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SUBMISSION ON DISCUSSION PAPER, *MEETING THE DIGITAL CHALLENGE*

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1. Introduction

1.1 The Australian Council on Children and the Media (trading as Young Media Australia, or YMA) welcomes this opportunity to put our views to the government on the question of broadcasting regulation.

1.2 YMA is a not-for-profit national organisation formed in 1957.

1.3 **Mission Statement:** Young Media Australia exists to promote a quality media environment for Australian children, and to raise community awareness of the needs of children and young people in relation to print, electronic and screen based media.

1.4 **Who we are:** YMA is Australia's only national advocacy organisation representing the interests of children and young people in relation to print, electronic and screen based media.

1.5 **What we do:** YMA collects and disseminates information, conducts research, and provides advice, education and training on the impact of print, electronic and screen based media on children and young people.

1.6 **How we do it:** YMA represents community concerns about the impact of print, electronic and screen based media on children and young people to legislators, regulators and the media.

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1.7 YMA bases this submission on consultation with its national membership, and on its Guidelines on Children's Media which include support for the UN Convention on the Rights of the Child, with particular reference to Article 13, and Article 17. The latter states in part that 'States parties shall ... encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his

or her well being'.

- 1.8 Responsibility for preparing this submission has been taken primarily by Associate Professor Elizabeth Handsley, Vice-President, and Ms Kate McFarlane, Youth Representative on the YMA Executive Committee.

2. The 'digital challenge' and ownership deregulation

- 2.1 YMA accepts that it is important for Australia to plan and take active steps to facilitate a full switch-over to digital television. We welcome the government's proposals aimed at addressing the difficulties that some groups might encounter in gaining access to digital technology. Similarly the government has shown its awareness of the special issues facing rural and regional markets. The proposal of these measures shows that the government is sensitive to the social, economic and informational vulnerabilities that can result from differentials in power and resources.
- 2.2 In YMA's view one of the most vulnerable sub-groups in the broadcasting market is children. The implications of this vulnerability are discussed in the next section of this submission.
- 2.3 In this section we wish to make some more general comments about the Discussion Paper and the process. In our view the Discussion Paper does not provide a sufficiently clear explanation of the connection between the Digital Access Plan and the relaxation of the ownership and control rules. Surely it cannot be denied that it would be *possible* to achieve the switchover under the current ownership and control regime; if there are additional benefits to deregulated ownership and control, for example that it might enable better or more economical use of the platforms available, these should have been spelled out.
- 2.4 This is particularly the case if, as the Minister has stated, consumers' interests are at the forefront.¹ As consumer representatives we are astute enough to know that increased profitability for industry does not necessarily 'trickle down' to better services for consumers.
- 2.5 The Discussion Paper is based on a premise that technological advances can make a regulatory structure outdated or irrelevant, or that digital technologies cannot work with a regulatory system designed for the analogue world. In order to make sense of such claims there is a need for a fundamental (re-)consideration of the rationale for regulation, yet this is something the Paper lacks. If the rationale for regulation is the possible impact of the media on people and society, and the risk that media power will be abused, surely this does not really change as technology changes. The profitability of different platforms might change, but this would require a review of the regulatory structure only if the rationale for media regulation were supporting the profitability of media organisations.
- 2.6 We note that s 3 of the *Broadcasting Services Act 1992* (Cth) provides no such object for the current regulatory regime; rather, references to the broadcasting industry are

¹ Senator the Hon Helen Coonan, *Address to the ANB AMRO Conference*, Sydney, 6 April 2006, 1.

limited to expressions of a desire that it be 'efficient, competitive and responsive to audience needs'. It need hardly be pointed out that responding to audience needs will not always spell greater profitability for the industry. We suggest that if the Discussion Paper had started from the premise underlying our regulatory regime – that broadcast licensees are entitled to protection and oligopoly rents only so long as they fulfill certain obligations to the Australian public – the proposals might have been quite different.

3. The special needs of children

3.1 Children's needs are special in two senses. First, children are a small and relatively unprofitable section of the market. The natural tendency of market forces would be to overlook the needs and interests of children entirely. Hence the Australian regulatory system has for some time provided special support and protections for children's interests in the form of, among other things, the content quotas in the Children's Television Standards. We note that these Standards are under review at the present time. We note also that the profitability of the child market is being affected by the growing spending power of (at least older) children, and by industry's steps to enhance its capacity to deliver marketing messages to children and in particular to harness 'pester power'.

3.2 Second, children have particular psychological attributes. They are impressionable, and they are literal-minded. Both traits are illustrated in examples from a recent humorous book about misconceptions people report having had when they were children:

My brother told me that the pieces of peel in orange marmalade were the chopped-up remains of Fred and Freda, my dead goldfish. Twenty years later, I still won't eat marmalade.²

When I was three, my parents told me that carrots could help you see in the dark. That night, they found me trying to use a carrot as a flashlight.³

I thought that being sentenced to death meant that you had to write the same sentence over and over again until you die.⁴

Whenever TV broadcasters had problems, a standard message would appear saying, 'Technical difficulties, please stand by.' I thought that meant I had to go and stand by the TV.⁵

3.3 These attributes make children especially vulnerable when it comes to commercial messages, as up to a certain age they are unable to distinguish between programmes and advertisements, and/or to discern the persuasive intent of advertising (in much the same way as the person in the first quotation above failed to discern her brother's intent to tease and manipulate her). The child who follows the impeccable logic displayed above in relation to 'sentencing' and 'standing by' the television is very likely to take

² Mat Connolly, *When I was a kid I used to believe ... butter comes from butterflies* (Random House Australia: 2004), 160.

³ *Ibid*, 188.

⁴ *Ibid*, 76.

⁵ *Ibid*, 128.

considerably more meaning from a commercial message than would a reasonably skeptical adult.

- 3.4 Putting it another way: in the context of foreign ownership, the Discussion Paper makes quite a lot of the fact that media will continue to be considered a 'sensitive sector' from the point of view of foreign investment. If the sector is sensitive from this point of view, it must be doubly or triply sensitive from the point of view of providing children with appropriate entertainment and services.
- 3.5 Although the package under discussion does not touch directly on advertising content, these characteristics will become relevant in this submission when we come to consider disclosure of cross-ownership arrangements.

4. A consumer perspective

- 4.1 In this submission YMA will be addressing the issue of how well consumers will fare under the government's proposed scheme for media ownership, and in particular how the vulnerable sub-group of children will fare. In making our observations we are mindful of the substantial imbalance between the number of commercial interests who will be expressing views on the package and the number of consumer-oriented interests. We expect to be one of a very small group of submitters taking this perspective. However we do represent Australian parents, educators and caregivers in addition to children and we could point out that our experience indicates a very broad interest in media ownership issues in Australian people from a range of walks of life. It is precisely because of the broad interest that it is difficult to imagine a large number of submissions being prepared from this point of view. Consumers of television and other media are not a special interest, they are practically the whole population – therefore they are inherently unlikely to be organised into the kinds of structures that would see media reform as a matter on which they would need to comment. The government should not be deceived: a small number of submissions does not necessarily mean a low level of interest in the community, especially on something as pervasive in the lives of nearly all Australian people as broadcast television.
- 4.2 Naturally we should have liked to think that the government would put Australian consumers first, and the Minister has given at least one clear statement that that is what she has done.⁶ However we find this difficult to reconcile with the Minister's later reference to 'the need to balance the legitimate interests of the industry with the emerging needs of consumers'.⁷ Certainly there is little overt reference in the discussion paper to the impact of the proposed changes on consumers compared to the amount of discussion of business interests. We therefore **submit** that there should be closer consideration of the interests of consumers before these changes are implemented.
- 4.3 Such consideration should begin with a close look at exactly what consumers' interests are. At present these interests seem to be conceived in a way that limits them to a range of choice. This leaves out the quality, consistency, predictability, reliability of

⁶ Senator the Hon Helen Coonan, *Address to the ANB AMRO Conference*, Sydney, 6 April 2006, 1.

⁷ *Ibid*, 2.

information, honesty, truthfulness that we **submit** should also be considered. There is little use, from a consumer point of view, in having a choice of content sources, if all the content is, for example, misleading or deceptive. For these reasons it would be useful to consider content quotas and restrictions hand-in-hand with changes to technological platforms and ownership patterns.

- 4.4 The consideration of consumers' interests should recognise also that consumers are not a monolithic group. As the government has already recognised in relation to some limited aspects of the matters under discussion, a variety of factors can affect the needs of sub-groups of consumers. Areas where this has been recognised are in relation to the proposal for assisting the disadvantaged and the elderly to convert to digital receivers, and in relation to the special needs of rural and regional consumers. YMA **submits** that a similar logic can be applied to socio-economic status, education level and especially age (eg being under 8) which might have a dramatic impact on one's access to the non-traditional platforms that are being presented as holding so much promise. YMA **submits** that there is a need to build in explicit safeguards to ensure that such disenfranchised viewers are not done a disservice.
- 4.5 Such safeguards might take a range of forms; for example they might be content restrictions or quotas, or the provision of support for consumer representation. YMA has taken the view for some time that there should be a one-stop shop for all consumer complaints about the media. A kind of **media ombudsman** could fulfill such a function, as well as engaging in some of its own monitoring to ensure the highest standard of effectiveness in regulating broadcasting. The implementation of these proposals provides the ideal opportunity to make such an idea a reality. Additionally, or alternatively, the government should provide **funding to groups in the community sector** to represent the interests of consumers, much as it has done for some time in the field of telecommunications.
- 4.6 YMA believes that these proposals would be preferable to continuing to rely on ACMA to protect consumer interests. Without wishing to cast aspersions on the current regulator, there is a natural tendency for government regulators to build up a relationship with industry, and a corresponding need for special care to be taken to achieve a balance in the representation of other interests, especially those of consumers. Active measures such as those mentioned above can allow everyone concerned to feel confident that consumers' interests are being represented effectively.

5. **Disclosure requirements and cross-promotion**

- 5.1 We stated earlier that the Discussion Paper makes little reference to content. One small, but in our view significant, reference to content is in relation to the proposed disclosure requirement when an outlet reports on the activities of another outlet owned or controlled by the same person. Generally YMA welcomes this recognition of the sensitivities associated with increasing concentration of media ownership. However we would like to see the details of the disclosure requirement before making any further comment on it. In the meantime we have two observations to make.
- 5.2 **A conspiracy of silence?**
- 5.2.1 The first observation is a general one, and not specifically related to children – though the interest might be heightened when children are concerned. The point is that it is all

very well to require disclosure when a television station reports on the activities of its sister newspaper, but it is at least as likely that the television station will not report on the activities of its sister newspaper *at all*, in circumstances that might reflect badly on the newspaper. Possibly even more worryingly, newspapers might stop reporting on issues relating to their sister television stations, or indeed to television and its regulation more broadly.

5.2.2 There are already some issues that find it difficult to get an airing on television – for example the debate on tightening regulation of food advertising to children is rarely reported in commercial television news or current affairs. Yet the nation is kept somewhat informed through the printed media. It would not be unreasonable to expect this to change once the print media owners also have television stations.

5.2.3 Nor is it easy to see what could be done about this. YMA would not wish to suggest that the government actively require reporting on this or that issue, by any kind of media outlet. Yet we feel sure the government will agree that this is a very real problem and a very real danger accompanying the proposed deregulation of ownership and control. We urge the government to consider what steps might be possible to limit the impact of deregulation on the comprehensiveness of information made available to the Australian public through commercial media.

5.3 Children and cross-promotion

5.3.1 Reference was made earlier to children's credulity in relation to commercial messages. As the government is no doubt aware, this credulity is recognised and responded to in regulatory systems for television advertising around the world. YMA **submits** that recognition and response are required also in relation to cross-promotions between different outlets owned by or controlled by the same person.

5.3.2 We were alerted to the potential difficulties here when one of the commercial broadcasters started producing a children's current affairs programme last year. While the broadcaster refrained from using commercial advertising during the programme, the episodes we saw contained numerous subtle and not-so-subtle means of self-promotion – for example the use of the signature music from that broadcaster's news programme, and casually dropping in the name of another programme on the same station that is known to appeal to a young audience. The programme also had a tie-in with a newspaper that provided further information and discussion questions to support the programme. Naturally, under the current media regime, the newspaper and the television station were owned by different people. Under the new proposals, they might not be. Indeed we could expect to see a good deal more attempts by television stations to put pressure on children to use other outlets in the same stable.

5.3.3 YMA **submits** that the currently proposed disclosure requirements do not go far enough to address the special needs of children. As already noted, young children do not understand the persuasive intent of advertising – so how could they understand the meaning underlying a disclosure of common ownership between the station they are watching and the product being promoted? The logical approach would be to have a ban on promotions of cross-owned products aimed at children, during children's programmes, during G and PG zones, or at times when children make up a substantial

portion of the audience. At the very least there should be some special restrictions aimed at addressing the special needs of children in this area.

5.4 The national broadcasters

5.4.1 The plan outlined in the Discussion Paper places considerable emphasis on the role of the 'national broadcasters' (ie ABC and SBS) in continuing to provide reliable and comprehensive services to the Australian public following the deregulation of ownership and control. YMA agrees that these outlets have the potential to fulfill an important role in this regard, and our members have always been grateful that the ABC in particular has continued to provide high quality age-appropriate viewing for all children.

5.4.2 However YMA finds it somewhat ironic that the government should be proposing the national broadcasters as part of the solution when, with all due respect, it seems in recent years to have been intent on limiting the ABC's effectiveness and independence. We are referring here not just to funding issues, significant though those are, but to the recent accusations of bias and the repeated impositions of inquiries on that subject. These must not only have diverted considerable resources that could have been put into the provision of a better service, but posed a great challenge to those wanted to maintain a fearless and independent stance. We see the recent move to disestablish the staff-elected director position as another example of the undermining of the ABC's special role in the media marketplace.

5.4.3 We therefore **submit** that it is imperative that the government improve funding to the national broadcasters and take steps to restore and guarantee their independence.

6. The proposed changes

6.1 Maintaining 5/4 over time

6.1.1 The Discussion Paper presents a plan to relax cross-ownership restrictions subject to a 'floor' of 5 separate media operators in mainland metropolitan markets; 4 in rural markets. YMA sees one major flaw in this plan, which is that it is quite conceivable that in time one of those 5 or 4 operators will go insolvent or otherwise drop out of the market. Therefore it is difficult to see how the plan could be sustained without either requiring one of the remaining groups to divest itself of resources, so as to form another operator, or providing government funds to support any failing organisation. We presume that the government is not proposing to impose the first solution. The second is what we foresee happening under the plan.

6.1.2 We believe that the government should consider its options and inform the Australian public, before the reforms are implemented, what it would propose to do in such a scenario.

6.1.3 Similarly, there is a need for the government to explain what it proposes to do about those regional markets that currently do not meet the threshold of 4 groups.

6.1.4 YMA is not opposed to the use of government resources to support private media organisations, but rather we see the scenario as one which underlines the essentially public nature of the media, and the profound public interest in ensuring its health and

diversity, irrespective of who owns it. Indeed, the 5/4 proposal itself is evidence of the government's continued recognition that this is not just any industry. We should like to see more consistent evidence of this same recognition in other areas of media regulation (for example, content, advertising, film and literature classification). That is, we should like to see other areas proceeding more clearly on the basis that there are public interests at stake that cannot be adequately addressed merely by competition in a marketplace.

6.2 The race to amalgamate and the public interest

6.2.1 YMA is also concerned at the apparent lack of regard for the public interest in the process of amalgamation that is bound to follow the introduction of these amendments to the law. As far as we can tell, the Australian public can expect to see a flurry of mergers and acquisitions in the media sector, with a boom being lowered as soon as the number of operators reaches 5 or 4. We **submit** that a first-past-the-post contest is not likely to serve consumers' interests, and that the government should provide at least some initial guidance as to which mergers are favoured. Ideally the government would play a close role in determining which transactions best served the national interest.

6.2.2 The Minister said in her ABN AMRO speech that she prefers a 'quantitative approach' because of 'the subjective nature of any qualitative measure' and on this basis she might have reservations about becoming involved in the process in the way just suggested. In our view, however, this is precisely the kind of call that government should be prepared to take responsibility for. Members of the government refer to the national interest when it suits them to do so,⁸ and therefore they should be willing to make transparent decisions in its name.

6.3 Reliance on other outlets to maintain diversity

6.3.1 We have already discussed the plan's reliance on the role of the national broadcasters in maintaining a certain level of diversity in services. We reiterate our support for such reliance, especially in the field of children's television, subject to the taking of steps to guarantee the financial viability and independence of those broadcasters.

6.3.2 The plan also relies on 'out of area newspapers' such as national newspapers. As far as we are aware there is only one such newspaper, and it is very likely to end up cross-owned in any event. The same goes for other metropolitan newspapers. Therefore we suggest that there is little basis for the reliance in this case.

6.4 Foreign ownership

6.4.1 The plan places heavy reliance on the use of special treatment for 'sensitive sectors' under foreign investment law in the wake of media-specific rules. The rationale, criteria and processes for this treatment would need to be spelled out much more clearly before we were willing to comment on the desirability of this step.

⁸ The Minister does so herself: *ibid*, 9.

6.5. Regional markets

- 6.5.1 We understand there is a plan to examine the question of regional media markets and local content, and we should like to have more information about how this will proceed and what remedies are likely to be proposed. This is because there are many similarities between regional markets and the children's television market ie it is smaller, subject higher costs, has lower revenues, and this puts content under pressure.
- 6.5.2 Arguably these characteristics of the children's market are all addressed by the Children's Television Standards which, as noted, are under review. At the very least we should like to see the CTS, or some equivalent, applied to any service that helps a group to be counted as one of the 5 or 4; additionally, or in the alternative, there may be solutions found to the regional dilemma that could inform the development of the CTS.

7. Summary

7.1 YMA commends the government on:

- 7.1.1 the sensitivity it has shown to the impact of socio-economic factors on people's access to new media platforms; and
- 7.1.2 the continued recognition of the special features of the media industry in such proposals as the floor on ownership groups and the disclosure requirements when co-owned entities report on each other's activities.

7.2 YMA has the following reservations about this process:

- 7.2.1 the absence from the Discussion Paper of a clear explanation of why changes in technology require changes in ownership structures;
- 7.2.2 the absence from the Discussion Paper of a fundamental (re-)consideration of the rationale for media regulation; and
- 7.2.3 reliance on 'out of area' newspapers to provide diversity, when these are likely to end up cross-owned.

7.3 YMA would require further information before being willing to comment on:

- 7.3.1 the proposed disclosure requirement when co-owned entities report on each other's activities [para 5.1];
- 7.3.2 how the government proposes to enforce the 5/4 floor if and when an operator goes insolvent or otherwise drops out of the market [para 6.1.2];
- 7.3.3 what the government proposes to do about those regional markets that do not presently conform to the floor of 4 operators [para 6.1.3];
- 7.3.5 the criteria and processes for decision-making about 'sensitive sectors' under foreign investment law [6.4.1]; and
- 7.3.6 the proposed measures for addressing the issue of regional markets and local content [para 6.5.1].

- 7.4 YMA makes the following suggestions and requests of the government:
- 7.4.1 a closer consideration of the interests of consumers, separately from the interests of industry [para 4.2];
 - 7.4.2 recognition that consumer interests extend beyond range of choice to the quality, consistency, predictability, reliability, honesty and truthfulness of the services and their content (this might require a broader consideration of content regulation in the context of these proposals) [para 4.3];
 - 7.4.3 further recognition of the special needs of sub-groups of consumers (especially children, and most especially young children) [para 4.4];
 - 7.4.4 establishment of explicit safeguards to protect minority groups and consumers generally, including:
 - 7.4.4.1 a media ombudsman to act as a one-stop shop for media complaints [para 4.5]; and/or
 - 7.4.4.2 provision of dedicated funding to support consumer representation in relation to broadcast and other media, much as currently happens in relation to telecommunications [para 4.5];
 - 7.4.5 consideration of steps to address the likely loss of newspaper reporting on broadcasting issues, and vice-versa [para 5.2.3];
 - 7.4.6 recognition of children's special needs in relation to cross-promotions between cross-owned entities [para 5.3.1];
 - 7.4.7 adoption of specific restrictions on cross-promotions to address the needs of children; these could apply to promotions of cross-owned products aimed at children, during children's programmes, during G and PG zones, or at times when children make up a substantial portion of the audience [para 5.3.3];
 - 7.4.8 adoption of steps to restore and guarantee the financial viability and independence of the national broadcasters [para 5.4.3, 6.3.1]; and
 - 7.4.9 development of a plan for guiding the initial round of mergers and acquisitions, to ensure that they proceed in the national interest [para 6.2.1].
- 7.5 YMA expresses once again its gratitude for the opportunity to make this submission. We should be most pleased to expand on any of the points made above.