

LOCAL CONTENT POLICY IN THE AUSTRALIAN TELEVISION INDUSTRY

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ABSTRACT

This paper examines the impact and effectiveness of the local content scheme currently operating in the Australian Television industry. It finds the scheme has questionable success in meeting its stated objectives of promoting Australian culture and allowing for a diversity of views, and that the economic costs of the scheme are difficult to gauge. Further, concentrated media power (in part arising from local content requirements) has influenced government decisions regarding implementation of digital technology in ways that have worked against public interest objectives of diversity in programming. Finally, rapidly changing technology means local content is only mandated on some broadcasting platforms, further reducing the effectiveness of the scheme.

Key words: television, protection, culture, diversity, local content

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1. INTRODUCTION

1.1. Scope of paper

Local content schemes provide protection for domestic intermediate input producing industries by encouraging producers of final goods and services to purchase a minimum proportion of their inputs from local producers. They have been used in a number of industries in Australia in the past, including tobacco growing, passenger motor vehicles, industrial machinery, agricultural tractors, orange juice, broadcasting and aerospace industries (IAC, 1984).

Local content schemes for goods became illegal under the Uruguay Round multilateral trade negotiations that led to the formation of the World Trade Organization (WTO) in 1995. Since then, their use within Australia has been limited, though local content policy continues to have a significant role in the broadcasting industry in Australia.

This paper examines the effect of the local content policy operating in the television sector of the broadcasting industry in Australia. The television industry in Australia has been required to meet local content quotas as a proportion of broadcast time since 1961. The local content policy is part of a wider regulatory framework in the television industry, making it difficult to isolate the impact of the local content scheme from other interdependent policies.

In some respects the television industry, and the operation of the local content policy within the industry, is quite different from the other industries that have been subject to local content policy in Australia (Manning, 2004). It is a service industry, and one with public good characteristics. Market pricing may lead to inefficient outcomes in the presence of public interest objectives of promoting Australian culture and ensuring that a diversity of views may be heard.

For these reasons, some form of government intervention may be necessary and justifiable. This paper examines whether the local content requirement that is currently operating in the industry is the most appropriate way of meeting those social objectives (which are taken to be a given here).

In addition to the social aim of promoting Australian cultural values and national pride, the local content requirement has an economic effect – protecting the local production industry (Brown and Cave, 1992, p. 379). Often ‘infant industry’ type arguments are used to justify this local protection; these arguments are also examined below.

1.2. Local content schemes as a form of protection

The effects of the local content scheme on final service producers (the broadcasters) will also be examined. The extra costs imposed on broadcasters of meeting the local content requirement have traditionally been used to justify a great deal of the other regulations currently in place to assist the television industry, including restrictions on entry. The 'extra costs' argument has been used a great deal more explicitly in the television industry than in other industries subject to local content rules in the past (Manning, 2004). This has been possible because of the role of the local content requirement in promoting social objectives, rather than just providing protection for the intermediate input producer. There has been a tendency for final good producers (the broadcasters) and intermediate good producers (who make the programs) to stick together to ensure the overall package of protection remains.

Thus local content rules have become part of a package of protection which has become prolonged and entrenched, and has resulted in high levels of protection, the exact extent of which is difficult to determine. In the television industry the distinction between economic objectives and social interest objectives has become blurred, with participants tending to argue for measures in the name of social objectives, where in fact the measures are more likely to provide mainly private economic benefits to these participants.

1.3. What is local content?

Defining what can be counted as local content is very problematic in the television industry. The necessity of finding extra funding for productions has led to an increasing tendency towards co-productions, with some ridiculous consequences for definitions of what is local. For example, producers of the mini-series *Moby Dick* (who were based in the USA) managed to have the production classified as Australian-British, partly by arguing that the whale qualified as an Australian actor! (Barbara Hooks, *Green Guide, The Age*, 18 November 1999). Does a program have to be under Australian creative control for it to meet the objectives of the local content policy? This is discussed further below.

Difficulties in defining what is local content, together with issues arising from changing technology and the move to digital television may result in local content regulation failing to meet its objectives. Technological advancements mean that television programs can be delivered on a variety of platforms, including the Internet. Many of these platforms are beyond the reach of the government's local content regulation. Government regulation regarding the introduction of digital television has actually worked against objectives of diversity in some cases. This is examined further below.

1.4. Local content incentives

There has been a range of incentives in different industries to ensure local content requirements have been met. (These are detailed in Manning, 2004.) Incentives have included allowing duty free importation of remaining inputs once a certain percentage of locally produced inputs have been used, and making tariff protection of the final good contingent on using a certain proportion of local inputs. In the television industry the incentive to comply with the local content requirement is absolute - television licences are issued subject to compliance.

Whilst local content schemes in general have become illegal under the WTO, the television industry is not currently covered by the General Agreement on Trade in Services (GATS). It has however been included in the US/Australia free trade agreement (AUSFTA) that entered into force on January 1 2005. Under this agreement local content policy for existing television platforms is exempted from the FTA, but the application of local content restrictions on programs broadcast using new technologies will be limited.

2. THE INDUSTRY IN OVERVIEW

2.1. Industry Structure

There are currently three commercial television networks, Seven, Nine and Ten. The licence ownership of the main networks is restricted to State capital city stations, however they also have programming affiliations with regional networks that hold all the regional television licences. There are a total of 53 commercial television station licences. Australia also has two public sector broadcasters, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS). Foxtel, Optus and Austar are the three major subscription television operators. In addition, there are numerous commercial radio licences, community radio licences and some community television licences (ABA, 2004). There will be no new commercial television licences until at least 2007.

2.2. Instruments of regulation

The television industry in Australia is subject to a considerable amount of regulation. This includes (Brown and Cave, 1992, p. 378):

- two public sector broadcasters - the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS).
- restrictions on ownership of private sector broadcasters,

- restrictions on how private broadcasting is financed,
- control over the composition of output (including local content rules), and
- restrictions on entry.

Broadcasting industry regulations are given in *The Broadcasting Services Act 1992 (BSA)*, though separate Acts govern the public sector broadcasters. The objectives of the BSA include facilitating efficiency, competitiveness and responsiveness to audience needs of the broadcasting industry, as well as promoting the role of broadcasting services in “developing and reflecting a sense of Australian identity, character and cultural diversity” (*Broadcasting Services Act 1992*, s.3).¹

The BSA 1992 established the Australian Broadcasting Authority (ABA), which is responsible for issuing licences, setting of content requirements and monitoring content, amongst other things. On 1 July 2005 the ABA was merged with the Australian Communications Authority to form the Australian Communications and Media Authority (ACMA).

2.3. Motives for regulation

The public good aspects of television have traditionally justified most of this regulation. The expense of the production of a program is a fixed cost, and once a program has been produced it can be broadcast by many stations (and received by many individuals) at virtually zero marginal cost.

In addition, importance is placed on television as a source of national pride and cultural identity. Local content rules have always been an important part of the television industry in Australia, as in many other countries. Australian content programming has been a condition of holding a broadcasting licence since 1961. Australian content rules are seen as having an economic function (protecting the Australian industry) as well as a social function (promoting national pride and cultural values) (Brown and Cave, 1992, p.379).

The cost to television licence holders of complying with Australian content requirements has often been used as justification for other forms of regulation, notably restrictions on entry and ownership. The restricted allocation of licences has been a very significant factor in the build up of economic and political power amongst existing licence holders; this power has been used to circumvent reform and change, particularly “change involving increased competition and viewer choice” (Owen et al., 1974, p.12). This concentration of power and influence is of particular consequence in the television industry, which arguably has the ability to influence voter’s political choices, and therefore makes politicians very sensitive to the demands of key industry players.

¹ As will be seen, these goals have worked against each other in practice.

The Productivity Commission, in its Inquiry into broadcasting completed in 2000, questioned whether the extra costs of complying with the local content requirement is a reasonable justification for these restrictions on ownership and entry particularly in view of the high value of television licences that has arisen as a result (PC 2000, p.21). For example, at 30 June 1998, the average value of a commercial television licence was \$64.9 million (regional licences are included in this average). The three licences in Sydney were worth an average of \$347.2 million each, and in Melbourne they were worth an average of \$201.1 million each (PC 2000, p. 325).

In 1999-2000 the total revenue for commercial free-to-air television was \$3.3 billion. Expenditure was \$2.5 billion (a surplus of \$803 million) (Harley, 2002, p.3). Average daily television viewing was 3 hours and 13 minutes in 2000, with 82 per cent of prime time viewing in the metropolitan markets being of commercial free-to-air stations (Harley, 2002, p.3).

2.3. Regulation and social objectives

There has been very little economic analysis applied to the television industry in general, and even less to the impact of local content rules on the structure of the industry, or on the quality and diversity of Australian TV programming.

The social objective of promoting national pride and cultural identity may indeed be judged to override economic costs to television licensees and consumers. However, this does not mean that the impact of local content rules on the industry should not be examined. It is still desirable to find the least-cost way to meet social objectives.

2.4. Technical advances and regulation

On 1 January 2001 broadcasters in the capital cities in Australia commenced transmitting digital signals alongside their analogue signals. Regional stations commenced digital transmissions in 2004. The government lent (without charge) an extra channel (i.e. additional spectrum on which to transmit television signals) to each of the five free-to-air networks (including the ABC and SBS) to enable them to make the transition to digital signals, while maintaining analogue signals for eight years (PC 2000, pp p – 10).

In addition to the start up date for digital television of 1/1/2001, the government has mandated the transmission of at least 20 hours per week of high definition (cinema quality) signal transmission, and continuous broadcast of a standard definition signal (PC 2000, p. 15). The government has prohibited multichannelling (transmitting multiple programs simultaneously over one channel) by commercial stations, at least until the end of 2005. This is to protect pay TV operators (PC 2000). In addition, no new television licences will be issued until at least 2007.

The commencement of digital TV in Australia, in particular the mandating of high definition television, and the possible introduction of multichannelling after 2005, has ramifications for the achievement of local content objectives in Australian television. In addition, the changes in technology that increasingly allow media content to be viewed on non-traditional platforms (such as the internet) will also affect the relevance of local content policy in Australia. These issues will be examined further below.

3. HISTORY OF CONTENT REGULATION

Quotas for Australian content were first introduced into the industry in 1961. Prior to that *The Broadcasting and Television Act 1956* required that Australians be employed as far as possible in the industry, but did not set specific quotas on program content (PC, 2000A, p. G.1).

In 1961 established television stations were required to meet a local content quota of 40 per cent of total broadcast time, including one hour per week in prime time (then defined as 7.30 p.m. – 9.30 p.m.) (PC, 2000A, p. G.1). From 1961 until 1998, quotas for Australian content were changed 14 times. A points system was introduced in 1973 to try and encourage programs seen as more beneficial to the achievement of the policy's objectives. In the following years the points system was refined and more encouragement was directed towards first release drama and documentaries.

Additional requirements for children's television content were put in place in 1967, initially simply providing incentives for the transmission of children's programs. Quotas were introduced in 1971, with a points system introduced in 1973 to try and improve quality. Successive changes increased and refined the quota system for children's television, including the introduction of a 'C' classification for children, and a 'P' classification for preschoolers in 1977 (with no advertisements allowed during 'P' programs.) (PC, 2000A, p. G.2). Current quota levels are detailed in the section 4 below.

4. CURRENT ASSISTANCE ARRANGEMENTS

Since 1998, 55 per cent of all programs broadcast on commercial free-to-air television stations between 6.00 a.m. and midnight must be Australian (averaged over a year).

There are several sub-quotas within this overall quota. These relate to:

- First release Australian dramas. Each commercial station must meet a requirement for a minimum of 250 points per year, with a minimum of 830 points over the three years from 1

January 2002. The score for subsequent 3-year periods must be at least 860 points² (ABA, 2004).

- First release Australian documentaries. A minimum of 20 hours per year.
- First release Australian children's (C) programs. A minimum of 130 hours per year including at least 25 hours of first release Australian children's drama per year, totalling at least 96 hours over a three year period.
- Australian preschool programs. At least 130 hours of 'P' programs per year (which may not be repeated more than three times in five years) (ABA 2004B).
- At least 80 per cent of television advertising must be locally produced.

Sub quotas must be shown during 'prime time', i.e. evenings for adult drama and outside school hours for children's programs. (PC 2000, p.389).

A program must be produced under the creative control of Australians to be classed as Australian content. The producers of the program must be Australian (although co-producers may be non-Australian). Directors or writers and 50 per cent of leading actors or on-screen presenters must be Australian and not less than 75 per cent of major supporting cast for drama programs. The program must also generally be produced and post-produced in Australia (PC 2000, p.386). Since 1999 New Zealand programs have been counted as Australian content, under the Closer Economic Relations Agreement. (CER). Despite concerns at the time, this has not resulted in an influx in New Zealand made programs.

As previously mentioned, defining what can be counted as 'local' in the television industry can be very problematic. A program could meet the creative control requirements and still not 'look' or 'feel' Australian. For example four series of *Flipper* have been made in Queensland; the fourth series would have met the creative control criteria, even though it is an American story, developed outside Australia and intended for release in America (ABA, 2002B, p.118). *Flipper* was not broadcast in Australia and so did not earn Australian content points, but the potential to do so existed.

Just as a program could meet the creative control criteria and not be at all Australian, a program could feel Australian without necessarily meeting the criteria at all. The decision to apply the CER agreement to television and allow New Zealand content to count as local came after a High Court of Australia judgment in 1998 in *Blue Sky v Australian Broadcasting Authority* (1998) HCA 28. In

² Different formats earn a different number of points per broadcast hour; this is to encourage a mix of program types. It was also intended to recognise the differing production costs and risk factors associated with the different formats, with the assumption that more costly formats tended to provide higher quality Australian content (ABA, 2002B, Appendix D, p.3). For example serials (which are produced at the rate of more than one hour per week) score 1 point per broadcast hour, series (produced at the rate of one hour or less per week) score either 2.5 or 3 points depending on the licence fee, feature films score between 2.5 and 4 points depending on licence fee and date acquired and telemovies, mini-series or self-contained drama score 4 points per broadcast hour (ABA, 2004B).

addition to finding that the Australian content rules were inconsistent with Australia's CER agreement (PC, 2000A p.387), the High Court found that Australian creative control was either irrelevant or unnecessary to achieve Australian content, and that, in fact, anyone can make an Australian program (Harley, 2002, pp8-9). If this is the case, then the creative control criteria are simply protecting the local industry. Some industry participants argue that there must be a certain level of Australian industry activity before the cultural and diversity elements of the local content requirement can be met. In this way the distinctions between industry protection and cultural and social objectives become increasingly blurred.

There is disagreement about whether non-Australians really could deliver "an Australian national identity" (Harley, 2002, p. 10). There is also disagreement about whether the local content requirement as it stands delivers diversity and a fair representation of multicultural Australia. The Australia Council's submission to the ABA Review of the Australian Content Standard (dated 1 February 2002), quoted Cyndi Tebbel writing for *Elle Magazine*, and quoting Lex Marinos:

"Whole sections of our society simply do not exist (on television screens)... And the message they receive from their exclusion on television is that they are not part of Australia. To disenfranchise so many people by perpetuating the image of Australia according to *Neighbours* is immature, irresponsible, inhuman and potentially damaging to society."

Section 5 below examines why minority groups are likely to be under represented in television programs on commercial free-to-air television, where networks face the financial necessity of delivering the biggest possible audience to advertisers.

The Productivity Commission's report of 3 March 2000 recommended retaining the existing overall quota for Australian content, along with the existing sub quotas. These quotas are to be retained until a further inquiry into cultural policy in the television industry can be undertaken, and a new framework that will address technology changes can be put into place. The report recommended that this process should be completed prior to the switch-off of analogue services in 2009 (PC 2000, p.422).

5. TRADE AGREEMENTS AND LOCAL CONTENT REQUIREMENTS

Australia has effectively quarantined its audiovisual services sector from inclusion in negotiations being undertaken under the General Agreement on Trade in Services (GATS - part of the DOHA round of trade negotiations).

The Department of Foreign Affairs and Trade has stated that

"The successful achievement of Australia's cultural objectives in the audiovisual sector depends in large measure upon the existence of a vibrant local film and

television production industry to develop Australian programs for broadcast and exhibition.”

and further, that

“it is essential for the Australian Government to have access to a wide range of policy measures and the flexibility to apply them as necessary to ensure that Australia’s cultural and social objectives for the audiovisual sector are met.”
(DFAT, 2001)

In this way the government is stating its intention to keep regulation of the Australian television industry, including the local content policy, within Australian government control.

Similarly, the government had indicated that it would quarantine the television industry from inclusion in the free trade agreement recently negotiated with the United States of America (Vaile, 2003). However in the end the agreement only quarantined the local content requirement for existing delivery platforms whilst restricting the application of local content requirements under future technologies.

6. SOCIAL OBJECTIVES

6.1. Influence of different types of media

As mentioned previously, compliance with Australian content rules is a condition of licence for commercial and subscription television broadcasters. Free-to-air television is the most heavily regulated as this form of media is assumed to have the greatest degree of influence. (PC 2000, p.385).

There is considerable debate about the influence of different forms of media on society’s opinions and behaviour. Free-to-air television reaches into 99 per cent of Australian homes (PC 2000, p.385), and is assumed to be very influential. However some argue that the print media, although accessed by fewer people, is also very influential as it “forms the political agenda”, and that radio can also have a lot of influence.³ These other forms of media do not have the content restrictions that free-to-air television has.

Clearly, some measure of the degree of influence of television is important in deciding about content regulation, for if television has little influence on society then insisting on content quotas will be largely irrelevant in reaching societal objectives of national pride and cultural identity. If television is very influential then effective Australian content regulation may indeed be important.

³ For a discussion on different views about the degree of influence of different media types, see the Productivity Commission’s report No. 11 p.p. 447 - 449.

If we accept for the moment that television does influence society's opinions and behaviour, and can affect how we feel about ourselves and what we believe about our society, then it is important to look more closely at the objectives of Australian content regulation. Why is it believed that the market, left to itself, will not provide an optimum mix of Australian and overseas programs?

The cultural objectives of the Broadcasting Services Act (BSA) include "developing and reflecting a sense of Australian identity, character and cultural diversity". Social objectives include community education and information. Diversity and choice is seen as important, and many have argued that freedom of expression and people's "right to know" underpins our democracy (PC 2000 p.380).

6.2. Free-to-air TV as a public good

To examine the question of market failure it is necessary to look at the public good aspects of free-to-air television. Once a program is made and transmitted it can be received by anyone with a television set within the transmission area. Viewers cannot be excluded or charged directly for a program. Their preferences cannot be directly gauged.

As free-to-air television stations cannot charge for their programs, they finance them through revenue received from advertisers who are interested in reaching the largest possible audience that will be most responsive to their advertising. In this way minority audiences can find that their preferences are ignored. This is a market failure; that the nature of financing free-to-air television does not recognise minority tastes. Diversity and choice form part of the objectives of the Broadcasting Services Act, thus one of the objectives of the local content scheme is to address this failure of the market.

What about majority preferences? Does it constitute a market failure if advertising research indicates that the way to sell margarine is to advertise during American movies?

Television programmers do not just look at revenue alone. In attempting to maximise profit from each time slot they have to consider costs as well. Even if quality Australian drama attracts a very large audience, it is costly to produce, and so may be replaced by lower cost imports even though they may attract a smaller audience, depending on which type of program generates the highest absolute profit. Without regulations to ensure diversity, programming may consist of endless repetitions and small variations on a tried and true overseas format that is cheap to purchase and attracts a regular audience that is partially satisfied by what is broadcast.

This is more than an argument about Australian producers not being able to compete with overseas imports. Because of the non-rivalrous consumption aspects of television programs, once a program has been produced overseas for an overseas audience, it can be purchased cheaply by Australian stations relative to the cost of producing home-grown drama. (It is of course true that some Australian programs sell well overseas – *Neighbours* and *Home and Away* are two examples.)

Other arguments are used to support regulations that ensure a degree of programming diversity. Diversity can be seen as a form of merit good. Viewers' preferences could be seen as incomplete or irrational, and certain types of programs (called "merit programs" (Brown and Cave, 1992)) are considered good for them regardless of their preferences.

It can be argued that merit programs may not initially be popular, but once the audience has been exposed to them for a while they may take off and become economically viable. This is an infant industry type argument, although it applies on the demand side rather than the supply side of the market. (Brown and Cave, 1992).

There does seem to be anecdotal evidence that it is difficult to know which programs will be a success in advance. Risk is an inherent part of many business ventures however, so this is not an argument for protection unless there are externalities or market failures resulting in risk levels being inefficiently high. Some American style written-to-a-formula type programs have failed miserably, whereas some Australian dramas, which might have been considered risky, have become very popular. An example of this is *Seachange*, written for the ABC, which may never have been given a showing on a commercial TV station. There are also many examples of shows (especially comedies) that have become popular on the ABC and then moved to a commercial station. And it is now being recognised that even a preschool show such as *Playschool*, that many parents would consider quality Australian children's television, can have lucrative merchandising spin-offs.

There is also the argument about minority interests who would miss out without encouragement for diverse programming, though to some extent the two public broadcasters in Australia, the ABC and SBS, cater for these.

Although these policies have cultural and social objectives they do have an economic impact. A further infant industry type argument is that a viable Australian industry is needed to meet cultural and social objectives, and that without content regulation the industry may not be able to sustain such a viable level of activity (PC 2000, p.380). Film and television production does however receive other assistance as well as content protection, in the form of government investment and production subsidies (PC 2000 p.384).

7. IMPACT OF PROTECTION

Data available on content quota compliance (from the ABA Annual Report, 2003-04, (ABA, 2004, Appendix 5)) for 2003 shows the overall local content quota of 55 per cent was over-met by broadcasters. The three commercial free-to-air networks achieved between 57 per cent and 63.5 per cent (on average, across metropolitan city stations) of broadcast time between 6am and 12 midnight. Only 8 hours of this was New Zealand content (about 1.5%), suggesting that early fears that Australian

television would be swamped with cheap New Zealand programs have not been realised. (There is of course the possibility that American programs may swamp Australia under the Australia/USA Free Trade Agreement, as technology changes away from the formats quarantined under that agreement.)

The first release Australian drama quotas were also over-met, with the Ten network achieving a score of 401 points on average (against the quota of 250 points). The Seven network also considerably exceeded the quota with an average of 392 points, whilst the Nine network achieved 298 points. The Seven network also exceeded the documentary quota (22.6 hours on average against the requirement of 20 hours), while Nine achieved 20.5 hours, and Ten just met the 20 hour quota.

Each network met the overall C (children's programs) quota of 260 hours. Of these, 130 hours must be first release children's programs, including 25 hours of first release children's drama per year (96 over 3 years). The networks each just met the children's quota with enough first release drama to meet their three-year obligation. A large part of their remaining hours was made up of repeats (71.5 hours for the Nine network.) The P (preschool programs) quota was only just met by each network. (ABA, 2004, Appendix 5).

Apart from the sub quotas, the overall quota in successive years has largely been met with news, sport, current affairs and infotainment (PC 2000 p.395). The fact that the overall quota is being over met suggests that it is not biting, and that viewer preferences for these programs determine programming choices. However, documentary, children's and preschool sub quotas were only just met, suggesting that content regulation was having an effect in this area.

Programs such as news and current affairs would still be likely to be made in Australia even without the local content requirement. The decision by commercial free-to-air networks to exceed the local content requirement may in fact be a commercial one. Judi Stack, the Chairman of The Federation of Commercial Television Stations (FACTS) said to a conference on Australian content standards held in March 2002:

“It is quite clear that we (FACTS) have a very strong commitment to Australian content and Australian programs. The primary reason for this commitment is that our audiences really like them ... the best measure for the commercial television sector is community response, which is broadly measured in audience ratings ... Ultimately, our message is that the market does not require fixing. There is no failure of the market for the Australian commercial television industry, insofar as the objectives of the Act are concerned ... The hours of Australian programs on commercial television have increased over the years and continuously exceeded the standard's requirements.” (Harley, 2002, pp48-49).

At the same conference reference was made to Network Ten's decision in 1999 to increase the number of hours of Australian content it broadcast in prime time. This decision was “driven by market forces” (Andy McIntyre in Harley (ed), 2002, pp. 5)

It may be, however, that cheaper overseas infotainment programs would replace some infotainment type programs if the quota were removed. While these programs may have questionable value towards meeting social and cultural objectives of the policy, they probably have more value in this regard than an overseas replacement is likely to have (PC 2000, p. 406). The content quota for subscription television (10 per cent of expenditure) was voluntary until December 1999, and was not met. Subscription broadcasters must now meet the 10 per cent quota requirement as a condition of their licence (PC 2000 p.394).

Subscription television has the potential to offer niche alternatives for minority preferences prepared to pay for particular channels, thereby increasing the diversity available. For these reasons the Productivity Commission found that Australian content quotas were not appropriate or effective for subscription television, and recommended their removal (PC 2000, p. 412).

As previously discussed, free-to-air television is available to 99 per cent of Australians and is assumed to be much more influential than subscription television, so it is free-to-air television on which content regulation is mainly focused (PC 2000 p.400). As technology changes, and if other forms of media become more influential, then the focus and implementation of Australian content regulation will also need to change.

8. TRANSITION TO DIGITAL TELEVISION AND NEW TECHNOLOGY

Digital television was introduced to Australia in 2001. The way it was introduced provided some inconsistencies with the spirit and application of the local content provisions in the television industry.

Features of the introduction of digital television include:

- Making provision of some high definition television mandatory
- commercial stations were not allowed to multichannel
- limits to amount of video that datacasters can show

The mandating of high definition television (HDTV) poses a number of problems for achieving the local content objective of diversity. HDTV is expensive to produce and requires more expensive and specialised equipment. It is more suited to the production of movies than sport and other cheaper-to-make infotainment type programs. Thus mandating HDTV potentially restricts the diversity of type of program that can be offered (PC 2000, p.418).

Commercial stations have been banned from multichanneling during the transition to digital television, limiting the opportunities for simulcast of programs catering to different preferences. The mandating of HDTV will limit opportunities to multichannel in the future, as high definition television takes up a great deal more spectrum than standard definition television, leaving less spectrum available for

multichannelling. Once again this works against diversity of choice and the ability to cater to more minority viewers.

The restrictions placed on datacasters⁴ effectively prevents them from broadcasting Australian dramas, documentaries and so on. Once again this is inconsistent with the spirit of the local content policy. As the Productivity Commission report put it:

“This will effectively prevent them (datacasters) from broadcasting traditional television programs and films including the categories identified in the BSA as culturally and socially valuable (namely Australian drama, documentaries and children’s programs). It is inconsistent that programs deemed essential (for their social and cultural value) on one form of broadcasting to be prohibited on another form.” (PC 2000, p.393).

Current content regulation is specific to analogue technology. The introduction of digital television and changing technology means programs can be broadcast on platforms that do not fall under the current local content regulation (for example, the Internet). Asynchronous Digital Subscriber Line (ADSL) is being increasingly taken up in Australia. ADSL allows data to be transmitted at up to 1.5 megabits per second – too slow for real time broadcasting. However it does allow downloading of television shows relatively slowly, which can then be watched and shared. ADSL is even now relatively old technology by international standards. More recently ADSL 2 technology – 10 times faster than ADSL – has started to be rolled out in some parts of Australia. ADSL 2+ is twice as fast again.

Thus we’ve started to reach the point where real time Internet TV of reasonable quality is feasible. This may be viewable under a pay-per-view form of financing, or may become free, financed by advertising, as happens with a number of Internet sites. At the same time the costs of making reasonable quality content have fallen dramatically with improvements in the technology of digital recorders. These developments could vastly increase the quantity and variety of TV content available over the Internet.

How will the government mandate local content on this type of platform? It is possible to regulate servers within your own borders, and Australia has passed regulations to ban pornographic and hateful material. But it is much harder to regulate material that comes from other countries, or indeed to prevent Australian servers moving their base overseas. As technology develops to allow more regulation, then technology is also developed to get around it.

Thus there will be a need to re-examine whether the current local content policy is meeting its social and cultural objectives, and also the extent and appropriateness of the economic assistance it provides. In addition, under the new free trade agreement with the United States of America, the restrictions on

⁴ In fact there are no datacasters currently operating. The government was unable to attract interest in datacasting licences and none were sold.

applying local content requirements to future technologies will mean that current local content requirements will be less effective with respect to American television imports.

9. ALTERNATIVES TO THE LOCAL CONTENT SCHEME

A Bureau of Transport and Communications economics paper suggests that either production subsidies or direct provision of programs may be more effective than quotas in ensuring that public good type programs are at least available to be consumed in this age of rapid technological change. Neither of these methods necessarily ensure the programs will actually be consumed (BTCE, 1997).

Any policy replacing the current local content scheme with production subsidies or direct provision need not apply to the whole range of Australian programs currently seen on Australian television. As discussed above, there is evidence that the quotas are not binding in some categories of television production; news, sport, current affairs and infotainment programs are likely to continue to be made in Australia as this is what audiences prefer.

The first release drama category quota was also over met. However as first release drama is an expensive and risky program format, any relaxing of quotas in this category would need to be carefully monitored to gauge whether a fall in the production of drama results, particularly as the overall adult drama quota was only just met.

In addition, a public debate regarding the value of first release drama on television could be helpful. Such a debate could examine whether Australian television drama meets the stated objectives of the current local content scheme, i.e. the promotion of national culture and allowing for a diversity of views to be portrayed. Does Australian television drama contribute more to these objectives than Australian films? If not, then an examination of why film and television drama are supported differently is warranted.

The local content quotas are binding for local documentaries and children's and preschool programs. Thus arguments for production subsidies or direct provision are stronger for these categories, given the nature of market failure discussed above.

10. DISCUSSION AND CONCLUSIONS

The local content policy in the television industry has had questionable success in meeting its objectives. It has been used to justify other forms of protection such as restricting the number of television licences issued, which has resulted in existing licences becoming very valuable and the concentration of media power in the hands of a few. In an industry such as the television industry, this may have consequences for democracy itself. These powerful vested interests have also been able to

influence government policy on the introduction of digital broadcasting in a way that, paradoxically, works against the objectives of diversity and promotion of Australian culture.

In the television industry there are generally accepted public interest arguments for ensuring that there is reasonable quality Australian content being broadcast. This does not necessarily mean that the local content requirements are essential to achieve this. In most categories the quotas are not biting - it seems that the television stations are following sensible commercial decisions to broadcast the Australian content they do in any case. In these categories there is a form of natural protection. Television stations broadcast Australian news, sport and current affairs programs because audiences like them. Thus in these categories there is more local content than is required, and overall more than 55 per cent local content is achieved. However in some categories the local content requirement is only just met, suggesting it does affect programming decisions. These categories include adult and children's drama, and preschool programs.

If there are positive externalities arising from broadcasting of local content then the market may under provide local content. In this case there may be justification for government intervention, particularly in the case of adult and children's drama, and children's and preschool programming in general (i.e. those categories that may be underprovided without the compulsion of the local content requirement). In the case of preschool programming, the free-to-air broadcasters are unable to broadcast advertisements, taking away their source of funding for these shows. In this case the negative externality associated with showing advertisements to very young children may justify government intervention to ensure these programs continue to be (a) shown, and (b) without advertisements. However this still leaves the question as to whether the local content requirement is the best way to promote these objectives. Another option could be direct subsidies of these types of shows.

There remain the questions that arise from the High Court *Blue Sky* case – can any one make Australian content? If so, does this mean that the protection in place mainly results in economic rather than cultural benefits? If broadcasting Australian content is the best commercial decision for the broadcasters, and only Australian production facilities are able to meet that demand, then you would expect them to be viable without any further government assistance.

The definition of what constitutes Australian content and indeed Australian culture can be problematic, and the current system does not necessarily promote the degree of diversity that an internationally sophisticated, broad-minded society may wish for. *Neighbours* may be Australian, but it only represents a part of the Australian culture. Perhaps a further consideration could be whether a stereotypical depiction of the Australian identity and culture may inhibit broadening of Australian minds, resulting in a less international, more nationalistic and xenophobic society.

Thus it can be concluded that the operation of the local content scheme in the television industry is problematic. It has been protective of the local industry, but not necessarily effective in meeting the

stated justifications for that protection, i.e. the promotion of local culture and identity. In some categories of television shows, there may simply be no need for a local content requirement, for the others there is a question mark over whether only shows under local creative control can meet the objectives of promoting local culture. The scheme may not be meeting the objectives of promoting diversity very well either. Shows such as *Neighbours* and *Home and Away* arguably show only a small part of Australian culture. First release drama quotas are only just filled, and the resulting dramas are then often repeated, again restricting diversity on our screens.

In addition, although at present the television industry is quarantined from negotiations under the GATS, in the future this stance may be hard to maintain.

Finally, changing technology is likely to render the local content scheme less relevant. Although the government had sought to quarantine the local content scheme from negotiations for a free trade agreement with the United States of America in the end the scheme has been included; the new agreement will restrict Australia's ability to impose local content restrictions on imports of American television shows made with new technologies.

Thus further work is needed to examine how better to meet the objectives of promoting cultural pride and identity, and taking into account any positive externalities associated with local programming. Options could include production subsidies or direct provision of culturally significant and diverse shows. Issues to be examined would include the difficulty of "picking winners", as simply ensuring these programs are available to be watched does not necessarily mean that they will hit a chord with viewers. In addition the current policies of mandating high definition digital television and the restricting of multichannelling need to be reviewed, as both of these policies work against objectives of diversity.

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