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**Muddy Footprints : Telecommunications,
Development And Transborder Housekeeping**

By

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**MUDDY FOOTPRINTS:
TELECOMMUNICATIONS, DEVELOPMENT AND TRANSBORDER
HOUSEKEEPING**

A paper presented by

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Traditionally, telecommunications has lent itself to easily categorised, technology based divisions. We talked about TV, radio and telephony and we talked about them in the context of individual countries which ran different regulatory regimes, according to different policy agendas, and who occasionally conferred internationally about the technical stuff necessary to permit interconnection between different places. In effect, the house was divided into neat little rooms, with clear functions, with national regulatory bodies effectively responsible for the housekeeping.

Satellites and digital technology have changed all that. Their global reach, and the indistinguishability of one digital signal from another, seem to promise a future where the borders between one form of technology and another have been blurred. To continue my metaphor, the doors of the house have been flung open and, like gangling teenagers, the satellites have tracked their muddy footprints from room to room. And, just as the harried parents of teenagers often wonder whether there is any point in trying to keep the place clean in the face of the barbarian invasion, many people have wondered whether there is any point in continuing to try to regulate telecommunications for a “transborder future”. Is there really any role for telecommunications regulation in national development?

To start with, let's look at the engines of change in telecommunications.

The first is the phenomenon of **convergence**.

As technologies converge, the old technological divisions between telecommunications services break down. With the advent of digitalisation and fibre optic cable, information consists simply of strings of digits, capable of differentiation only at the input and output stages. It becomes more and more artificial to apply different rules to the same signal in the way we have done when voice went by telephony or radio, vision by television or satellite and data by cable.

Convergence also undermines attempts to categorise services by reference to their target audiences.

When the same optical fibre cable is being used to provide public switched telephony services, point to point data transmission and pay TV, all of which are being sold by various permutations of service providers, applying many of our current regulatory structures seems to present us with a choice between a regulatory tower of babel or a market driven free for all. Do you apply the rules for broadcasting, or for pay TV, or for telephony, or all of them, or none of them?

It is also important to remember that it is not only the services which are converging, but also the service providers themselves. Commercial mergers and strategic alliances between enterprises are a prominent feature of the telecommunications world, producing interlocking webs of corporate structures and commercial ventures.

By way of illustration, consider the “On Australia” project announced by Telstra and Microsoft. Here you have a joint venture between Australia’s largest provider of telephony services and one of the world’s most successful providers of computer software to provide on-line services to Australian homes in a user-friendly “windows” format.

This is one of the simpler structures. We are also seeing complex arrangements free to air and pay TV providers, linkages between the print media, and free to air operators, and linkages between national broadcasters and pay TV operators. The alliances form and dissolve regularly, but the end result is a powerful convergence not only of business operations but also of economic clout and cultural impact.

The second engine of change is **economic development**. The availability, and accessibility, of telecommunications services is now a vital factor in economic growth. Multinational corporations, banks and other business enterprises depend increasingly on the ability to store, transmit and manipulate information. Commercial users are becoming more and more sophisticated in their use of, and demand for, telecommunications services as business tools.

Indeed, telecommunications industries themselves are economically important in their own right. In Australia, they are among the fastest growing of our industries and the source of valuable export dollars.

This relationship can become uncomfortably circular. Job creation, and the growth of the economy, requires infrastructure expansion at the same time as it also increases the general community expectation for a higher level of service, even in areas which are commercially unprofitable. Meeting these needs exceeds the capabilities of most government owned monopoly service providers. Expansion requires capital, often foreign capital, because of the sheer scale of the undertaking involved, so that meeting national goals and economic aspirations must accommodate the needs of multinational business.

Competition for investment dollars is fierce, and the place with the most favourable terms is the place most likely to receive the greatest share of the available capital. It is almost like a kind of high stakes musical chairs.

The third engine of change is **globalisation**, which is essentially the product of convergence and economic growth. The convergence of technologies and of corporations, combined with the demands of rapid economic growth, mean that successful programming (and hence also marketing) can be targeted across borders. Data can be shared wherever points can be linked, regardless of the political and ethnic labels applied to the areas in question.

Instead of national markets, it is now possible, for example, to address a Cantonese language market or an international special interest market.

However, this has brought with it an interesting paradox. The more you ignore national boundaries, and focus instead on target groups, the more you increase the awareness of distinctive cultural identities. For example, if you start to provide Mandarin language programming, programming in Bahasa Indonesia, and English programming you begin also to focus on the cultural differences between these groups. At the same time as breaking down the old boundaries, which applied from country to country, you begin instead to create new, cross border shared cultures. Inevitably, you increase awareness of, and concern about, issues of cultural identity.

Globalisation brings regionalisation in its wake.

Should nations continue to try to regulate in the face of all this change? My answer is an emphatic yes. The direction of telecommunications changes is indisputably towards cross border products, and with them cross border service providers. By definition, such multinational enterprises must focus on broad, non-national agendas. They develop cultures of their own, and indeed economies of their own. They cannot be expected to consider, let alone protect, the economic or cultural development of the nations within their footprints except in as far as that is relevant to their own commercial and economic well being. That's not a moral judgement. It's simply a statement of commercial reality.

Successful regulation in this environment must balance the agenda for national development against the need for cultural identity.

For all of us in this region, economic growth requires investment in telecommunications. An efficient industry, which is predictable and stable, is a very attractive feature, which can be developed and enhanced by sensible regulation. After all there are times when national development goals can outweigh simple economic reasoning: services still need to be provided to commercially unattractive areas. Regulation can implement policies which “bundle” commercially attractive sectors with nationally important ones. By planning the use of the spectrum it can carve out space for community sectors, for repeater stations for outlying areas, for satellite telephones in the back of beyond. Regulation can ensure that the voracious demands of capital cities and urban elites are not serviced at the expense of poor and distant communities.

Perhaps the most critical role of the regulator, though, is in the preservation and development of national cultural identity.

Most of us in this region have emerged from colonial pasts. We have struggled to establish ourselves as nations, and to establish national identities. Australia in particular has had to work hard to establish our cultural identity - to ourselves and to the world. We are a young nation, composed largely of immigrants, which conducts most of its daily business in English. We don't have the language barrier between us and the huge output of English language programming from more developed production industries, such as the U.S. Yet we do have an idea of who we are: a diverse multicultural polity, but one with shared values and shared traditions.

Broadcasting is particularly important to this self image. Like everyone else, we both like and need to see ourselves and our lives reflected in the media. Our creative output is part

of our process of self definition and through it we express both who we are and where we want to go, whether it be by means of fictionalised drama on TV, “period” movies, Australian music or talk back radio.

I couldn’t disagree more with Mark Fowler, the former Chairman of the United States Federal Communications Commission who once described television as “just a toaster with pictures”. Broadcasting is the mirror which we hold up to ourselves as a community, and by which we identify and assess ourselves. It must therefore preserve our national unity, encourage cultural diversity and, above all, present our national culture as valuable and worth preserving. At the end of the day, if we do not have a sense of ourselves, we do not have a nation.

These sorts of goals don't find themselves unbidden on the agendas of multinational corporations. Regulation is what puts them there, and its challenge is to mediate between national goals and international services.

Clearly, it is no longer possible to regulate through state ownership or strictly monitored rules and punishments. The industries are too big, the capital requirements are too high. You can’t fine or lock up someone who is effectively outside your jurisdiction. We can either put up with the muddy footprints, or change our housekeeping methods.

Just as the providers of telecommunications services have shifted their focus from the technology to the users, so must regulators. We must look to the people who are doing the communicating, the service providers and the users, and switch our agenda from containment to one of mediating agendas. As any parent of teenagers will tell you, we are more likely to succeed by wielding influence than by wielding power.

Despite initial appearances, there are some effective tools available in the regulator’s broom cupboard.

The first is transparency of regulation. This involves the establishment of clear and public rules, which both help to minimise opportunities for “under the table” deals and provide levels of comfort for foreign investors.

The rules don’t have to be heavy handed or coercive. They can consist of clear industry guidelines and active supervision. For example, in Australia the *Broadcasting Services Act 1992* requires various industry associations, such as the national associations of commercial television stations and radio broadcasters, to devise, publish and adhere to industry codes of conduct. While the requirement for a code is imposed, the code itself is not. Devised, worded and administered by the industries themselves, the codes are “owned” by them and compliance levels are generally high. As the products of consultation with community and other stakeholder groups, they also closely reflect public opinion and community standards. As regulator, the ABA mediates the negotiation process when the codes are devised, and acts as arbiter of public complaints in cases where the complainant is not satisfied with the broadcaster’s response.

A second tool in the regulatory repertoire is to recognise what I have called the “dollar drive”.

Much of the fear and concern about transborder broadcasting arises from a focus on the capacity of the technology itself: that is, on the fact that it is physically impossible to prevent a determined offshore broadcaster from transmitting a signal and an equally determined onshore recipient from receiving it. When we shift our focus from the technology to the users, however, the importance and regulatory utility of the commercial imperative becomes obvious.

Technical capacity alone does not ensure economic viability. The business of broadcasting, whether within or across national boundaries needs income, from advertising

or subscriptions or both. It therefore needs to be able to collect, bank and or transfer its earnings from one place to another. If services are encrypted it needs to have decoding devices made available and if subscribers are to be kept happy it needs to be able to provide back up service. If advertising revenue is to be obtained, advertisers need to be comfortable that their investment will not also attract government opprobrium in target markets. Business needs national government support just as national governments need multinational business. The central point however, is that these needs are now much more finely balanced. No one has “the whip hand”, making negotiation and compromise the only workable solutions.

The third tool I would like to mention is the establishment and encouragement of a strong local industry, as a complement and competitor to transborder broadcasting. One of the strongest messages I took home from the World Summit on Children and Television, held in Melbourne earlier this year, is that children, like adults, generally prefer to watch things they can identify with. Again and again, presenters reported that when available local product consistently outrated all but the most sophisticated imports. In fact, children will often choose to watch unsuitable adult products, locally made, rather than imported children’s programming.

This is as it should be, for good cultural and economic reasons. It is important to all of us to ensure that our children grow up to be good people, imbued with the values that our own communities hold to be important and equipped to make decisions between right and wrong, appropriate and inappropriate. A strong local broadcasting industry is an important means by which the mores and values of our individual communities can be presented to our children. If they are contrasted, through the availability of imported material, to those of other cultures all the better. Our children can then learn to understand other points of view while remaining strongly grounded in and confident of their own heritage.

What we must guard against, however, is allowing glamour and sophistication and other attractive things to be perceived as residing only outside our own cultures. We must ensure that our own domestic products are good enough to prevent the establishment of what Australians call a “cultural cringe”. We need to ensure that our communities and our children are confident about their own worth and the worth of their own products. If they are not, it is not only cultural identity but also the national balance of payments which may suffer.

In Australia, we have tried to apply these tools in a number ways. Our aim is to ensure a high quality, domestic service which:

- reinforces Australian cultural identity
- provides Australian viewers with quality material they want to see
- contributes overall to the national economy and
- is a sound investment for its owners.

If we can achieve all this, whatever may come by way of transborder broadcasts will be a welcome enrichment of, but not a substitute for, our own culture and industry.

One of the most important features of Australian regulation is the imposition of quota requirements for Australian content and children’s television upon the holders of domestic commercial broadcasting licences.

The ABA has this month issued a draft of a new Australian content standard, which among other things requires commercial TV networks to allocate 55% of their annual transmission time to Australian content. 100% of the time allocated for pre school programming is to be Australian content. At least 32 hours of quality, first release children’s programming is required each year as well as 10 hours of new Australian documentary programming. Having issued the draft we are now in discussion with community and industry groups about its final, binding form. It is likely that there will be

some changes to the details as a result of this process, but the overall framework is unlikely to vary much.

Our regulatory system is also predicated on the assumption that the level of regulation applied to a particular segment of the industry should be proportionate to the level of influence that segment is perceived to have in the community. Thus, a number of content standards apply to commercial television broadcasters which are not applicable to narrowcasters, who by definition appeal to only limited groups or limited areas.

Television is more heavily regulated than radio.

To ensure diversity of access and voice, provision is also made for community broadcasting services when planning and allocating spectrum. These are usually small, non-profit operations run by amateurs with a surprising degree of skill and professionalism, and which are directed specifically to the needs of small local areas.

On the whole our regulatory tools seem to be working for us. They are not without their detractors, especially those who see them as constituting a form of non-tariff-based trade barrier.

We think that this approach will continue to be useful in keeping our broadcasting house in proper order, but we are mindful that it is not necessarily of universal applicability. All sensible housekeepers are wary of salespeople with all purpose cleansers.

The Asia-Pacific region is far too heterogeneous for one model to be appropriate as a basis for all. Our economies range from mature markets to developing ones, from established infrastructures in need of updating to infrastructure bottlenecks in need of clearing. Our legal and cultural contexts are also widely disparate, ranging from the western assumption that just about any argument is worth having (and in the open, in the media) to the perception of others that the preservation of harmony and consensus is more important than individual outspokenness. We include code based legal structures and common law,

precedent driven ones. Some of us emphasise the formal enforcement of obligations and others the informal mediation of disputes.

Clearly it is simplistic to think that we can all just do the same sorts of things. Yet, in face of all of this diversity, we need to acknowledge that while we may need to find individualised solutions, the same factors of convergence, economic growth and globalisation are driving our need to change.

The paradigm within which we seek to regulate has changed. We have moved from government ownership, to a world where private sector participation is essential. The emphasis on standardisation has given way to the need to manage diversity, of users, of needs, of technologies and of service providers. These things call for a shift in focus from technology to users, and to a regulatory approach premised on both domestic and international co-operation rather than prohibitions and containment.

If the goals of national development and cultural identity are to be attained and nurtured, then win-win outcomes need to be negotiated between national governments and business interests. The role of regulation is to find an acceptable framework within which this reconciliation can occur.

In any negotiation, information is a precious and vital commodity. Knowing the market, the players and the regulatory landscape is essential to constructing regimes which balance national interests, international obligations and commercial requirements. The ability to gather and share information is one of the main advantages multinational corporations gain from the joint ventures which are springing from convergence. They are able to combine experience, information and intelligence gleaned from multiple markets and regulatory environments in order to determine the strategies most likely to succeed.

We are all facing the need to negotiate strategies with these converged interests. We are all facing the need to integrate our national regulatory approaches into an international framework, from copyright regulation to the GATT.

If national interests are to be pursued it is therefore essential that this access to information be balanced across the negotiation tables. Regulators need to share information, intelligence and approaches too if real win-win outcomes are to be achieved. While the differences between us are too great for universal answers, there is much to be gained from sharing experiences and from exchanging personnel.

The ABA is committed to developing relationships of mutual exchange with other regulators. To this end we have signed a Memorandum of Understanding with the Federal Communications Commission of the United States, and are this week signing one with the Singapore Broadcasting Authority. We have also established ongoing relationships with regulators in the United Kingdom and South Africa. We hope to develop further ties within the Asia-Pacific region as well. One of our most cherished aims is to participate in the establishment and development of an on-going regional forum for broadcasting regulators, which meets regularly and exchanges relevant material among its members.

Satellite and digital technologies have tracked their muddy footprints across our formerly pristine regulatory regimes. Our national aims and cultural identities are too important for us to decide just to live with whatever might eventuate. There is an important, although changed, role for regulation in a transborder world.

We will all ultimately have different solutions, but we will arrive at them more easily and effectively through mutual exchange and support. The answer is a paradox which our Indonesian hosts know something about:

in unity lies the preservation of our diversity.