21 March 2016

Fairfax Media Limited

Inquiry into the Broadcasting Legislation Amendment (Media Reform) Bill 2016

Submission to the Senate Environment and Communications Legislation Committee

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Introduction

Fairfax Media is pleased to accept the invitation to make a submission to the Senate Environment and Communications Legislation Committee's inquiry into the *Broadcasting Legislation Amendment (Media Regulation) Bill 2016*.

Fairfax Media has a long standing, consistent and public position regarding the proposed media law reforms.

Fairfax Media strongly supports the intention of the Minister for Communications, Senator Mitch Fifield, to repeal outdated, irrelevant and increasingly restrictive sections of the *Australian Broadcasting Services Act 1992* (BSA), namely the so-called two-out-of-three rule (2/3 rule) and the 75 per cent "reach rule".

These sections of the BSA in particular are out of date in a modern global media environment.

Technology and consumer demand have revolutionised the consumption and distribution of all forms of information and entertainment well beyond the present legislative regulation as to make it irrelevant and restrictive.

The BSA does not even recognise the internet let alone the proliferation of internet based delivery systems such as SVOD, TVOD, IPTV or audio subscription services nor the impact of global search engines like Google or social media sites such as Facebook and Twitter. Overseas online publishers such as *The Guardian*, *Daily Mail* and *The Huffington Post* are creating limited local Australian content and are not subject to the BSA regulations, operating purely as online businesses.

The restrictive nature of the current legislation impacts adversely not only on the Australian media industry but importantly on consumer choice, affordability and diversity.

Despite some agenda-driven claims to the contrary, Fairfax Media believes the repeal of the current legislation will increase the diversity of information sources. Existing media operations will be afforded the opportunity to expand services across a wide range of media platforms and consumer choice will be increased.

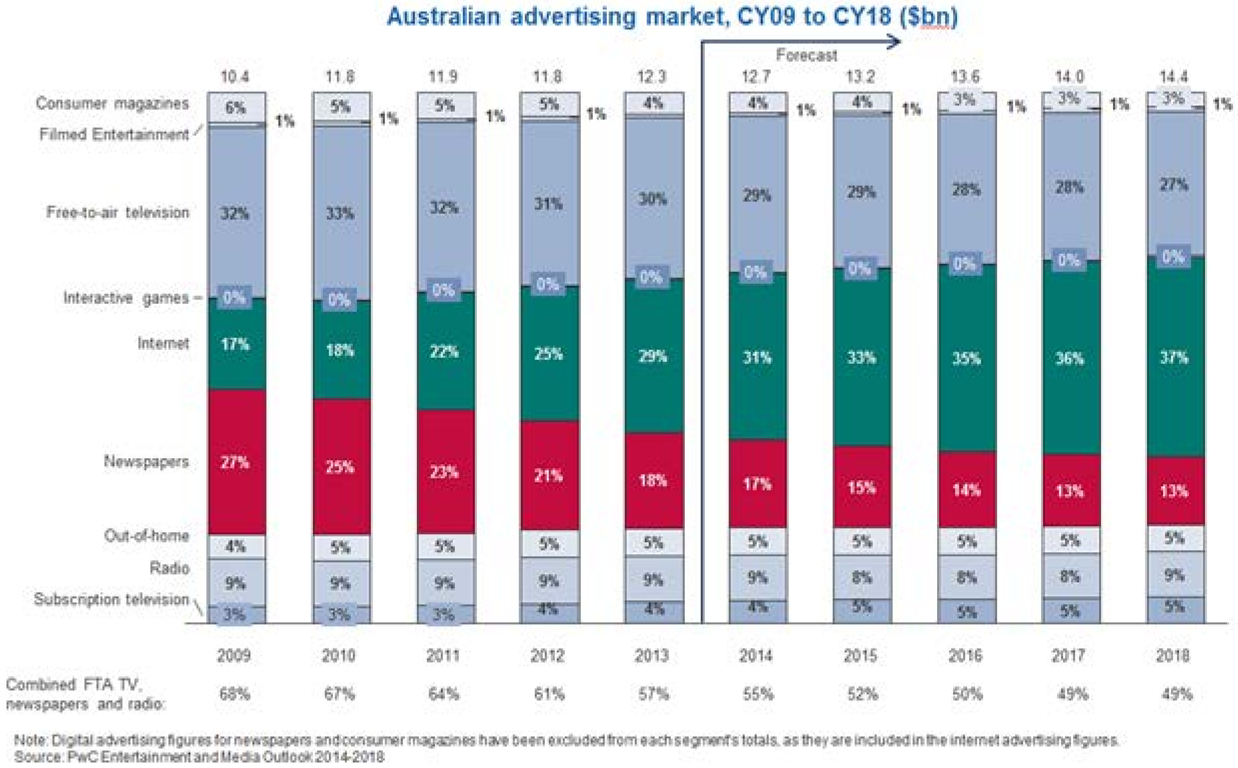
Consumer Benefits from Removing 2/3 Rule

The provision of media content is expensive, particularly for "at scale" journalism providers with a national focus and footprint – spanning investigative journalism, analysis and news gathering and popular video content such as premium live sport and current global affairs. At the same time, the ability of traditional media companies to invest in creating this content is being increasingly eroded.

Both of these trends are detrimental to the media consumer in the longer term and both are being driven by inter-related factors:

1. Financial pressures faced by traditional media

- Traditional media formats – particularly newspapers and free-to-air television (FTA TV) – are losing advertising revenue share to internet-based media platforms, as shown in the chart below:



- Newspapers have had their traditional sources of revenue decline at rapid rates since the mid-2000s, with some revenue streams such as print classifieds virtually disappearing. This will inevitably lead to a reduction in the ability of publishers to invest in quality content, particularly in regional areas where digital economies of scale are very low.

- Whilst FTA TV has been less impacted by digital disruption to date, this is not expected to remain the case in the long term given the rapid growth in viewing substitutes such as SVOD and online video.

- The chart above demonstrates the inequity of continuing to apply ownership regulation to the three traditional formats – newspapers, TV and radio – when the media market has drastically changed and their combined share continues to fall. More than one third of advertising revenue has moved to the internet and this share is growing quickly.

- Importantly, the internet platforms that are garnering the bulk of the advertising spend are global platform businesses – Google and Facebook. Neither Google nor Facebook invest in the creation of local content, particularly news journalism content.

- Therefore the total advertising dollars that are being spent over time on local media that invest in local Australian content is proportionately diminishing.

2. **Competitive dynamics in the markets for video content**
   - FTA TV broadcasters are experiencing viewer fragmentation due to the growth of internet-based substitutes such as streaming, and this is seeing their traditional advertising revenue base start to erode.
   - In this context, premium live sport is seen as crucial in maintaining a sound economic footing for the networks, given its value to advertisers. This value is underpinned by the popularity of sport in Australia as well as its immediacy, which makes it less vulnerable to disruption from on-demand services.
   - The financial pressures facing broadcasters have driven up the price of sports rights immensely over recent years, as evidenced by recent NRL and AFL deals.

3. **A shift in the range of companies seeking to acquire media content**
   - In the period before broadband internet became widely available, the range of companies seeking to acquire or produce media content was limited.
     - In the case of video, it was limited to the FTA TV networks and Pay TV. In the case of news, it was limited to newspapers and to a lesser extent radio and FTA TV.
   - For video, this shift is driving up the cost of content, with the recent acquisition of the English Premier League rights by Optus (a new entrant to the broadcasting market) an example of this trend. The Optus bid was at a significantly higher price than that paid by the previous rights holder, Foxtel.
   - For news media, the internet has lowered barriers to entry for new competitors, as evidenced by the growth of local versions of international news.
     - These new news media outlets have the ability to take revenue share from traditional media without the same heavy investment in local journalism, many relying instead on using global networks and high volume "clickbait".
   - Combined with loss of print revenues and the wider fragmentation of audiences across non-news digital sites, this has drastically lowered the economic return on producing local news content. In the long run this will inevitably lead to lower investment in content creation.

Taken together, these factors suggest that the ability of traditional media companies to continue to acquire or create increasingly expensive local content will be diminished over time. This is clearly a suboptimal outcome for media consumers, who rely on the broad reach and ubiquity of traditional media platforms to access content.

The removal of the 2/3 rule would provide media owners the opportunity to explore amortising their investment in local content across multiple channels thereby improving the economics of such an investment. From a consumer perspective, this would lead to more high quality content being made available than would otherwise be possible.

As outlined above, these benefits would not come at the expense of media diversity given how drastically the media market has changed since the 2/3 rule was enacted.

Conclusion

Fairfax Media is strongly supportive of repealing outdated, irrelevant and increasingly restrictive sections of the BSA, namely the 2/3 rule and the 75 per cent "reach rule".

The current legislation - constructed in 1987, years before the internet and cable TV - does not meet the needs of the industry, community or Australian consumers. The legislation in its present form impacts adversely on Australian media companies and weakens the local industry's competitive position.

Global companies are operating increasingly in Australia without similar restriction.

The rules around diversity of voice are irrelevant because consumers can use the internet to access any voice on any subject they want, including new offerings from global players.

Fairfax Media is supportive of operating in an unregulated environment in respect of the outdated laws because it would provide an even playing field and optionality in terms of the strategy the company chooses to pursue.

This position was endorsed by the remarks of the Minister for Communications, Senator Mitch Fifield, at the National Press Club in Canberra on 16 March 2016. The Minister said that reform was necessary to afford Australian domestic media organisations the opportunity to build scale and compete against global media giants that operate without the constraints of the regulation that is imposed on local industry; and also do not invest in the creation of local journalism content for Australian audiences.

The current laws are also restricting the investment opportunities for Australian media businesses and, most detrimentally for Australian consumers, leading to active disinvestment in the sector.

Disinvestment has very real consequences for quality journalism of the standard that Fairfax Media provides. The scale of journalism and standard of reporting that Australian consumers presently enjoy from Fairfax Media requires an investment environment that encourages it, not discourages it.
