

## Submission to Senate Committee on Broadcasting Legislation Amendment 2016

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### Executive Summary

1. I support the abolition of the 75% audience reach rule for television networks. This is not simply out-dated; it never was an effective policy for promoting media diversity.
2. With more reservations, I support the abolition of the 2 out of 3 cross-media rule in some regional areas as long as the four/five rule remains in metropolitan areas.
3. I support the need for strengthening of local programming requirements in regional areas especially if media ownership becomes more concentrated. (I presume this refers to both radio and television.)

These three measures are all defensible. By themselves they will do nothing to improve media diversity or promote a richer Australian media environment in the digital age. They may marginally contribute to even greater concentration of media ownership. They should be supplemented by other policy changes. I suggest four:

1. Measures to allow the development of two more commercial TV networks.
2. The creation of a news agency to supply news about local government to any media who want it.
3. The need to support and ensure Australian content will be just as strong in coming decades.
4. Further strengthening of local production and service provisions in both TV and radio.

### Three Common Fallacies

It is a commonplace that much of the regulation drawn up during the analog era is now outdated in a digital media environment. However the proposals are then often framed in a misleading way.

1. **Regulation is futile.** Many advocates sound somewhat like the creatures from Star Trek who claimed that resistance was futile. They argue that in the age of the internet, of borderless media, that regulation is powerless. It can do no good, and will only do harm to those companies or industries where it is attempted. It is notable that representatives of News Corp were putting this view in the early 1990s, saying that the advent of satellite TV meant that all national regulations were now outdated. Rather regulation is still necessary and can be effective and a force for guaranteeing the better working of market forces and to advance audience interests where they may not align with producers'.

2. **Monopoly does not matter.** Sometimes the age of the internet is spoken of almost mystically, as if in the digital age, every demand will be supplied, and at negligible cost. So the internet will make impossible predatory pricing or unfair anti-competitive practices. This argument is plausible because until now, the start-up costs of new media, or the limited terrestrial spectrum of the analog era, have deterred more open competition. In the digital age, start-up costs are much reduced. However this does not dissolve issues of monopoly. There are emerging key points at which gatekeepers can engage in rent seeking, censorship and unfair practices. In addition, there are still very unequal audiences and access to the programming that commands them, such as major sporting events.
3. **The future has already happened.** A third common fallacy is to paint a picture of some future world, then assume that it makes the present irrelevant or superseded. As of now, the mainstream media are still the principal means by which people are informed about the world and entertained. Changes in policy should not precede changes in consumption, as if the transition period can be assumed away. Free to air television is still the single most important medium in Australia, and likely to remain so for the next decade at least. In an era of constant change, there will need to be periodic changes of policy, but at any one moment that policy should be oriented firstly to the situation that currently exists, and not one that might exist in a couple of decades.

In sum, the idea that the scale and pace of change makes all policy consideration irrelevant is wrong, and often put forward in a self-serving way. Media policy continues to be both difficult and important.

### **Government Policies that have Abetted Media Concentration**

Australian governments typically pay lip service to the desirability of media diversity and pluralism. At crucial moments, however, governments of both colours have taken steps that make diversity less likely. Three are outlined here.

1. The Hawke Government's 1986-7 decision to allow the Murdoch press to expand so that it controlled daily newspapers with around 60 per cent of national circulation. While the merits of introducing limits on cross-media ownership can be argued, the upshot was to increase concentration within both the press and commercial television, and combined with the recession soon after landed all networks in a sea of debt. It is a moot point what impact the debt had on programming ambitions and regulatory stringency. What is much clearer however is the damaging effect giving the Murdoch press such a dominant position has had on Australian public debate.
2. The development of pay television. The chaotic introduction of pay TV by the Keating Government became a laughing stock. But more importantly its and the Howard Government's actions all but guaranteed that pay TV in Australia would be a monopoly.

The Keating Government made some crucial interventions which favoured the large players, particularly the Packer corporation. Before the 1993 election, in direct contradiction to its stated policy, it stopped the projected microwave services. A small but symbolic action – taken at the

initiative of Graham Richardson – was to prevent the new pay TV channels from raising any money from advertising for the first two years to give the TV networks time to adjust. This outrageous provision had no justification. It was saying that no minnow would be allowed to inconvenience the carp.

The Howard Government suffered no political embarrassments as pay TV was developed, but it was equally an abnegation of policy making. It left the development of infrastructure to the telephone companies, so that after a few years around 20 per cent of homes had access to cable, but around 90 per cent of these had access to two cables.

Pay television policy under both governments made several crucial errors. Of most last consequence was tying competition in services to competition in infrastructure. Now in some countries, such as the US and UK, there is competition between providers via cable and via satellite. That is not the case in Australia, and it is extremely unlikely that in the near future there could be competition between delivery platforms in Australia. The other, almost equally important error was allowing exclusivity agreements which inhibited competition and enhanced monopoly. The final aspect is that pay TV allows a conflict of interest where a platform also owns particular channels. Sometimes in the United States, there have been charges that a platform owner has favoured their own channel over competitors. In the early days of Fox News, Rupert Murdoch suffered unfairly from competitors denying the new channel access for reasons of favouritism rather than honest market transactions. Murdoch's problem was resolved, but the systemic issue was not addressed.

3. The introduction of digital terrestrial television. Australia was late moving television from the analog to digital transmission. Then it initially mandated that spectrum was to be used for improved picture quality (HDTV) rather than increased services, which meant that combined with the expense, this was not an attractive prospect for consumers. The lasting consequence was the decision to ban any new entrants (although for a time there was talk of allowing 'datacasting', a concept with no clarity about it), and to use the extra spectrum to allow existing networks to have two more outlets.

This was possibly the most anti-competitive decision in Australian media policy history. Whereas the normal market rhetoric is to praise competition as bringing better services and growing the market overall, in television, the argument, especially by incumbents has always been that increased competition would reduce quality. Whether or not this was ever true, the idea that nine channels could be controlled by three companies for viewer benefit hardly makes sense by any criterion. The transition from analog to digital terrestrial television transmission was a missed opportunity to introduce more competition into the free to air television market.

### **Utilizing the Full Potential of the Digital Spectrum**

The proposal here is that two more commercial free to air networks be formed.

Either little used frequencies could be used, or existing ones acquired. At the moment it would seem that at the least the third channel of each of the networks is by any definition under-utilised,

and that this applies also to SBS. These could be compulsorily bought by the government, presumably at their current valuation.

The necessary spectrum should be auctioned, with each applicant fully cognizant of the obligations it would bring in terms of Australian content, news etc.

None of the traditional barriers to owning a television licence should apply. They should be open to newspaper proprietors and to foreign corporations such as Twenty First Century Fox to apply. Indeed it would be better for invigorating the sector if they were strong corporations who would compete vigorously.

Strongly competing networks would draw more audiences, and grow the advertising pie compared with allowing the current players to gradually run down the sector. It would have good consequences for televising Australian sport, for building more Australian drama, and increasing journalistic scrutiny.

Of course the existing networks will protest against any increased competition, and say that they are already under financial pressure. On the other hand, they are now allowed to acquire fully network ownership; it is likely that licence fees will be eliminated, and if one of their channels is bought, then that will be an immediate cash injection.

### **Creative Destruction and Market Failure**

The Austrian economist Joseph Schumpeter thought the central feature of capitalism was its creative destruction, how its dynamic forces destroyed existing arrangements in order - through new technologies or techniques or marketing opportunities - to create improvements for consumers and better profits for companies.

This dynamism is often the case, including into the digital media era. A case in point is the music industry. According to one source, the global revenues in the recorded music industry declined from \$US20 billion in 2005 to \$US15 billion in 2015. Revenue from physical sales declined from 17.9 billion to 5.8 billion, while digital revenue rose from 1.1 to 6.7.

Nevertheless for the consumer, access to music is cheaper and more convenient. For the producers and artists revenue has probably not been greatly reduced. The music industry, overall, promises to be as vibrant as ever.

Most of the loss of revenue was associated with the physical production and distribution and retail sales of discs. Although this is a problem for the people so affected, overall it is a movement towards greater efficiency.

There are severe problems with the ongoing loss of revenue from piracy, and the ongoing issues with streaming services such as Spotify, but assuming these can be minimized, music can be seen as an archetypal example of creative destruction.

It is not clear that either journalism or television production, especially drama production, is going to be as successful. There is a very real prospect in areas such as these of market failure, that a product that the public needs and values will not be viable in the new environment.

The issue confronting the news industry, with its shrinking revenues and loss of journalistic jobs, is how will news production be supported in the digital era? Similarly with the fragmented audiences and cheap supply from elsewhere of TV programs, how will an Australian television industry survive? It is not a seamless universe. In the future, economies of scale may tell against Australian media content, and services responsive to local needs, especially in regional areas.

### **Supporting a Local Government News Agency**

There are general questions about the future viability of journalism, and the indispensable democratic role it plays. But there are also more specific questions. For example, it may be that a viable journalistic industry can be supported in some areas – such as federal politics, sport and business – but not in others. One area where there is arguably already and in future will be even greater market failure is in the reporting of local government.

Although newspapers are failing in the marketplace, it would not be an appropriate use of public funds to subsidise particular titles. This would inevitably invite the perception and perhaps the reality of political favouritism. It would either be an act of protecting current players against new competitors, or spending money on projects of unknown public value.

Rather attempts to publicly support democratically desirable journalism must be done in a commercially and politically impartial manner.

Local government is a crucial part of our democratic system. I am advocating that the government create and support a publicly funded local government news agency.

One or two reporters would be assigned to every local government area in the country. They would report institutional proceedings; council press releases; plus local debates and the viewpoints of community groups. They could also compile and publicise comparative data on different local governments and debates around the country.

The material would be either free to all who wanted it, or available at a very modest price. News services and bloggers could reproduce its content as they wanted.

The point would be not to do investigative reporting. Rather the aim would be to make routine information available and to promote dialogue. It would be to expand and strengthen the public record.

(I should acknowledge that my thoughts on this topic were first prompted by a submission made to the Finkelstein Inquiry by Stephen Mayne, journalist, shareholder activist and Melbourne City Councillor.)

### **Supporting Australian Content**

The long lead-up to ensuring substantial Australian content on TV, and especially Australian drama, was a matter of policy intervention to address an area of market failure. There was always strong public demand for Australian content, but it was always cheaper and safer for TV networks to have a preponderance of international material. This was much cheaper, and nearly always safer because they could purchase programs that were already a proven success in America.

In the new era with fragmented audiences, and with the direct use of whole channels that originate internationally, the need to protect Australian content is still strong.

For most normal channels with general programming, the requirements that exist should continue.

For special channels, imported from overseas, it would be unreasonable to expect the injection of Australian content. Based on their cost and audience size, though, the owners of those channels should contribute a levy to support the production of Australian material elsewhere.

### **Regulating for, and supporting, local production and services in regional areas.**

It should be remembered that a strong force for the formation of the ABC in the early 1930s was the belief of Country Party MPs that normal market forces would not cater adequately for rural areas. The challenges of that long past, relatively primitive technological era are, perhaps ironically, pertinent again in an era where technology now allows an abundance of services.

As we move towards national and global generation of services, there is still a need to ensure local windows of programming.

In theory, what have been called hyper-local services are now possible, but in practice these are often precarious, unfunded projects of inconsistent standards and reliability.

The regulation should ensure in television and radio that national players have to support local windows of programming.

### **Concluding Statement**

The changes promoted by the government at the moment are very modest, and as stated I support them. They are however the harbinger of much larger debates that will be held in coming years. I have tried to make the case here for the ongoing importance of policy and regulation

This is not an argument for delaying or ignoring technological change. Resistance to the march of new technologies is often seen as ‘luddite’ or the case of lamp lighters being replaced by electric street lights, and is popularly associated with trade unions trying to protect workers’ jobs. In Australian media history, though, it has been companies rather than trade unions which have been the resisters of change. It began in the 1930s with Keith Murdoch successfully lobbying the Lyons Government not to allow the ABC to have an independent news service because it

would damage the sales of afternoon newspapers. It reached its zenith with Kerry Packer successfully delaying the introduction of pay television and digital television for a long time simply to protect his profits with the Nine network.

Now several of the key companies want complete deregulation. But just as in their earlier successful attempts to limit competition, it would be a mistake to equate the public interest with their corporate interests. It is not necessarily best for consumers or for market forces or a vibrant sector.

The coming technological changes do not make all the policy assumptions we have had over decades obsolete. The need for a strong public broadcaster is as important as ever. All public opinion polls show the ABC is the most respected media organization in the country. It will have even more importance as the media environment becomes ever more fragmented, and their offerings even more opinionated.

The sector will continue to need a strong and independent regulator. There is a need for at least some black letter regulation because of a widespread willingness to ignore the rules or to exploit ambiguities and loopholes. For example it would be better to specify allowable share holdings rather than slipperier concepts like control. Even in the last week, John Singleton has denounced ACMA. My understanding is that after the merger, the company had illegally three AM radio stations in Sydney. Given time to dispose of the third station, it did not do so. Now it is indignant the law will be enforced. Such arrogance is not unknown among Australian media proprietors.

In all areas, there is the need for simplified, direct complaints systems. ACMA should be the first port of call for audiences (who easily become discouraged) simply as a central register to record the types and volumes of criticisms. Most of these will not require further follow-up, but occasionally there will need to be independent action.

Free to air TV will continue to be the central medium consumed. It is important to keep, for example, the anti-siphoning policies in sport, so that Australians can continue to enjoy for free (or accompanied by advertising breaks) the sports they want.

Many challenges await, but there is scope for fruitful public interventions to enrich what is available to Australian audiences.

## Short Biography

Rodney Tiffen is Emeritus Professor in Government and International Relations at the University of Sydney. His most recent book is *Rupert Murdoch. A Reassessment* (2014). His earlier books include *How Australia Compares* (two editions, co-authored with Ross Gittins); *Diplomatic Deceits. Government, Media and East Timor*; *Scandals. Media, Politics and Corruption in Contemporary Australia*; and *News and Power*. He has authored numerous articles on mass media and Australian politics, and is editor of *Mayer on the Media: Selected Essays on Australian Media*, and co-editor (with Murray Goot) of *Australia's Gulf War*. He was Visiting Professor in Australian Studies at the University of Tokyo (1984-86); acted as an observer of South Africa's media during that country's first democratic election (1994); conducted three reviews of the ABC's international broadcaster Radio Australia (1989, 1995, 1997), and worked with the independent Finkelstein inquiry into the media (2011-12).

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