

From the desk of Chris Berg, Senior Fellow

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Committee Secretary  
Senate Standing Committees on Environment and Communications  
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Canberra ACT 2600

To whom it may concern,

The *Broadcasting Legislation Amendment (Media Reform) Bill 2016* is welcome not just because it clears up two of the most archaic regulatory controls on the media, but also because it goes a long way to abandoning one of the core beliefs that has characterised media regulation in Australia: the idea that the government should seek to control who owns media assets.

The Institute of Public Affairs has long argued that the media is over-regulated. This regulation is not suited to a digital age, and that much of this media regulation – particularly that involving spectrum licensing and ownership controls – can constitute a threat to freedom of speech. The ‘75 per cent audience reach rule’ and the ‘two out of three cross-media control rule’ offer no benefits in a world where media technologies are converging and where media businesses see their role as providing multi-platform content across the nation.

However, much deeper regulatory change is needed. Parliament has yet to come to terms with the far-reaching consequences of technological change in the media sector. The original idea behind the Gillard government’s Convergence Review was the right one: The necessary reform would approach the regulation of communications technologies on a functional basis, rather than on the grounds of their technological legacy. Such a change would be akin to the move after the Wallis Financial System Inquiry to treat financial services on a functional rather than an institutional basis – known in the financial services field as competitive neutrality.

One such approach would be the “network layers” model, which the Australian Communications and Media Authority supported in its 2011 paper *Broken Concepts*. I argued at the time that adopting the network layers model would necessarily imply a retreat from government regulation of the media:

In a regulatory environment governed by such a model, the communications regulator would probably have nothing to do. Adopting a layers model would bring radical deregulation.

After all, if a regulator treated internet and free to air exactly the same, how would they enforce Australian content requirements on both? ACMA would be unable to insist that a certain percentage of all websites were Australian even if they wanted to. Same for the broadcasting standards and codes of practice - how could a regulator insist on "balance" on the internet?

That's content. If the Government wanted to regulate infrastructure consistently, would it insist every owner open its network to competitors - as Telstra's copper lines were treated? Or would

it leave infrastructure to the market - like mobile phone networks? The economic logic of infrastructure investment suggests less regulation would be imposed, not more.<sup>1</sup>

One way to describe the failure of the Convergence Review was its attempt to both impose competitive neutrality and maintain the existing level of regulatory control – such as Australian content requirements – on the media.

In this context, the increased local content requirements being imposed as part of the *Broadcasting Legislation Amendment (Media Reform) Bill 2016* are a symptom of the deeper regulatory challenge facing any government that wishes to modernise media regulation. The fact that there are stakeholders that benefit from the current regime and may lose those benefits if the regime changes does not demonstrate that the current regime is in the public interest. Local content has never been cheaper to produce and it is possible that local content requirements are crowding out alternative entrepreneurs in this space.

After all, the demand for local content is not infinite. The government has not demonstrated that there is a clear market failure in local content provision that would establish the case for the current regime, let alone an increased regulatory burden after a given ownership change.

I would be happy to discuss these issues further as the committee sees fit.

Kind regards

Chris Berg  
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Institute of Public Affairs

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<sup>1</sup> Chris Berg 'Communications Regulation Is A Dog's Breakfast', *ABC The Drum*, 6 September 2011