, K. and Lumby, C., (2011), *The Adaptive Moment: A Fresh Approach to Convergent Media in Australia* at 40. Available online at <http://www.unsw.edu.au/images/pad/2011/May/Convergentmedia.pdf> .

This risk of regulation creating competitive distortions in convergent markets was identified as early as 2000, in NOIE's Convergence Review Report that identified 'Competitive Neutrality' as an important principle for the review³⁵.

In light of these risks, Telstra submits that the internationalisation of content distribution requires the Review Committee to examine changing the focus of policy intervention to domestically based users rather than the now internationally dispersed content creators/distributors.

Principle 4: Australians should have access to news and information of relevance to their local community

Telstra Response:

Telstra supports this principle.

Discussion:

As is the case for content that contributes to cultural or national identity, Telstra submits that the technology change that has accompanied the process of convergence has resulted in Australians having greater access to "news and information of relevance to their local community" today than ever before.

As the Gov 2.0 Taskforce Report noted:

"The use of the internet as a platform for collaboration is already transforming our economy and our lives. Whole industries and sectors are being refashioned by this phenomenon of web 2.0. Citizens are being empowered to express themselves, organise and collaborate in myriad new ways.

*The tools of web 2.0 include blogs, wikis and social networking platforms. **These tools enable communities of interest to develop rapidly to find people with local knowledge or technical expertise to build understanding of issues and solve problems as they emerge.** They enable communities to filter the torrent of information on the internet and identify the most useful parts of it. They enable us to find the most useful contributors in any given subject area, be they a world expert or someone possessing important local or ephemeral knowledge."³⁶ (emphasis added)*

Academic researchers Axel Bruns and Mark Bahnisch have argued that the ability of social media to collect and distribute 'hyperlocal' content arguably makes this medium more viable than 'professional content creators':

"[...] local participation may be harnessed to report on local events or record local histories, or to capture local insider knowledge which is available only to long-standing members of the (offline) local community. Here, particularly, there is also an important role for the use of mobile devices to capture such information on the spot and virtually in real time – such uses range from the use of Flickr or Twitter to report high-profile events such as the 2005 London bombs or the 2008

³⁵ National Office for the Information Economy, (1999), *Convergence Review* at 48-49. Available online at: http://www.archive.dbcde.gov.au/2008/01/convergence_review .

³⁶ At xi

<http://www.finance.gov.au/publications/gov20taskforcereport/doc/Government20TaskforceReport.pdf>³⁶ *Ibid* at xi .

*Mumbai attack through to comparatively more mundane activities such as sharing information about traffic jams, potholes, restaurants, or travel destinations.*³⁷

Research undertaken by the ARC Centre of Excellence for Creative Industries and Innovation has found that Australians see the Internet as their most important source of information, with 73.4% of respondents ranking it as an 'important' or 'very important' source of information (compared to 37.8% for television, 38.9% for newspapers and 45% for radio)³⁸.

Particularly relevantly to this principle, more than two thirds (67%) of respondents stated that they would go online to get information about 'a large local story' that was breaking in their community³⁹. In practice, 65.8% of respondents stated that they had gone online to look for local community news in 2009, with 41.5% doing so on a weekly basis and 20.6% on a daily basis⁴⁰.

As has been seen during the recent Queensland floods, social media (social networking, micro-blogging, blogging etc) has emerged as a critical source of real-time local news and information. Local government, emergency services and citizens all used social media extensively during the crisis to aggregate, filter and distribute news and information (including pictures, videos) about the floods.

Dr Axel Bruns, an Associate Professor in the Creative Industries Faculty at Queensland University of Technology, has undertaken in depth data analysis of social media activity during the Brisbane floods and has concluded that:

"Twitter and Facebook were both used extensively throughout the floods – by emergency services such as the Queensland Police, by the Brisbane City Council, by the ABC and by tens of thousands of individual citizens, to warn or to help one another. They delivered timely advice about flood peaks to people who could not get it in other ways, about road closures, about the needs of communities which had been cut off and to co-ordinate responses. They were used by authorities to correct false rumours as soon as they started.

*For example the hash tag #qldfloods used on Twitter was spontaneously accepted as a primary source for information by public, police and emergency services. "As soon as the Police saw people using it, they were quick to take it up as a means of disseminating advice more widely and effectively. I'd expect to see a similar pattern in future events."*⁴¹

Echoing Dr Bruns findings, Kym Charlton, the executive director of Queensland Police Media has stated that the QPS largely stopped issuing traditional press releases during the floods, preferring to communicate directly with communities and journalists via social

³⁷ Bruns, A. & Bahnisch, M., (2009), *Social Media: Tools for User-Generated Content: Social Drivers behind Growing Consumer Participation in User-Led Content Generation, Volume 1* at 28. Available online at:

http://www.smartservicescrc.com.au/PDF/Social_Media_State_of_the%20Art_March2009.pdf .

³⁸ Ewing, S., and Thomas, J., ARC Centre of Excellence for Creative Industries and Innovation, (2010), *CCI Digital Futures 2010: The Internet in Australia* at 19. Available at <http://www.apo.org.au/sites/default/files/CCI%20Digital%20Futures%202010.pdf> .

³⁹ Ibid at 20.

⁴⁰ Ibid at 21.

⁴¹ ARC Centre for Excellence for Creative Industries and Innovation, *SOCIAL MEDIA VS THE FLOODS*. Available online at <http://www.cci.edu.au/about/media/social-media-vs-the-floods> .

media⁴². In the 24 hours following the floods in Grantham the QPS had 39 million story views on Facebook⁴³.

Further, Ms Charlton believes that the use of social media actually improved the quality of information received by local communities, stating:

"It was a really valuable thing in killing off rumours. There was a great rumour that went on for quite a while, and we mythbusted it repeatedly, that there was a secret morgue in Toowoomba and that there were 40 bodies in this morgue and police weren't telling anybody. To be able to address that stuff before it makes it to talkback radio, newspapers or TV is really valuable."⁴⁴

In addition to becoming a source of official information, social media was also a venue for extensive citizen reporting of the floods. Locals utilised their camera phones to share digital pictures of the floods in their areas with great enthusiasm. Research by Dr Jean Burgess has identified more than 3374 pictures tagged #qldfloods and uploaded to the major image sharing sites on Twitter alone between the 8th and 23rd of January 2011⁴⁵. At the same time, many citizens used their mobile phone cameras to upload hundreds of videos of the floods to Youtube and other video sharing sites⁴⁶. Blogs with a local connection, including the Brisbane based, Larvatus Prodeo (a blog with an audience of around 100,000 unique visitors a month⁴⁷), aggregated these photos and videos and provided additional context and commentary, attracting hundreds of comments from its readers⁴⁸. The growing importance of this medium for news generation has even been implicitly recognised by Parliament through the extension of its media Shield Laws to 'citizen journalists'⁴⁹.

As was the case for diversity of voices and cultural content, Telstra submits that the impact of the technological changes accompanying the process of convergence has been to increase the volume of news and information of relevance to local communities available to Australians.

Policy Issues Raised

Adapting the Policy Response to Recognise New Forms of Content

As previously indicated, Telstra submits that the Review Committee should critically assess the impact of convergence on the level of access to local content, taking into account the emergence of new forms of content, before considering whether policy mechanisms are required to promote this content. Telstra further submits that should the Review Committee determine that policy intervention is required to further promote this content, that it consider the role that social media may play in realising this objective (for example through the promotion of digital literacy/citizenship).

⁴² Foo, F., The Australian, *Facebook the first stop for Queensland Police in floods*, April 18, 2011. Available online at <http://www.theaustralian.com.au/business/media/queensland-police-freed-from-having-to-respond-to-questions/story-e6frg996-1226040600327> .

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Note: Dr Burgess's research suffered from technological limitations that limited her ability to count pictures uploaded to Facebook, but a search of the site shows that many hundreds more photos were uploaded to this site.

⁴⁶ See for example: http://www.youtube.com/results?search_query=queensland+floods&aq=f .

⁴⁷ See for example: <http://larvatusprodeo.net/2008/08/20/economy-tanks-blogs-suffer-or-advertising-and-readership-accountability-post/>

⁴⁸ See for example: <http://larvatusprodeo.net/2011/01/11/brisbane-flood-maps-and-up-to-date-flood-information/> and <http://larvatusprodeo.net/2011/01/12/toowoomba-flood-pics/> and <http://larvatusprodeo.net/2011/01/01/queensland-floods/>

⁴⁹ See the Evidence Amendment (Journalists' Privilege) Act 2010 (No. 2).

Spectrum Allocation and Management

The growing reliance of social media on mobile platforms reinforces the importance of any convergent policy framework planning for sufficient radiocommunications spectrum for mobile broadband to be made available and efficiently allocated (outlined in further detail below).

Principle 5: Communications and media services available to Australians should reflect community standards and the views and expectations of the Australian public

Telstra Response:

Telstra has long supported the *National Classification Scheme's* underlying objectives of protecting children from material that may be harmful, while (within reason) enabling adults to watch what they choose. Telstra has provided strong industry leadership in the area of cyber-safety by offering a range of education programs for our customers and more recently, by committing to voluntarily blocking a list of known child pornography and abuse sites.

However, the media environment has changed significantly since the establishment of the *National Classification Scheme*. In particular, while the volume of content available to users has exploded in recent times, users now have far more control over the content that they consume than they have had at any time before.

In this context, Telstra submits that this principle should be amended to focus on ensuring that users (particularly children) have the knowledge, tools and ability to control the content they consume. By framing this principle in terms of the content 'available to Australians' this principle ignores the central role that users are now able to play in determining the content that they consume in a modern media environment.

Discussion

Technological change accompanying the process of convergence has resulted in consumers having both more control over the content that they consume and access to a far greater range of content than ever before.

Across platforms and devices, content providers in convergent environments are increasingly moving from "push" to "pull" delivery mechanisms. Telstra is well aware that our customers now demand to access services where they want to, how they want to and when they want to. Technological innovation is now frequently making this individually customisable media experience possible.

Telstra's T-Box is a useful practical example of this trend. Telstra's T-Box is a digital set top box that plugs into a user's television. In addition to giving users the ability to play, pause and rewind Free-to-Air TV, timeshift TV viewing via an electronic program guide and watch on-demand or streaming internet video (including BigPond TV, BigPond Videos, Youtube and shortly, Foxtel on T-Box), the T-box also includes a Parental Control function that is designed to help users control the types of channels, programs and applications that are watched in their home.

At the same time that users have acquired more control over their viewing experience, the volume of content available to them has exploded. For example, data recently released by Google shows that not only is more than 48 hours of video content uploaded

to Youtube every minute, but that the rate of growth in the volume of content being uploaded to the site is continuing to increase⁵⁰. All of which is 'available' to Australians.

This increase in both users' control over content and the volume of content available to them fundamentally challenges this principle as currently drafted. As Crawford and Lumby have recognised:

"Contemporary media users exercise an unprecedented level of choice and control over the content they consume and, indeed, are frequently sources of content themselves. This digital literacy is shaping media users into active media citizens who expect industry and government to consult with and inform them about risks and opportunities of media platforms and content."⁵¹

Telstra strongly believes that while the appropriateness of content should be considered by this review, the focus of this principle should be on the role of users in controlling the content that they consume rather than the content theoretically 'available' to them.

Policy Issues Raised

Importance of Holistic Approach

Despite its worthy underlying intent, successive Governments have responded to the challenges to the classification system posed by rapid technological change with a series of issue specific regulatory responses. After more than a decade of incremental changes, the *National Classification Scheme* as it stands today is a complex arrangement of parallel and sometimes overlapping systems of classification. While many aspects of the *National Classification Scheme* are operating effectively, regulatory complexity has created areas of overlap, inconsistency and uncertainty that have the potential to be confusing for consumers and costly for industry participants implementing the scheme.

In this context, there is a pressing need to address this issue through a comprehensive review of the operation of the *National Classification Scheme* of the kind envisaged by the Government's proposed Australian Law Reform Commission ('ALRC') Review.

As such, Telstra submits that it is critical that the Review Committee works closely with the ALRC's process to ensure a holistic approach to classification reform is adopted at the conclusion of these reviews.

The Importance of User Empowerment

As already indicated, Telstra submits that the Review Committee needs to give more attention to policy interventions designed to increase users' ability to control the content that they consume.

As Crawford and Lumby have recognised, there is a:

"need for government and industry to educate consumers and provide them with resources to work in online communities to identify problematic content and to notify relevant organisations or authorities. Media literacy is vital. Education about opportunities and risks online is a particularly critical component of any

⁵⁰ Youtube, *Thanks, YouTube community, for two BIG gifts on our sixth birthday!*, May 25, 2011. Available online at: <http://youtube-global.blogspot.com/2011/05/thanks-youtube-community-for-two-big.html>

⁵¹ Crawford, K. and Lumby, C., (2011), *The Adaptive Moment: A Fresh Approach to Convergent Media in Australia* at 44. Available online at <http://www.unsw.edu.au/images/pad/2011/May/Convergentmedia.pdf> .

strategy that aims to protect children, as well as maximise the potential for innovation and creative engagement⁵².

To this end, Telstra submits that digital literacy/citizenship programs of the kind discussed above should be actively explored by the Review Committee. As the Australian Communications Consumer Action Network ('ACCAN') has argued, there is a pressing need for empirical research in this regard to determine the "sorts of skills we want Australians to pick up to become empowered consumers in the communications and media market"⁵³. Telstra submits that the Review Committee may wish to consider commissioning research of this kind as a starting point to inform its work on this principle.

Principle 6: Australians should have access to the broadest range of content across platforms and services as possible

Telstra Response:

Telstra strongly supports the inclusion of this principle.

Discussion:

For the reasons discussed above, Telstra supports the fact that this principle places the user at the centre of the policy and regulatory response to convergence.

Policy Issues Raised

None.

Principle 7: Service providers should provide the maximum transparency for consumers in how their service is delivered

Telstra Response:

Telstra supports the inclusion of this principle.

Discussion:

Telstra recognises that the Framing Paper has explicitly flagged the transparency of communications network management practices as an issue for consideration in the Convergence Review:

In this respect, Telstra notes that the ACCC has long used the prohibition on misleading and deceptive conduct in the *Trade Practices Act* (now the *Competition and Consumer Act*) to require full and accurate disclosure of network management practices in Australia, particularly operators' data caps, excess data charging and shaping practices. Recent ACCC action and Federal Court findings against Optus for inadequate disclosure of data shaping practices underline this point⁵⁴.

⁵² Crawford, K. and Lumby, C., (2011), *The Adaptive Moment: A Fresh Approach to Convergent Media in Australia* at 6. Available online at <http://www.unsw.edu.au/images/pad/2011/May/Convergentmedia.pdf>. Crawford K and Lumby C, 2011 "The Adaptive Moment: A Fresh Approach to Convergent Media in Australia" at 6 <http://www.unsw.edu.au/images/pad/2011/May/Convergentmedia.pdf>

⁵³ Australian Communications Consumer Action Network (ACCAN) (2009), *Future Consumer: Emerging Consumer Issues in telecommunications and Convergent Communications and Media* at 21. Available online at http://accan.org.au/files/Reports/ACCAN_Future_Consumer.pdf.

⁵⁴ ACCC v Singtel Optus [2010] FCA 1272.

Policy Issues Raised

None.

Principle 8: The government should seek to maximise the overall public benefit derived from the use of spectrum assigned for the delivery of media content and communications services

Telstra Response:

Telstra notes that in the future media and communications information will not necessarily be restricted to spectrum that is specifically assigned for such uses.

To this end, Telstra submits that this principle should be clarified and simplified to read "*The government should seek to maximise the overall public benefit derived from the use of spectrum for the delivery of media content and communications services*".

Discussion

Telstra recognises the critical importance of efficient spectrum management and allocation in convergent markets and supports the inclusion of this issue as a fundamental principle of the Convergence Review.

As already indicated, many of the new media services outlined above are delivered via the 'mobile internet' to mobile devices that users bring with them wherever they go (eg smart phones, tablets). The trend toward this kind of device driven 'mobile internet' has significant implications for convergent industries.

Firstly, it means that growth in mobile traffic and demand for mobile bandwidth is expected to grow enormously over coming years. As seen in Figure 1 below, current forecasts indicate that the number of mobile data intensive smartphones in use in the Australian market is set to explode over the coming years⁵⁵

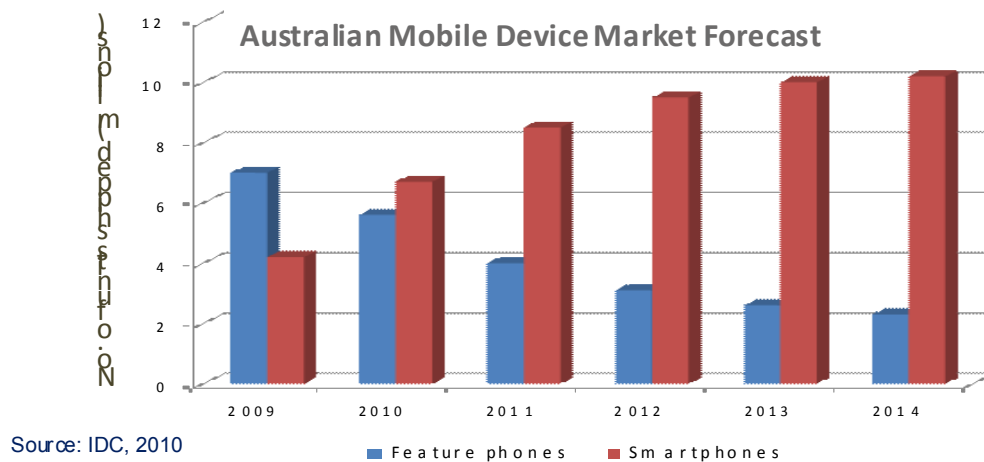


Figure 1

⁵⁵ IDC, (Dec 2010), *Australian Mobile Device Market Forecast 2009-2014*.

The rapid growth in smart mobile devices also means that we can expect to see a similar explosion in the volume of mobile broadband data. Figure 2 illustrates the trend in mobile data over the period from 2009 to 2014⁵⁶.

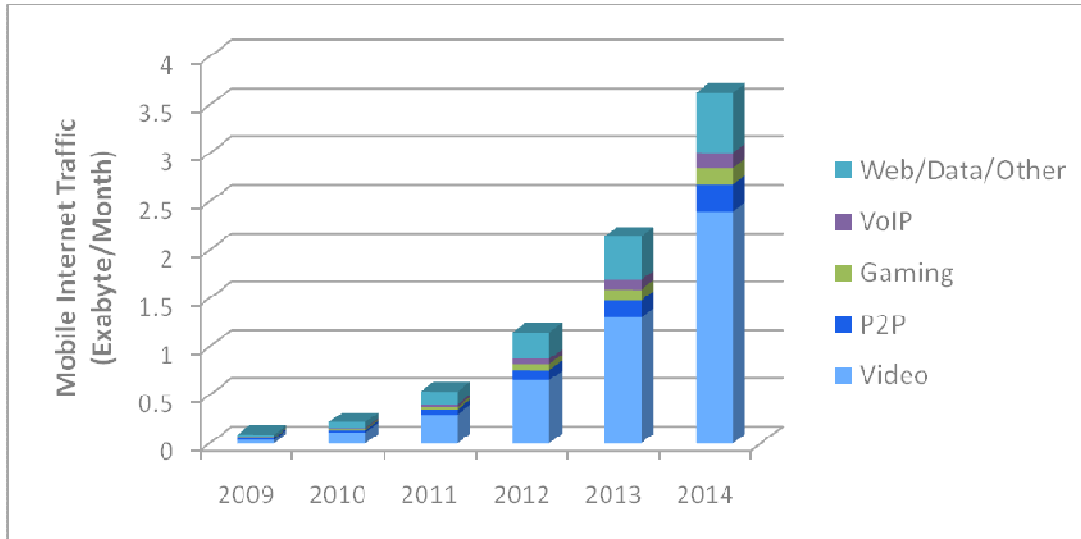


Figure 2

As this figure shows, video is by far the biggest driver of this growth; by 2014 it is projected that 66% of mobile traffic will be video. In effect, the capacity of mobile networks to deliver high quality video has now aligned with the capability of mobile devices to display this video and consumers have rapidly taken up this opportunity.

This explosive growth in demand for mobile data raises the second implication of the growth of mobile delivered new media; the critical need for efficient spectrum allocation and management.

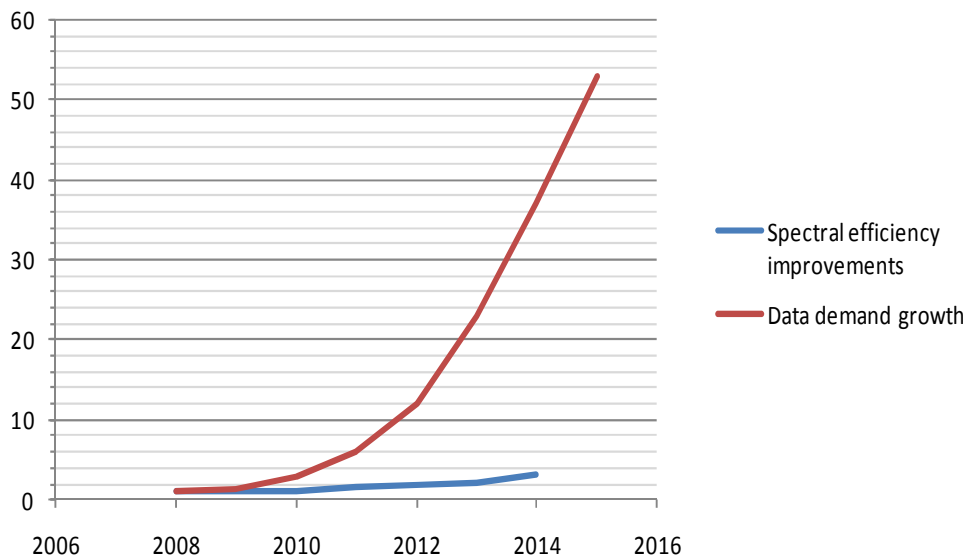


Figure 3

⁵⁶ Cisco, VNI Mobile, 2010.

Figure 3 illustrates what this rapid increase in demand means⁵⁷. The red line on this graph shows the projected increase in global mobile broadband data demand over the period from 2008 to 2015. The blue line shows the corresponding improvement in spectral efficiency due to radio technology improvements. Spectral efficiency is the quantity of data carried by each Hertz of spectrum. It is currently around 1-2 bits/sec/Hertz and Telstra expects this to perhaps increase by 2 or 3 times over the next few years.

What Figure 3 shows is that demand is expected to approximately double every year from 2010 while spectral efficiency is expected to improve at a far slower rate.

There are four ways to close this gap between mobile broadband data demand and the capacity of the network technology:

1. Create more capacity through infrastructure investments by further splitting cell site sectors or installing new sites to create a denser network. But at some point this becomes uneconomic due to the costs of securing and building new sites (Note: the importance of providing incentives for infrastructure investment is discussed in further detail in the Additional Principles section below).
2. Use differential service offerings – to incentivise users to use the network capacity more efficiently. For example – reduce the costs for users who download iphone applications in off peak times.
3. Smarter applications that are tuned for mobile use and require less data to deliver the same functionality.
4. And finally, and most importantly, **additional spectrum**. Each of the three proceeding approaches discussed above will offer incremental improvements but they will not be enough to address the shortfall on an economic basis. Ultimately, in order to accommodate the expected growth in demand for new media services delivered over mobile services in the future, the policy framework will need to make more spectrum available for mobile broadband.

Policy Issues Raised

Telstra has recently publicly identified a number of priority issues for spectrum policy:

1. Expedite the clearance and auction of the digital dividend spectrum and the 2.5 GHz bands to avoid the pending short-term shortage of mobile broadband spectrum.
2. Develop a bold and long term strategic plan for national spectrum reallocation to address future spectrum requirements for mobile broadband and short range devices. The recently released ACMA discussion paper "Towards 2020 – future spectrum requirements for mobile broadband" is a useful step in the right direction.
3. Update our regulatory frameworks to make space for the introduction of new smart radio technologies (eg cognitive and adaptive wireless devices) that have the potential to use the spectrum resource more efficiently. Telstra notes and

⁵⁷ Source: Telstra internal research.

welcomes the fact that these issues were recently flagged by the Chair of the ACMA as important issues emerging from the process of convergence.⁵⁸

4. Focus on pro-active compliance and enforcement to control the increasing spectrum pollution from both 'non-transmitting' and 'transmitting' devices, to maximise the utility of the spectrum resource.

Telstra would be happy to engage in any of these issues with the Review Committee in detail in later stages of consultation on the Convergence Review.

3. Additional Principles

Telstra believes that in addition to the principles discussed above there are three further fundamental principles that should be adopted by the Review Committee to guide its work:

- A. Regulatory Forbearance;
- B. The Promotion of Investment; and
- C. User Empowerment.

A. Regulatory Forbearance

At present, the principles set out by the Review Committee outline a number of desirable objectives for a future convergence policy framework. However, the principles as they currently stand fail to set out a framework for evaluating different policy responses to these objectives.

As set out in Telstra's submission on the draft Terms of Reference for the Convergence Review, the combination of rapid change and high uncertainty in convergent markets dramatically increases the risk of one particular policy mechanism, regulation, creating unintended and undesirable outcomes. As technologies and business models in convergent industries are continuously adopted, modified and abandoned in nascent convergent markets, regulatory interventions targeted at often transient market outcomes can easily become outdated and redundant.

In Telstra's view, the regulatory burden in convergent industries is already high and has been growing in recent times. The Framing Paper recognises this regulatory growth in the broadcasting sector, noting that:

"The Broadcasting Services Act has become more complex through successive attempts to adapt to the requirements of the changing environment"

and that

"On its introduction the 'simplified regulatory regime of the BSA' – as heralded in the explanatory memorandum – was set out in 96 pages. Today, over 60 amending bills later, the BSA has two volumes and is approaching nearly 10 times the number of pages'.

Telstra submits that an examination of the telecommunications sector tells a similar story. Telstra's Submission to the Federal Government's Taskforce on Reducing the Regulatory Burden on Business noted that

⁵⁸ ACMA Chairman Chris Chapman Speech to the Communications and Media Lawyers Association, *The 'convergence phenomena' from a regulator's perspective*, May 30, 2011. Available online at http://www.acma.gov.au/WEB/STANDARD/pc=PC_91724 .

"Telecommunications specific regulation has grown from 184 pages in 1991 to somewhere in order of 900 pages (in 2005)"

and that

"Since industry was 'deregulated' in 1997, the volume of telecommunications legislation has grown over 6 times."⁵⁹

It should be noted that these numbers do not include either the regulation introduced as part of the previous government's Telstra Sale Bills or the current Government's recent reforms.

The reasons for this growing regulatory burden are not unique to the broadcasting or telecommunications sectors; it is a universal problem. This issue was the focus of the 2005 Inquiry into Reducing the Regulatory Burden on Business led by the Chairman of the Productivity Commission, Gary Banks. At the conclusion of this inquiry, Mr Banks noted:

"A fundamental driver of the demand for regulation in recent years has been increasing 'risk aversion' in many spheres of life. Regulation has come to be seen as a panacea for many of society's ills and as a means of protecting people from inherent risks of daily life. Any adverse event — especially where it involves loss of life, possessions, amenity or money — is laid at government's door for a regulatory fix."⁶⁰

While convergence brings with it the potential for increased competition across media and communications markets, it also brings uncertainty. All too often, policy makers' demonstrated response to this uncertainty has been to reflexively extend traditional regulatory approaches rather than to allow increased competition to emerge and discipline market conduct.

Given both the increased risk of unintended and undesirable outcomes of regulation in convergent industries and the already high regulatory burden on business in convergent industries, there are strong reasons to include *Regulatory Forbearance* as an underlying principle for undertaking this review.

By submitting that Regulatory Forbearance should be a principle underpinning the work of the Review Committee, Telstra is simply advocating that the Review Committee consider the principles of good regulatory process outlined in the Australian Government's *Office of Best Practice Regulation Handbook*⁶¹ when considering the application of the principles outlined in the Framing Paper.

In particular, Telstra submits that in accordance with the Best Practice Regulation Handbook, the Committee adopts a process that:

- Defines the scope of the policy 'problem' on the basis of empirical evidence;
- Identifies a range of possible mechanisms for responding to the problem (including taking no action) and considers the costs (including compliance costs)

⁵⁹ Telstra Corporation Limited, *Submission To Taskforce On Reducing The Regulatory Burden On Business*, November 2005 at 14. Available online at: http://www.regulationtaskforce.gov.au/_data/assets/pdf_file/0005/70196/sub066.pdf.

⁶⁰ Banks, G., (2006), *Reducing the regulatory burden: the way forward*, speech given at the Monash Centre for Regulatory Studies, Melbourne, 17 May. Available online at <http://www.pc.gov.au/speeches/>.

⁶¹ Department of Finance and Deregulation, *Office of Best Practice Regulation Handbook* (2010) – also recognised in ACMA, (2010), *Optimal conditions for effective self- and co-regulatory arrangements: Occasional paper*. Available online at http://www.acma.gov.au/WEB/STANDARD/pc=PC_312187.

- and benefits (including the extent to which a mechanism is expected to be successful in 'solving' the defined problem) of each mechanism;
- Selects the mechanism that delivers the greatest net benefit taking into account the costs and the benefits.

When considering the range of mechanisms for responding to properly defined policy problems Telstra further submits that the Review Committee should explicitly consider the non-regulatory tools or levers identified by the ACMA in "*Optimal conditions for effective self- and co-regulatory arrangements*"⁶².

B. The Promotion of Investment in Australian Convergent Industries

Telstra also submits that the promotion of investment in convergent industries should be an explicit guiding principle for the Review Committee.

To fully realise the potential of convergence, major investments will be required throughout the value chain of convergent industries. As just one example, as flagged earlier, major infrastructure investments will be required to increase the data carrying capacity of Australia's mobile networks in order to respond to burgeoning consumer demand. Content providers will similarly need to make continuing investments not only in the production of digital content, but also in the technical and commercial networks required for its distribution.

Whilst Telstra recognises the Government's ongoing investment agenda with respect to the National Broadband Network ('NBN') and supports the exclusion of regulatory issues related to this agenda from the scope of this review, the NBN does not reduce the importance of promoting investment beyond Layer 2 fixed access infrastructure.

The importance of promoting investment in convergent industries is frequently recognised as one of the most fundamental principles for policy making in convergent environments. In fact, the promotion of investment is recognised as the first principle in the OECD's Policy Guidance on Convergence and Next Generation Networks⁶³.

Despite this, the term 'investment' does not appear in the Framing Paper.

The traditional mechanisms used to achieve many of the other objectives outlined in the Framing Paper impose costs on industry participants that are likely to act as a disincentive to investment in convergent industries. Given this, it is important that the Review Committee explicitly balances the pursuit of other objectives of the review against their impact on investment incentives in the Australian sector.

C. Maximising User Empowerment

Telstra submits that the Review Committee should adopt a guiding principle that the policy framework should give users the maximum possible scope to control their own engagement with convergent industries.

As outlined elsewhere in this paper, the technological change accompanying the process of convergence has provided users with an unprecedented level of control over their engagement with convergent industries; allowing them to manage, shape and contribute to the content that they consume in previously unimagined ways.

⁶² ACMA, (2010), *Optimal conditions for effective self- and co-regulatory arrangements: Occasional paper* at 7. Available online at http://www.acma.gov.au/WEB/STANDARD/pc=PC_312187 .

⁶³ OECD, (2008), *Policy Guidance on Convergence and Next Generation Networks* at 3. Available online at <http://www.oecd.org/dataoecd/14/52/40869934.pdf> .

This degree of user empowerment has now become the norm in convergent markets. In Telstra's experience, users now *expect* to exercise close to total individual control over the way they engage with convergent environments.

This is undoubtedly a positive technological and commercial development. In Telstra's view, it should be reflected in the policy environment for convergent markets.

In this context, Telstra submits that the Review Committee should recognise this new reality by pursuing a policy and regulatory environment that provides users with a similar level of empowerment; giving them the freedom, tools and the knowledge they need to effectively exercise their new found control their engagement with convergent markets.

4. Comments on Other Policy Considerations

As requested in the Framing Paper, Telstra has generally addressed the 'other policy considerations' outlined by the Review Committee while addressing each of the principles above. Telstra does however have a small number of further comments on these other policy considerations set out below.

The impact of legislative and regulatory frameworks outside the Minister's portfolio which may impact on issues within the scope of the review

Telstra Response:

Attorney General's Department

Telstra recognises that appropriate protection of intellectual property rights and the development of business models for the sale of online content are important factors in an efficient convergent environment. However, Telstra does not believe that the Convergence Review is the appropriate time or forum for policy responses to these issues to be considered. The scope and practical operation of the existing copyright safe harbor scheme for internet service providers is currently the subject of ongoing litigation. As recognised in the Attorney General Department's incoming government brief, policy reform in this area should desirably await the definitive conclusion of this litigation⁶⁴.

Telstra further believes that this issue is better dealt with by seeking an industry-led consensus between copyright owners and ISPs once the litigation is resolved and submits that as such, the issue of online intellectual property infringement should not be considered by the Review Committee.

Department of Foreign Affairs and Trade

As outlined earlier in this submission, the technological changes accompanying the process of convergence has led to the internationalisation of many of the industries in this space and as a result, of the Government's policy responses to issues arising in these industries (eg responses to illegal content, intellectual property rights enforcement).

However, this process of internationalisation does not reduce the need for the Government to actively consult with Australian users and industry in the development of Australian positions on these international responses. In fact, as the advocate of

⁶⁴ Attorney General's Department, *Incoming Government Brief*, 2010 at pp35-36. Available online at: http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/sup_1011/ag/106_Attachment_A_Section_1_Section_2.pdf .

Australian interests in these forums, there is a greater obligation on Government to consult with Australian users and industry in order to ensure that the impact of specific international policy proposals in the Australian context is fully understood and taken into account.

Despite this, Telstra believes that there is a continuing issue with the level of consultation and transparency offered to Australian stakeholders during recent international trade negotiations (eg the Anti-Counterfeiting Trade Agreement⁶⁵ and the Trans-Pacific Partnership Agreement⁶⁶).

These international agreements increasingly address contentious issues in areas of specialist policy. Transparency and consultation with all stakeholders during the negotiation process for these agreements is extremely important to ensure that all interested parties are afforded an opportunity to assess potential impacts in the Australian context and to raise issues and concerns.

To this end, Telstra submits that the Review Committee should consider the appropriateness of governance arrangements in ensuring adequate consultation with Australian industry and users during the development of international policy responses.

The impact of policy settings on industry and government revenue

Telstra Response:

Telstra notes that the Review Committee is required to take into account the impact of policy settings on industry and government revenue.

In doing so, Telstra submits that in general, the broad based Australian taxation system is the most efficient way of raising government revenue. Designing a policy or regulatory framework with the objective of both achieving a specific policy objective while also raising revenue is likely to be both inefficient and distortionary in practice.

As ACMA has noted,

"Many of the existing taxes (collected by ACMA) are sectorally based, and essentially represent hypothecated payments and /or transfer payments between industry participants. There may be an efficiency case for considering whether such sectoral taxes are the most economically efficient method of funding relevant policy objectives.

...

Where revenue-based taxes are necessary, broadly-based taxes on revenue (such as company tax) will generally be less distortionary and more efficient than sectorally-based taxes on revenue (such as the licence fees paid by commercial broadcasters).⁶⁷

Despite this, the Australian telecommunications sector is already subject to a wide range of industry specific levies (USO, TIO), license fees and other charges (eg purchase of spectrum). In fact, according to ACMA, as a result of its responsibility for collecting and these charges, in 2007-2008 ACMA was the third largest collector of Commonwealth taxes and levies in Australia (behind only the Australian Taxation Office and the

⁶⁵ See <http://www.dfat.gov.au/trade/acta/> .

⁶⁶ <http://www.dfat.gov.au/fta/tpp/>

⁶⁷ ACMA, (2011), *Submission to Australia's Future Tax System Review* at iii. Available online at http://taxreview.treasury.gov.au/content/submissions/pre_14_november_2008/ACMA.pdf .

Australian Customs Service)⁶⁸. In 2009-10 (the most recent year for which figures are available), the ACMA administered \$687.683 million of revenue on behalf of the Commonwealth Government⁶⁹.

Some of these levies, fees and charges are collected on an annual basis (eg licence fees, numbering charges), while others are collected intermittently (eg radiocommunications licences totally more than \$3 billion between 1997 and 2001⁷⁰). The main charges levied on the telecommunications industry in this way are:

- The Annual Numbering Charge (\$60m in 2009-10);
- The Universal Service Obligation Levy (\$145.076m in 2009-10);
- The Annual Carrier Licence Charge (\$39.549m in 2009-10);
- The National Relay Service Levy(\$15.577m in 2009-10); and
- Other Apparatus Licence Taxes.

These sector specific charges are, of course in addition to the company and other taxes paid by any company in Australia.

In this context, Telstra submits that any consideration of the impact of policy settings on industry and government revenue should begin with the understanding that the burden of Government revenue collection on the Australian telecommunications industry is already high.

⁶⁸ ACMA, (2011), *Submission to Australia's Future Tax System Review* at 1. Available online at: http://taxreview.treasury.gov.au/content/submissions/pre_14_november_2008/ACMA.pdf .

⁶⁹ ACMA, *Annual Report 2009-2010* at 11. Available online at http://www.acma.gov.au/webwr/assets/main/lib311959/acma_annual_report_2009-10_chapter-1.pdf

⁷⁰ ACMA, *Radiofrequency spectrum auctions list* available online at: http://www.acma.gov.au/WEB/STANDARD...PC/pc=PC_364 .