

Legal And Regulatory Frameworks Affecting Television

By

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TELEVISION DEVELOPMENT IN THE ASIA-PACIFIC REGION

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CENTRE

"LEGAL AND REGULATORY FRAMEWORKS AFFECTING
TELEVISION"
A PAPER FROM THE AUSTRALIAN PERSPECTIVE BY
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DEPUTY CHAIRMAN
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A Paper from the Australian Perspective

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INTRODUCTION

This paper attempts to provide something of an overview of the Australian television broadcasting scene, and the regulatory regime that applies to it, in each case drawing upon their historical contexts.

In brief, the Australian perspective now has the benefit of many years experience with all forms of traditional broadcasting - commercial, national, and community - as well as more recent experience with subscription services, and the new concept, for Australian law, of narrowcasting.

The Australian television market is mature, and strong again after some troubled years; but apprehensive about the potential impact of the introduction of pay television next year.

Australia's regulatory system anticipates future broadcasting developments and is technology neutral in that the means of delivery of a broadcasting service is immaterial to the question whether a service is a radio or television program. Nor does technology determine the level of regulation that is applicable to a service. It is the degree of influence that a service is able to exert in shaping community views in Australia that determines the level of regulatory control applied.

Australia's history with broadcasting and the evolution of its various regulatory schemes to its present form might provide some indications of future directions for other jurisdictions to take. Whether or not this is so, the value of an historical perspective in any jurisdiction is compelling. So

too is the identification of community attitudes to broadcasting because of the usefulness with which they inform both industry and regulatory developments.

THE HISTORY OF TELEVISION IN AUSTRALIA

The first television broadcast in Australia, which was by a privately owned commercial licensee, took place on 16 September 1956.

The first broadcast by the Government-funded Australian Broadcasting Commission (the ABC - and now renamed the Australian Broadcasting Corporation) took place on 5 November 1956.

The commercial television sector was initially limited to two stations in each of Sydney and Melbourne, Australia's two largest cities. Over the next few years licences were granted in other State capital cities. In 1960 applications were called for licences to serve major provincial and country areas. By 1967 there were forty-one licensed commercial television stations in Australia.

At the present time there are approximately the same number of licensed commercial television stations in Australia as there were in 1967. The ownership and control rules that have applied through the years have allowed the formation of three national commercial television networks - the Seven, Nine and Ten networks, as they are known.

A number of independent television operators continue to operate commercial television stations in smaller cities and regional areas that take most, but not all, of their programming from the networks.

The ABC was established by the Commonwealth Government in 1932. Following a 1954 Report of the Royal Commission on Television and the allocation of the first commercial television licences, the ABC began its television services and it now has a nationally available service.

The Special Broadcasting Service (SBS) commenced operation in 1978 with a warrant to provide broadcasting services of a multicultural nature. The SBS began television broadcasting in 1980 and it now provides television services to a large proportion of the national audience, although its ratings are quite low.

Between them, Australia's three commercial networks and its two national services (ABC and SBS) occupy five of the available six national television channels. The eventual use that is to be made of the so-called 'sixth channel' will be determined by the responsible Minister (presently the

Minister for Communications and the Arts, the Hon Michael Lee MP) in the context of a review he is required by law to conduct of the television broadcasting industry in order “to assess the national benefits that would accrue if more than 3 commercial television broadcasting services were permitted in licence areas”¹.

The ABA is not allowed to allocate more than 3 commercial television broadcasting licences in any licence area before, in effect, the date of completion of the Minister’s review².

In the late 1970’s the Australian Government decided to proceed with the establishment of a national communications satellite system. AUSSAT Pty Ltd, a public company that was originally 75% owned by the Government and 24% owned by Australia’s then sole telecommunications operator, Telecom Australia, was given responsibility for the system. The first two AUSSAT satellites were launched in 1985. AUSSAT has since passed into the hands of Optus Communications, Australia’s second telecommunications carrier.

As a consequence of the introduction of a domestic satellite service, and its utilisation for television program distribution (this did not include the provision of programs on a direct-to-home basis, other than for very remote areas and not by the networks) it became possible for the three major networks to provide services to those remote and regional parts of Australia not then able to receive them.

The Government determined that a policy of ‘equalisation’ should be applied to the provision of commercial television services throughout most (but not the entirety) of Australia. This policy sought to ensure the provision of three commercial television services to most of the solus markets in Australia (ie, to those markets serviced by only one operator). The implementation of the equalisation policy has almost concluded and, at the present time, most Australians receive the three major commercial television services. 99% of Australian homes have at least one television set.

Over the years, various Australian Governments either took no action to introduce pay television or declared a moratorium on its introduction until, in 1991, it was announced that the then moratorium on pay television would be lifted from October 1992. Following the passage of enabling legislation in late 1992, the Government has facilitated the grant of two four-channel satellite pay television services to different licensees, and it

¹ Section 215(1) of the Broadcasting Services Act 1992.

² Section 28 of the Broadcasting Services Act 1992.

proposes to grant a two-channel service licence to the ABC in the near future, so that ten satellite pay television channels will be made available to the Australian audience. These services have not yet commenced.

While it is envisaged that pay television services will be delivered to remote and regional areas of Australia by means of the utilisation of the Optus Communications satellite system, both microwave (from 1 January 1995) and cable technologies may be used also to deliver such services.

THE HISTORY OF TELEVISION REGULATION IN AUSTRALIA

The broadcasting regulator at the time of the introduction of television into Australia was the Australian Broadcasting Control Board, which had been established in 1949.

The legislative scheme for the regulation of broadcasting prior to the introduction of television was provided by the Broadcasting Act 1942. In 1956, the year that television services began in Australia, legislation was introduced by way of amendment to the Act, the name of which was changed to the Broadcasting and Television Act, a title which was to remain until 1986.

The Broadcasting and Television Act reserved the grant of commercial television licences to the Minister, although there was a public inquiry by the Board prior to any grant, renewal or termination of any licence. Australian content requirements were introduced, as was a limitation on the ownership and control of no more than one television station in a capital city or two stations in Australia. The 'two station' rule survived until more radical changes were made to the ownership and control rules in 1987.

National (ABC) programs were removed from the supervision of the Board by the 1956 Act. (The Commonwealth Parliament eventually enacted the Australian Broadcasting Corporation Act 1983, giving the ABC an extensive statutory charter. SBS obtained its own separate statutory charter through the Special Broadcasting Service Act of 1991.)

The Australian Broadcasting Control Board was abolished in 1976. The planning and technical functions of the Board were transferred to the Postal and Telecommunications Department, and its licensing, inquiry and program functions were transferred to the newly created Australian Broadcasting Tribunal.

The ABT conducted many inquiries during the years before it too was abolished in 1992. But the administration of broadcasting regulation during

those years was fragmented. The Minister of the day retained the responsibility to determine planning priorities for the licensing of new radio and television services, and this was essentially an *ad hoc* system, while the ABT was responsible for assessing the fitness and propriety of applicants for any new licences and for policing broadcaster behaviour during the term of licences.

The procedures of the ABT attracted a great deal of criticism for being unduly bureaucratic and adversarial, although the publication by the ABT of industry information and of the results of community based research was highly valued by those with an interest in the operations of the industry.

Until 1982 broadcasting licensees were authorised to operate a 'station' (ie, a single transmitter), but the licensing system passed through a transitional stage that began then and concluded in 1985 whereby licensees were authorised to provide a 'service'. This change, adapted from Canadian legislation, separated the service from the means by which it was provided, and allowed a number of stations to provide the service under a single service licence³.

In 1986 the Government introduced new television ownership laws. In summary, the proposals involved replacement of the maximum limit of two stations with an audience reach rule limiting any person to prescribed interests in licences serving a total maximum of 75% of the Australian population. This limit was to be coupled with a cross-media restriction designed to prevent a person having interests in both a television licence, and a newspaper published at least four days a week and having more than 50% of its circulation in the same area. These proposals, with a reduction of the audience reach rule from 75% to 60%, passed into law, and they precipitated major changes in the ownership and control of television, newspapers and other media linked to television ownership. The stockmarket crash of October 1987 devastated many of the new owners, who had relied on high debt-to-equity gearing in order to launch their takeovers⁴.

Two of the networks were placed in receivership and the commercial television industry endured significantly depressed circumstances for several years. They have all now returned to operational profitability, albeit still with not inconsiderable debts.

³ Communications Law and Policy in Australia, a Butterworths Service edited by Mark Armstrong, para [2150].

⁴ Communications Law and Policy in Australia, a Butterworths Service edited by Mark Armstrong, para [2165].

In 1992 the Government introduced the Broadcasting Services Act, which introduced an integrated approach to planning and licensing, as well as a number of other important features, and which abolished the ABT and created the Australian Broadcasting Authority.

THE AUSTRALIAN TELEVISION REGULATORY REGIME

The Broadcasting Services Act 1992 is 'technology neutral' in relation to broadcasting services. The means of delivery of television or radio programs, whether utilising the radiofrequency spectrum, cable, optical fibre, satellite or any other means or combination of those means, is irrelevant to a determination whether a service is a broadcasting service.

There are some specific exceptions to the technology neutral definition of a broadcasting service, and they are

- data or text services
- a service that makes programs available on demand on a point-to-point basis, including a dial-up service
- a service that the Minister determines not to fall within the definition.

Also MDS-delivered services were excluded from use for the purposes of subscription television broadcasting until after 30 December 1994, and there are particular rules that limit satellite subscription television broadcasting until 1997.

The definition of 'broadcasting service' is fundamental to the Act as it establishes the types of services that are to be regulated under the Act. The service must deliver radio or television programs, and the delivery of a broadcasting service may be by transmission on the radiofrequency spectrum (including via satellite), or by a line as defined in the Telecommunications Act, or by a combination of radiofrequency transmissions and a line⁵.

The Act contains ten Objects (see Attachment A) and the Explanatory Memorandum to the Broadcasting Services Bill 1992 says

"The purpose of these objects is to set out clearly the outcomes Parliament wishes to see in the regulation of broadcasting, to assist with the formulation of decisions consistent with the policy enshrined in the Act, and to guide the ongoing administration and enforcement of the Act....It is recognised that there are tensions between the objects. It is intended that the ABA, in the exercise of its regulatory powers, should have regard to the competing objectives, drawing

⁵ Explanatory Memorandum to the Broadcasting Services Bill 1992.

on its ability to assess community views and needs, and to monitor developments in the broadcasting industry.”.

The Act also spells out a ‘regulatory policy’ (see Attachment A) which builds on the objects of the Act by enunciating the underlying philosophy to be pursued in the administration of the Act. Some of the elements of this regulatory policy aim for the accommodation of technological change. The policy recognises that in recent years there has been an acceleration in the development of technologies for delivering communications services. It is intended that as those technologies come on-stream for general application, they be accommodated within the regulatory regime provided in the Act⁶.

The role of the ABA (see Attachment A) is also spelled out in the Act. The ABA is charged with responsibility for monitoring the broadcasting industry, and it has conferred on it a range of functions and powers that are to be used to produce regulatory arrangements that are stable and predictable, and that will deal effectively with breaches of the rules in the Act.

Some specific functions and obligations are also conferred on the ABA by the Act (see Attachment A).

The general regulatory scheme, in so far as television is concerned, is as follows:

Jurisdiction

- The ABA’s jurisdiction is confined, in the main, to the commercial sector.

The ABC and the SBS, which have their own statutory charters, are not generally subject to the supervision of the ABA. [The only exception to this lies in the area of complaints. The national broadcasters are required to register codes of practice with the ABA and complainants who claim to be unsatisfied with the outcome of any complaint made to them can bring their complaint to the ABA for resolution. The ABA must investigate all complaints that are not frivolous or vexatious or that are not relevant to a registered code of practice. If the ABA is satisfied that a complaint is justified it may, by notice in writing, recommend to the ABC or the SBS that it take action to either comply with the code or take other remedial action, which may include the publication of an apology or a retraction. The ABA must notify the complainant of the results of such an investigation, and it may give the Minister a written report on the matter. If such a report is sent to the Minister it must be laid before each House of the Parliament within 7 sitting days.]

⁶ Explanatory Memorandum to the Broadcasting Services Bill 1992.

Codes of Practice

- Each section of the broadcasting industry is required to develop industry codes of practice, and the commercial television broadcasting industry group (the Federation of Australian Commercial Television Stations (FACTS)) and the subscription television broadcasting industry group (the Confederation of Australian Subscription Television (CAST)) are required to develop, in consultation with the ABA, codes of practice that are to be applicable to the broadcasting operations of each of those sections of the community.

[The Act particularises matters that such codes may relate to. These matters include

- preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast
 - methods of ensuring the protection of children from harmful program material
 - methods of classifying programs that reflect community standards
 - promoting accuracy and fairness in news and current affairs programs
 - the amount of time devoted to advertising
 - methods of handling complaints about program content or compliance with codes of practice]
- In developing these codes of practice, community attitudes to the following matters are to be taken into account
 - the portrayal in programs of physical and psychological violence
 - the portrayal of sexual conduct and nudity
 - the portrayal of drug use, including alcohol and tobacco
 - the portrayal in programs of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability
 - For the purpose of classifying films, the codes of practice developed by the commercial television broadcasting licensees must apply the film classification system administered by the Office of Film and Literature Classification. There are also rules that relate to the broadcast of certain classifications of films.
 - The ABA must register a code of practice if it is satisfied that

1. it provides appropriate community safeguards
2. it is endorsed by a majority in the industry
3. the public has had adequate opportunity to comment

Licensing

- The Act recognises six categories of broadcasting service -
 1. national broadcasting services (ABC and SBS)
 2. commercial broadcasting services
 3. community broadcasting services
 4. subscription broadcasting services
 5. subscription narrowcasting services
 6. open narrowcasting services
- Individual broadcasting licences are required from the ABA before commercial, community or subscription broadcasting services can be offered. National services are not licensed by the ABA (although the ABC will be allocated a two-channel pay television service licence in the near future). Narrowcasting services and subscription radio broadcasting services do not require an individual licence from the ABA - they operate under the 'class licence' provisions of the Act, which provides a number of automatic licence conditions. Broadcasters and narrowcasters require, however, an 'apparatus' licence which is issued pursuant to the Radiocommunications Act, and which applies to the transmission function of broadcasting.

Planning

- The Minister, pursuant to the Act, has referred that part of the radiofrequency spectrum that contains the 'broadcasting services bands' to the ABA for planning purposes. [These bands include the MF-AM radio band, the VHF television band I, the VHF-FM radio band (which includes the VHF television band II), the VHF television band III and the UHF television bands IV and V.]
- The Act imposes considerable obligations on the ABA to conduct planning for the allocation of new radio and television services in a methodical and structured way, accompanied by wide public consultation.

- These obligations are less onerous in television than they are in radio, because most of Australia already receives the present maximum three commercial television services. The ABA is currently planning for those less well-served areas of Australia. (Population figures???)
- Under the Act the Minister may notify the ABA to reserve capacity in the broadcasting services bands for specified numbers of community and national services. In October 1993 the Minister notified the ABA to reserve capacity for national radio services in the AM and FM bands and for ABC and SBS television services throughout Australia.

Ownership and Control

- A person must not be in a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75% of the population of Australia (increased from 60% by the Broadcasting Services Act).
- A person must not be in a position to exercise control of more than one commercial television broadcasting licence in the same licence area.
- A foreign person must not be in a position to exercise control of a commercial television broadcasting licence, and a foreign person must not have company interests in a commercial television broadcasting licensee that exceed 15%. Two or more foreign persons must not have company interests in a commercial television broadcasting licensee that exceed 20%.
- A person must not be in a position to exercise control of a commercial television broadcasting licence and a commercial radio broadcasting licence that have the same licence area, or a commercial television broadcasting licence and an associated newspaper.
- There are a number of related provisions that limit cross-directorships in addition to the limitations on ownership and control.
- It is an offence to provide a commercial television broadcasting service without a licence. The maximum penalty is \$2 million.

- It is an offence for a commercial television broadcasting licensee to breach a Scheduled condition of licence. The maximum penalty is \$2 million.
- However, the ABA has available to it a range of powers to apply to any breach of the Act or licence conditions, including licence suspension or cancellation.

Program Standards

- The ABA must determine standards that are to be observed by commercial television broadcasting licensees and which relate to
 - programs for children
 - the Australian content of programs
- The ABA is currently reviewing the Australian Content Standard. It presently provides for:
 - a transmission quota of 50% Australian content (between 6 am and 12 midnight)
 - minimum score requirements for
 - drama programs
 - diversity programs
 - childrens programs
- The ABA has recently released a couple of papers dealing with the progress of its thinking on these issues, and they are available from the ABA on request.
- The Children's Television Standards are quite comprehensive and relate to a large number of matters. The objective of the Standards is that children should have access to a variety of quality of television programs made specifically for them, including Australian drama and non-drama programs.
- In the event that industry codes of practice fail or no code is developed, the ABA may determine mandatory program standards.
- Standards and codes are amendable by Parliament.

- With the exception of children's programs the ABA is forbidden to determine a standard that requires ABA pre-approval of programs.

ABA Procedures

- The ABA has extensive powers to conduct investigations, compel evidence and conduct hearings. It may also publish reports of its investigations, but persons adversely affected by such a report must be given an opportunity to comment thereon.
- Any hearings conducted are to be informal, quick and economical. They are to be conducted in public except in exceptional cases. An ABA report on a hearing must be published.
- No proceedings for defamation, civil or criminal, lie against the Commonwealth, the Minister or the ABA in respect of the publication of a report of an investigation or a hearing.
- A number of matters that are the subject of administrative decision by the ABA may be appellable to the Administrative Appeals Tribunal and are reviewable on the merits. General appeals on errors of law lie to the Federal Court of Australia.

SOME CURRENT REGULATORY ISSUES IN TELEVISION IN AUSTRALIA

Codes of Practice

The relatively new regulatory scheme established on 5 October 1992 - the date of commencement of the Broadcasting Services Act 1992 - has worked reasonably well so far.

Industry codes of practice developed by FACTS and the commercial radio industry association FARB (the Federation of Australian Radio Broadcasters) have each been in operation for over a year and no significant difficulties have arisen. The ABA has established only one breach of the FACTS code

The closer relationship that now exists between commercial broadcasters and their audiences, who must now complain initially directly to the

broadcaster, is thought by the broadcasters to be beneficial in providing them with feedback about the merits of their programs.

Ownership and Control

There has been no reason to date for the ABA to report any breach of the ownership and control rules, although the ABA is constantly monitoring the operation of these rules and is currently engaged in a couple of investigations arising out of its monitoring of the industry. At the time leading up to the grant of the satellite subscription television licences A and B, the ABA conducted investigations into prospective licensees and publicly reported on the results of those investigations.

Attachment B to this paper contains a schedule which outlines the nature and extent of Australia's ownership and control rules at the present time.

Pay (subscription) Television

There has been considerable focus recently on the pay television sector. Both of the duopolists in the Australian telephony system (Telstra and Optus) have announced plans within the past few months to establish extensive and expensive systems (totalling \$7 billion in investment) of an optical fibre and coaxial cable hybrid which would be used initially to provide pay television to Australian audiences.

While there has been considerable public interest in the advent of pay television in Australia, there has also been some disquiet at the possibility that Australia might acquire a broadband capacity cable network, or networks, which might not also be available to service providers who wish to offer their products on it.

Broadband services have been, during 1994, the subject of an inquiry by the Broadband Services Expert Group (BSEG), which was commissioned by Minister Lee to examine "the technical economic and commercial preconditions for the widespread delivery of broadband services to homes, businesses and schools in Australia". BSEG is chaired by the ABA's Chairman, Mr Brian Johns.

BSEG has produced an interim report and is due to report finally to the Minister by the end of this year. In its interim report BSEG had this to say about the question of access to the so-called information superhighway:

The Expert Group considers that if, and when, broadband services do become a major medium of communications, then it is important to individuals and the community that the broadband network be accessible. The Group believes that priority should be given to institutions such as schools, libraries, medical facilities and community centres.

On 24 November Minister Lee announced that the Government would act to ensure that broadband services will comply with the provisions of the Telecommunications Act so that for pay TV usage of cable the general access and interconnection principles of the Act will not be applied at least until 1 July 1997. This exception will be reviewed in the lead-up to 1997. If there is appropriate competition in the delivery of pay TV using cable, the Government will allow the exemption to continue until 1999. After that time, access will be open, consistent with the Telecommunications Act.

The Minister, in the same statement, also rejected suggestions that Australia be split into regional monopolies for cable operators. The Minister said "I see no merit in myself or any regulator drawing lines on maps to give carriers monopolies over this infrastructure".

Pay television will certainly be introduced to Australian audiences during 1995. It is anticipated that one of the satellite subscription television broadcasting licensees, Australis Media, will commence some services quite early in 1995.

A Telecommunications Review

The Minister recently announced that he would conduct a review of Australian telecommunications policy and regulation. He published an Issues Paper in September this year and has sought submissions dealing with the situation that is anticipated to apply after the introduction of full competition into Australia's telecommunications market. The current limits on the number of fixed and mobile carriers will end on 30 June 1997, and the Government is committed to a regime that will be more competitive and liberal than is currently the case.

In his Foreword to the Issues Paper the Minister said

Australia cannot escape the technological and global market pressures in this industry: we must continue to update policies so that we capture the full benefits from the opportunities offered by modern communications.

Planning

The ABA has begun to release its first draft Licence Area Plans (LAPs), giving the broadcasting industry the first indications of the ABA's approach to the introduction of new services.

When these first LAPs have been finalised early next year the introduction of any new commercial licences will be facilitated by a price-based allocation system, the details of which are still to be finally settled, but which will resemble an auction with the licence being allocated to the highest bidder.

The ABA has estimated that this approach to new licence allocation will result in many millions of dollars being returned to the Department of Finance over the next three years.

The ABA's planning process is due to be completed around the whole of Australia by the end of 1996, and the final allocations for that round of planning will probably be made by the middle of 1997.

The ABA and the Asia-Pacific Region

The ABA has, for the first eighteen months or so of its life, been fully occupied with its domestic priorities. But for the past six to twelve months the ABA has been looking outwards to its counterparts in other parts of the world in order to achieve three objectives:

- to learn about other broadcasting systems
- to introduce the ABA to other countries
- to pursue regional regulatory cooperation

As well as the visit by me and the ABA's Director of Planning, Mr Giles Tanner, to Singapore, Malaysia, Indonesia and Japan in August this year, ABA representatives have visited other Asian countries and some Pacific Island nations as well. The ABA is intending to engage itself in regional broadcasting issues in future to the extent that is appropriate.

The role of regulatory infrastructure and regulatory cooperation was adverted to in July this year by the ABA's Chairman, Mr Brian Johns, in a speech to the Pacific Telecommunications Council Conference in Sydney. He said:

...while enterprise alliances and linkages within the region are a necessary and crucial element in the shaping of regional markets, they are not sufficient in themselves to support our mutual trade and regional co-operation aspirations. If we are to bridge our national and business cultures, then we need to look at a range of other factors involved in linking and supporting those business cultures.

This Conference will undoubtedly provide plenty of opportunities for the Australian Broadcasting Authority to identify and develop mutual opportunities for the establishment of a regional regulatory infrastructure.

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by

Peter Webb

Deputy Chairman of the Australian Broadcasting Authority

**Presented at a Seminar jointly organised by the Department of Information
of the Republic of Indonesia and the Asian Mass Communication
Research and Information Centre, Singapore
"Television Development in the Asia-Pacific Region"
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**THE PAPER I HAVE MADE AVAILABLE IN ADVANCE TO THE
ORGANISERS OF THIS CONFERENCE CONCLUDES WITH MENTION OF
SOME REMARKS MADE EARLIER THIS YEAR BY THE CHAIRMAN OF
THE ABA, BRIAN JOHNS.**

**AS YOU CAN SEE HE SPOKE ABOUT THE ROLE OF REGULATORY
COOPERATION IN BOTH LINKING AND SUPPORTING BUSINESS
CULTURES.**

**ONE OF THE REASONS WE ARE DRAWN HERE TODAY IS THE
ACKNOWLEDGMENT THAT DOMESTIC MARKET BOUNDARIES ARE
BREAKING DOWN, AND THAT REGIONAL AND GLOBAL MARKETS ARE
EMERGING.**

**RELATIVELY OLD TECHNOLOGY - SATELLITE, MICROWAVE AND
CABLE - COUPLED WITH RELATIVELY NEW TECHNOLOGY - DIGITAL
(IN ALL ITS FORMS), BROADBAND FIBRE OPTICS, AND THE NEW
GENERATIONS OF MICRO-CHIPS - IS TRANSFORMING OUR
COMMUNITIES BEFORE OUR VERY EYES.**

TECHNOLOGY IS, OF COURSE, NOT A FORCE ON ITS OWN

**IT MUST BE MARRIED TO OTHER DRIVERS OF CHANGE FOR IT
TO SUSTAIN GENUINE DEVELOPMENT AND PROGRESS, BUT IT HAS
BEEN, AND THE MARRIAGE GROWS STRONGER WITH EACH PASSING
YEAR.**

IT IS THE COUPLING OF TECHNOLOGY TO PHENOMENA SUCH AS:

- **THE WORLD-WIDE GROWTH IN THE ELECTRONIC
ENTERTAINMENT INDUSTRIES**

- THE GROWING REALISATION THAT LESS RESTRICTED COMPETITION CAN PRODUCE EXTRAORDINARY GAINS IN PRODUCTIVITY AND EFFICIENCY
- THE EMANCIPATION OF TELEVISION IN EUROPE AND
- STUNNING ECONOMIC GROWTH IN ASIA

(IT IS THESE THINGS) TAKEN TOGETHER WITH CHANGES IN BUSINESS CULTURE AND STRATEGY THAT SEEK TO CAPITALISE ON THEM, THAT IS RINGING THE CHANGES.

VERY FEW OF US COULD SAY THAT WE DO NOT LIVE AND WORK NOW QUITE DIFFERENTLY FROM TEN YEARS AGO. OUR LIVES ARE INEXORABLY CHANGING IN MANY WAYS.

YET TELEVISION REMAINS A CONSTANT AT THE CENTRE OF ALL THIS CHANGE.

AND THE GREAT MAJORITY OF PEOPLE LIKE TO WATCH TELEVISION.

THEY LIKE TO WATCH IT VERY MUCH.

IN TRUTH TELEVISION HASN'T CHANGED A GREAT DEAL, BUT WHAT HAS CHANGED IS ITS GLOBALISATION.

THE CONTRIBUTION I HOPE TO MAKE TO THIS CONFERENCE IS TWOFOLD: MY PAPER TRIES TO GIVE YOU SOME IDEA OF THE PRESENT NATURE OF AUSTRALIAN TELEVISION AND OF ITS DOMESTIC REGULATION.

I OFFER YOU A POTTED HISTORY OF TELEVISION IN AUSTRALIA, AND AN OVERVIEW OF ITS CURRENT POSITION TOGETHER WITH AN OUTLINE OF THE REGULATORY SCHEME THAT HAS APPLIED TO IT SINCE OCTOBER 1992.

[THAT REGULATORY SCHEME, FOR THE RECORD, HAS THE FOLLOWING FEATURES:

- IT IS TECHNOLOGY NEUTRAL IN ITS DEFINITION OF BROADCASTING
- PARLIAMENT HAS IDENTIFIED THE OUTCOMES IT WISHES TO SEE ACHIEVED
- IT IS FLEXIBLE IN ITS ADMINISTRATION, LEAVING THE INDUSTRY TO REGULATE ITSELF ON A DAY-TO-DAY BASIS, AND EQUATING LEVELS OF COMMUNITY INFLUENCE WITH LEVELS OF REGULATION
- PLANNING FOR NEW SERVICES IS TRANSPARENT, STRUCTURED AND CONSULTATIVE

- LICENCE ALLOCATION IS BASED ON PRICE
- ANTI-COMPETITIVE RESTRICTIONS HAVE BEEN EASED
- AN 'OPEN SKY' POLICY WILL PREVAIL FOR SATELLITE BORNE PAY TELEVISION AFTER 30 JUNE 1997 - SUITABLE OPERATORS MUST BE LICENSED AND LICENCE CONDITIONS WILL APPLY, BUT ANY NUMBER OF SUCH OPERATORS MAY PLY THEIR TRADE]

THE AUSTRALIAN REGIME MAY CONTAIN SOME IDEAS, OR MAY SUGGEST OTHERS, YOU WILL FIND WORTH CONSIDERATION, AND I WILL BE GLAD TO SPEAK TO ANYONE WHO WISHES TO EXPLORE SUCH IDEAS DURING THE COURSE OF THE CONFERENCE.

BUT THE SECOND PART OF MY CONTRIBUTION WILL BE FOUND IN MY REMARKS HERE TODAY, AND I INTEND TO SPEAK ABOUT THE NEED FOR REGIONAL REGULATORY COOPERATION AND LIAISON, OF THE PROGRESS THAT HAS BEEN MADE WITH THAT TO DATE, AND OF SOME SITUATIONS THAT, IN THE ABA'S VIEW, MAKE SUCH COOPERATION NOT ONLY DESIRABLE BUT ESSENTIAL.

AS A STARTING POINT I THINK IT MIGHT BE USEFUL TO REVISIT SOME ASSUMPTIONS ABOUT TELEVISION REGULATION ITSELF, AND ABOUT WHY WE BOTH LIKE TELEVISION AND REGULATE IT.

THE FIRST ASSUMPTION MIGHT BE: BROADCASTING IS REGULATED BECAUSE SPECTRUM IS A PUBLIC RESOURCE AND THE GOVERNMENT IS ENTITLED TO LICENCE IT ON TERMS IT SEES FIT.

- CHALLENGERS OF THIS ASSUMPTION SAY THE CASE IS UNCONVINCING BECAUSE IT INFERS THE RIGHT TO REGULATE DERIVES FROM THE OPPORTUNITY TO DO SO. IT MIGHT EXPLAIN HOW REGULATION IS FEASIBLE BUT DOES NOT JUSTIFY IT.

THE SECOND ASSUMPTION IS BASED ON THE LIMITATIONS ON BROADCAST FREQUENCY.

WITH ONLY A PRIVILEGED FEW ABLE TO OBTAIN OPERATING LICENCES, WHY SHOULDN'T GOVERNMENT REASONABLY REQUIRE LICENSEES TO SHARE THAT PRIVILEGE WITH OTHERS OR REQUIRE THEM TO PROVIDE 'BALANCED' PROGRAMMING?

- CHALLENGERS OF THIS ASSUMPTION SAY THAT THE SCARCITY OF SPECTRUM IS A POLICY CHOICE FOR GOVERNMENTS, AND THAT, AS WELL, DIGITISATION WILL SHORTLY PRODUCE PLENTY WHERE NOW THERE IS LITTLE.

A THIRD ASSUMPTION REVOLVES AROUND THE CHARACTER OF BROADCAST MEDIA. IT GOES SOMETHING LIKE THIS -

TELEVISION AND RADIO ARE VERY INFLUENTIAL IN THE COMMUNITY, AND PLURALISM AND DIVERSITY NEED TO BE MANDATED.

PROGRAM CONTENT SHOULD THEREFORE BE REGULATED AND MEDIA MONOPOLIES BROKEN UP OR STOPPED FROM FORMING.

- **CHALLENGES TO THIS ASSUMPTION ARE MORE MUTED. THE POTENCY OF THE MEDIUM, PARTICULARLY TELEVISION, IS ACKNOWLEDGED, AS IS ITS PERVASIVENESS. CABLE TELEVISION IS ALLEGED NOT TO BE SO STRONG AN INFLUENCE AS FREE-TO-AIR TELEVISION, AND THEREFORE NOT SO MUCH IN NEED OF REGULATION.**

EVEN IF ONE WERE TO GIVE THE CRITICS OF THESE OLD ASSUMPTIONS THE BEST OF IT, THE GROUND HAS SHIFTED CONSIDERABLY SINCE THEY WERE FASHIONED AND OTHER CONSIDERATIONS HAVE EMERGED THAT MAKE ALL GOVERNMENTS PONDER WHERE THE PUBLIC INTEREST LIES AND HOW BEST IT MIGHT BE GIVEN EFFECT TO AND NOURISHED.

ONE OF THE NEWER ASSUMPTIONS RELATES TO THE NEED TO PRESERVE AND PROTECT CULTURAL VALUES AND IDENTITIES.

IT IS TRUE THAT THIS ISSUE HAS ALWAYS UNDERPINNED THE THIRD ASSUMPTION I MENTIONED - THE INFLUENCE ASSUMPTION - AND IT HAS TRADITIONALLY BEEN MET WITH DOMESTIC REGULATION, ENFORCEABLE AGAINST LOCAL OPERATORS, AND DESIGNED TO PRODUCE SOCIALLY RESPONSIBLE BROADCASTING.

BUT THE GLOBALISATION OF TELEVISION, THE MARCH OF WHICH IS UNSTOPPABLE, PARTICULARLY IN THE ASIA-PACIFIC, HAS GIVEN RENEWED, PERHAPS REDOUBLED, CAUSE FOR CONCERN.

IN AUSTRALIA WE ARE HAVING THE MOST VIBRANT OF DEBATES ABOUT OUR NATIONAL IDENTITY, AND OUR CONSTITUTIONAL LINKS WITH THE UNITED KINGDOM ARE UNDER VERY CLOSE SCRUTINY.

SO TOO IS OUR NATIONAL ORIENTATION.

THIS ORIENTATION, UNTIL RECENT YEARS, HAS BEEN A TOUCH NELSONIAN.

MOSTLY, ALTHOUGH NOT UNIVERSALLY, ORDINARY AUSTRALIANS HAVE HAD EYES FOR OUR WESTERN COUNTERPARTS

LIKE THE UNITED KINGDOM, THE USA AND WESTERN EUROPE, AND HAVE TURNED SOMETHING OF A BLIND EYE TO ASIA.

WHILE BUSINESS AND GOVERNMENT HAVE LONGSTANDING LINKS WITH ASIA, THE RECENT PACE OF OUR ENGAGEMENT WITH ASIA HAS, IN FACT, TAKEN THE PERSON IN THE STREET SOMEWHAT BY SURPRISE.

FORTUNATELY, WE ARE FUNDAMENTALLY A PHLEGMATIC NATION, AND IT IS AN ENVIABLE AUSTRALIAN CHARACTERISTIC THAT WE ARE CAPABLE OF GREAT ATTITUDINAL CHANGE WITHOUT HURTFUL SOCIAL DISCORD OR RANCOUR.

AUSTRALIANS ARE ALSO INQUISITIVE ABOUT THE WORLD, MORE THAN SCARED OF IT, AND NO DOUBT THIS IS DUE TO OUR RELATIVE GEOGRAPHIC ISOLATION FROM BOTH EAST AND WEST, AS WELL AS TO THE STABILITY OF OUR HISTORY AND THE WORTH OF OUR INSTITUTIONS.

OUR PHYSICAL SECURITY IN THE REGION HAS RECENTLY BEEN THE SUBJECT OF AN EXPERT REPORT AND IT HAS BEEN REPORTED THAT AUSTRALIA'S SOVEREIGNTY IS NOT PARTICULARLY AT RISK BECAUSE, AMONG OTHER THINGS, AUSTRALIA'S SIZE MAKES IT AN ENORMOUSLY DIFFICULT COUNTRY TO TAKE AND HOLD.

SO WE ARE REASSURED AND STRONG IN OUR BELIEF THAT AUSTRALIA HAS MANY MORE OPPORTUNITIES THAN THREATS IN THE REGION, AND WE KNOW WE MUST BUILD ON THE OPPORTUNITIES.

BUT AS SECURE AS WE ARE, IN COMMON WITH MOST PEOPLES, WE HAVE FRETTE^d OVER THE FATE OF OUR CULTURE. AND FRETTE^d OVER THE IMPACT OF ENGAGEMENT WITH OTHER CULTURES, PARTICULARLY THOSE OF THE UNITED KINGDOM AND OF AMERICA.

ODDLY ENOUGH, WE HAVE NOT SEEN THE WAVES OF IMMIGRATION THAT HAVE STRUCK OUR SHORES AS NEARLY SO MUCH OF A PROBLEM AS THE IMPACT OF ENGLISH AND AMERICAN TELEVISION SHOWS, MORE PARTICULARLY NOW THE LATTER.

AUSTRALIA IS UNDOUBTEDLY A MULTICULTURAL PHENOMENON, ABSORBING QUITE LARGE NUMBERS OF EUROPEAN MIGRANTS INITIALLY, AND MORE LATTERLY THOSE FROM THE MIDDLE EAST AND ASIA, WITHOUT GREAT DIFFICULTY AND WITH ENORMOUS BENEFIT.

IMMIGRATION HAS CHANGED BEYOND RECOGNITION THE AUSTRALIA I WAS BORN INTO - AND MUCH FOR THE BETTER.

A DEFINITION OF ANY COUNTRY'S NATIONAL IDENTITY IS DESTINED FOREVER TO BE ELUSIVE, BUT SOME TURNING POINTS IN HISTORY CAN BE SEEN, USUALLY IN RETROSPECT, TO HAVE BEEN DEFINING MOMENTS - EVEN IF THEY ARE 'MOMENTS' THAT EXTENDED OVER A DECADE, OR TWO OR THREE.

WHATEVER AUSTRALIA'S NATIONAL IDENTITY WAS AT THE BEGINNING, DURING AND AT THE END OF THE FIRST HALF OF THIS CENTURY, IT HAS BEEN CHANGING AND EVOLVING EVER SINCE UNDER THE IMPACT OF AN IMMIGRATION PROGRAM THAT HAS HAD A CUMULATIVE EFFECT ON THOSE WHO NOW LIVE IN AUSTRALIA.

TELEVISION, AND THE INFLUENCE ON CONSUMERISM OF MODERN RETAILING THAT IS EXERTED THEREBY, HAS ALSO PLAYED ITS PART IN THIS EVOLUTION AND WILL, NO DOUBT, GO ON DOING SO, BUT TWO THINGS COULD BE SAID ABOUT OUR SENSE OF SELF:

1. IT IS MUCH MORE ROBUST THAN WE TEND TO GIVE IT CREDIT FOR
2. IT IS MUCH LESS INFLUENCED BY TELEVISION AND MORE INFLUENCED BY OTHER SOCIAL FACTORS THAN MIGHT APPEAR TO BE THE CASE

TELEVISION AND IMMIGRATION BEGAN IN AUSTRALIA AT ABOUT THE SAME TIME.

TELEVISION IN AUSTRALIA IS NOW A VERY MATURE INDUSTRY, EARNING A\$1.87 BILLION IN THE YEAR ENDED 30 JUNE 1993 IN THE COMMERCIAL SECTOR, AND COSTING ABOUT A\$250 MILLION EVERY YEAR IN THE NATIONAL SECTOR (FOR THE ABC AND SBS).

THE RESULT OF AROUND FORTY YEARS OF IMMIGRATION POLICIES IS THAT SOMETHING APPROACHING 25% OF THE PRESENT AUSTRALIAN POPULATION WAS NOT BORN IN AUSTRALIA, AND THE PERCENTAGE OF THE POPULATION THAT SPEAK A LANGUAGE OTHER THAN ENGLISH AS THEIR FIRST LANGUAGE IS OVER 15%.

THERE IS ALSO A LIVELY DEBATE THAT SURFACES FROM TIME TO TIME IN AUSTRALIA ABOUT THE EXTENT TO WHICH OUR COMMERCIAL TELEVISION SHOULD REFLECT THIS CULTURAL DIVERSITY, AND THE NETWORKS HAVE RECENTLY ASKED LOCAL PRODUCTION HOUSES TO ENSURE THAT A REPRESENTATIVE CROSS-SECTION OF THE AUSTRALIAN COMMUNITY IS, WHEREVER POSSIBLE, DEPICTED IN THEIR PROGRAMS.

AFTER ALL. PEOPLE LIKE TO SEE THEMSELVES ON TELEVISION, AND A MASS BROADCASTING MEDIUM THAT EXCLUDES SEGMENTS OF

SOCIETY FROM THEIR RIGHTFUL PLACE AMONG OTHERS CAN ONLY GIVE COMFORT TO DISAFFECTION AND RESENTMENT.

THAT'S PART OF THE REASON WHY SO MUCH EMPHASIS IS PLACED ON LOCAL CONTENT ON TELEVISION.

AUSTRALIA HAS A MANDATED REQUIREMENT THAT 50% OF ALL PROGRAMMING BROADCAST BETWEEN 6 AM AND MIDNIGHT BE AUSTRALIAN PROGRAMMING.

THIS IS A REGULATORY RULE, NOT A PARLIAMENTARY DICTATE, ALTHOUGH PARLIAMENT HAS DECREED THAT A STANDARD SHOULD APPLY AND LEFT IT TO THE REGULATOR TO DETERMINE ITS SCOPE. THE STANDARD IS PRESENTLY BEING REVIEWED BY THE ABA.

BUT THE PRINCIPAL POINT I AM MAKING ABOUT THE AUSTRALIAN PERSPECTIVE ON TELEVISION ON THIS TOPIC IS THAT AUSTRALIA HAS BEEN TRANSFORMED SINCE THE SECOND WORLD WAR INTO A GENUINELY MULTICULTURAL SOCIETY, WHILE TELEVISION DOES NOT SEEM TO HAVE BEEN ANYTHING LIKE A SIGNIFICANT, DIRECT FACTOR IN THAT TRANSFORMATION.

THIS DOESN'T MEAN FOR ONE MOMENT OF COURSE THAT TELEVISION IS IRRELEVANT TO THE DEVELOPMENT OF NATIONAL IDENTITY OR TO THE CULTURE OF WHO WE ARE AND WHAT WE DO.

OUR PRIME MINISTER, TOGETHER WITH THE MINISTER FOR COMMUNICATIONS AND THE ARTS, RECENTLY LAUNCHED 'THE FIRST COMMONWEALTH CULTURAL POLICY IN OUR HISTORY', CREATIVE NATION.

AS THE POLICY SAYS:

THE REVOLUTION IN INFORMATION TECHNOLOGY AND THE WAVE OF GLOBAL MASS CULTURE POTENTIALLY THREATENS THAT WHICH IS DISTINCTLY OUR OWN.

IN DOING SO IT THREATENS OUR IDENTITY AND THE OPPORTUNITIES THIS AND FUTURE GENERATIONS WILL HAVE FOR INTELLECTUAL AND ARTISTIC GROWTH AND SELF-EXPRESSION.....

THAT IS WHY WE MUST ADDRESS THE INFORMATION REVOLUTION AND THE NEW MEDIA NOT WITH FEAR AND LOATHING, BUT WITH IMAGINATION AND WIT.....

WE HAVE TO EMBRACE IT AS WE EMBRACED THE CULTURAL DIVERSITY WHICH POST-WAR IMMIGRATION DELIVERED TO US.

WISE GOVERNMENTS HAVE WORKED WITH TELEVISION, RATHER THAN AGAINST IT, AND HAVE ATTEMPTED TO CAPITALISE ON ITS POTENTIAL FOR ENCOURAGING SOCIAL COHESION.

THEY HAVE ALSO SOUGHT, IN RECENT YEARS, TO MEET APPREHENSIONS ABOUT THE GLOBALISATION OF TELEVISION, AND ITS IMPLIED THREAT OF MONOCULTURALISM, BY ENCOURAGING GREATER DOMESTIC DIVERSITY IN TELEVISION.

IN CREATIVE NATION THE AUSTRALIAN GOVERNMENT IS ATTEMPTING TO SPAWN AN OUTBURST OF CREATIVITY IN TELEVISION PROGRAM PRODUCTION, IN MULTI-MEDIA, IN INTERACTIVITY AND THE LIKE, IN AN EFFORT TO MEET THE CHALLENGE FROM ABROAD WITH WHAT IS ESSENTIALLY A CULTURAL RESPONSE.

INCIDENTALLY, CREATIVE NATION WAS ALSO ABOUT THE GOVERNMENT'S INTENTION TO EMPHASISE AUSTRALIA'S BREAK WITH ITS COLONIAL PAST.

IN THAT RESPECT AUSTRALIA IS NOT DISSIMILAR FROM ITS ASIAN NEIGHBOURS IN THAT IT FACES THE CHALLENGE OF CELEBRATING A MIX OF ETHNIC GROUPS AND CULTURES, INCLUDING A NEW RESPECT FOR OUR INDIGENOUS CULTURE, WHILE CONTINUING TO EXPLORE ITS EMERGING CULTURAL IDENTITY AS A POST-COLONIAL NATION.

I NOTICED DURING MY RECENT TRIP TO SINGAPORE, MALAYSIA, INDONESIA AND JAPAN THAT THE SPONSORSHIP OF MORE DOMESTIC SERVICES SEEMS TO BE A UNIFORM STRATEGY FOR COPING WITH THE THREAT OF SATELLITE-DELIVERED PROGRAMS FROM OFF-SHORE OPERATORS WHO ARE NOT SUSCEPTIBLE TO TRADITIONAL REGULATION.

AUSTRALIANS SHARE SOME OF THOSE APPREHENSIONS, BUT WE HAVE A LONG HISTORY OF EXPOSURE TO TELEVISION AND THE COMMONWEALTH PARLIAMENT HAS MADE IT POSSIBLE FOR SATELLITE PAY TELEVISION OPERATORS, OTHER THAN THOSE THAT WILL PROVIDE THE INITIAL THREE SERVICES (TOTALLING TEN CHANNELS) THAT ARE LIKELY TO COMMENCE EARLY IN 1995, TO BE LICENSED TO OFFER ANY NUMBER OF SERVICES AND CHANNELS FROM 1 JULY 1997.

THE IDEA IS TO GIVE THE INITIAL OPERATORS, AND THEIR SHAREHOLDERS, A HEAD START BEFORE FULL-SCALE COMPETITION IS PERMITTED IN THE MARKET.

BUT IN THE TIME BETWEEN NOW AND JULY 1997 OPERATORS ARE FORBIDDEN BY AUSTRALIAN LAW TO PROVIDE A SUBSCRIPTION TELEVISION BROADCASTING SERVICE UNLESS THEY HAVE BEEN ALLOCATED A LICENCE.

THE PENALTY FOR PROVIDING SUCH A SERVICE WITH THE USE OF A SATELLITE IS A\$2 MILLION FOR EACH DAY THAT THE BREACH OF THE ACT CONTINUES.

AS YOU CAN SEE, THIS IS NOT 'LIGHT TOUCH' REGULATION, AND THE ABA STANDS READY TO ENFORCE THE LAW SHOULD THE CIRCUMSTANCES ARISE THAT REQUIRE IT, AND, AS REQUIRED BY THE BROADCASTING SERVICES ACT, IN A MANNER CONSISTENT WITH THE SERIOUSNESS OF ANY BREACH OF THE LAW.

BUT ANYONE WHO HAS EVER WORKED IN LAW ENFORCEMENT UNDERSTANDS THAT THE BEST APPROACH TO LAW-BREAKING IS TO PREVENT IT, RATHER THAN TO PURSUE IT AFTER THE EVENT.

THE ABA HAS EMBARKED ON A PREVENTATIVE STRATEGY - ONE THAT IS DESIGNED TO ACQUAINT BOTH SATELLITE OPERATORS AND BROADCASTERS WITH THE TERMS OF AUSTRALIA'S LAWS.

TO DATE THIS PROGRAM HAS BEEN WELL RECEIVED.

SATELLITE OPERATORS HAVE UNDERTAKEN TO PASS ON TO THEIR CLIENTS INFORMATION ABOUT AUSTRALIA'S REGULATORY SCHEME, AND SOME OF THOSE RESPONSIBLE FOR THE LICENSING OF SATELLITE OPERATORS HAVE INDICATED AN "IN PRINCIPLE" PREPAREDNESS TO COOPERATE WITH THE ABA AND TO GIVE MEANING TO COOPERATIVE ARRANGEMENTS THROUGH THE FORMAL EXECUTION OF MEMORANDUMS OF UNDERSTANDING.

BROADCASTERS HAVE ALSO FREELY ENTERED INTO DISCUSSION WITH THE ABA ABOUT THESE MATTERS, AND HAVE UNDERTAKEN TO DISCUSS ANY FUTURE PLANS WITH THE AUTHORITY.

GOVERNMENTS IN THE REGION HAVE ALSO BEEN VERY RESPONSIBLE ABOUT THIS ISSUE.

THE HONG KONG GOVERNMENT, FOR EXAMPLE, HAS PASSED LEGISLATION THAT REQUIRES SATELLITE BROADCASTERS UPLINKING OUT OF THEIR JURISDICTION TO RESPECT THE PROGRAM REGULATIONS AND SENSIBILITIES OF THE COUNTRIES THEY BROADCAST INTO.

'BROADCAST' IS AN OPERATIVE WORD INCIDENTALY IN THE AUSTRALIAN REGULATORY LEXICON, BECAUSE ONE OF THE

FEATURES OF AUSTRALIA'S NEW REGULATORY SCHEME IS THE INTRODUCTION OF THE CONCEPT OF 'NARROWCASTING'.

NARROWCASTING SERVICES ARE BROADCASTING SERVICES WHOSE RECEPTION IS LIMITED IN SOME WAY, AND THEY MAY BE SUBSCRIPTION OR OPEN IN NATURE.

[RECEPTION MAY BE LIMITED:

- BY BEING TARGETED TO SPECIAL INTEREST GROUPS
- BY BEING INTENDED ONLY FOR LIMITED LOCATIONS
- BY BEING PROVIDED DURING A LIMITED PERIOD, OR TO COVER A SPECIAL EVENT
- BECAUSE PROGRAMS ARE OF LIMITED APPEAL
- OR FOR SOME OTHER REASON]

SATELLITE-DELIVERED NARROWCASTING SERVICES MAY BE PROVIDED TO AUSTRALIAN AUDIENCES, AND SOME ARE NOW, IN FACT, AND THE ABA HAS BEEN GIVEN THE RESPONSIBILITY OF PROVIDING THE INDUSTRY ON REQUEST WITH FORMAL, WRITTEN OPINIONS ABOUT SERVICE CATEGORISATION (AND FOR A MODEST FEE).

SUCH OPINIONS, WHICH COULD CONFIRM OR CONTRADICT THE PLANS OF BROADCASTERS, ARE BINDING FOR AT LEAST FIVE YEARS, AND NEITHER THE ABA NOR ANY OTHER GOVERNMENT AGENCY MAY, WHILE THE CIRCUMSTANCES RELATING TO THE BROADCASTING SERVICE REMAIN SUBSTANTIALLY THE SAME AS THOSE ORIGINALLY ADVISED TO THE ABA, TAKE ANY ACTION AGAINST THE PROVIDER OF THE SERVICE.

THIS POWERFUL TOOL HAS PROVED VERY HELPFUL DOMESTICALLY TO AUSTRALIAN WOULD-BE BROADCASTERS, AND THERE IS NO REASON WHY IT SHOULD NOT BE UTILISED BY ANY SATELLITE BROADCASTER INTENDING TO PROVIDE PROGRAMS TO THE AUSTRALIAN AUDIENCE. I RECOMMEND IT TO BROADCASTERS EVERYWHERE.

I WAS ASKED TO SPEAK TODAY FROM AN AUSTRALIAN PERSPECTIVE.

THE AUSTRALIAN PERSPECTIVE IS NOT, HOWEVER, A DOMESTIC VIEW ANY LONGER.

TELEVISION DELIVERY IS NOW UBIQUITOUS, EFFORTLESSLY CROSSING NATIONAL BOUNDARIES, AND ITS REGULATION FROM NOW ON CANNOT BE A DOMESTIC PREOCCUPATION ALONE, ALTHOUGH

MUCH OF DOMESTIC CONCERN REMAINS, AS EVER, TO BE DEALT WITH.

AN INTERNATIONAL DIMENSION HAS BEEN ADDED, AND THE RESPONSIBILITY OF REGULATORS EVERYWHERE WILL BE, INDEED NOW IS, TO COOPERATE WITH OTHERS IN THE LEGITIMATE PURSUIT OF DOMESTIC REGULATORY OBJECTIVES.

THE DOMESTIC JURISDICTION MUST, OF COURSE, REMAIN WITHIN THE SOVEREIGNTY OF NATION STATES.

THE COOPERATION OF WHICH I SPEAK IS NOT DESIGNED TO FURTHER ANY UNACCOUNTABLE REGULATORY AGENDA, OF COURSE, BUT RATHER TO HELP US ALL COPE WITH THE REALITIES OF THE MODERN MARKET PLACE.

AND FOR TELEVISION THAT MARKET PLACE HAS NO REAL OUTER MARKERS.

WHAT FORM CAN THIS COOPERATION TAKE?

THE FORM IT'S ALREADY TAKING.

INFORMAL AGREEMENTS TO EXCHANGE INFORMATION, TO ACT AS AGENTS AND TO PROVIDE MUTUAL SUPPORT IN THE FORM OF TRAINING, SECONDMENTS AND THE LIKE ARE BEING REACHED NOW.

SOON, MORE FORMAL ARRANGEMENTS WILL BE MADE BY THE ABA WITH A NUMBER OF ITS COUNTERPARTS.

THE ABA WILL NEXT YEAR FINALISE MEMORANDUMS OF UNDERSTANDING WITH ITS COUNTERPARTS IN THE USA, CANADA AND THE UNITED KINGDOM.

OTHERS WILL SURELY FOLLOW.

THESE ARRANGEMENTS, COUPLED WITH EDUCATIONAL AND INFORMATIONAL STRATEGIES WILL NOT ONLY SERVE TO MINIMISE INADVERTENT PROBLEMS BUT TO MAKE CLEAR THE EXTENT OF WHAT MAY BE ACCEPTABLE AND UNACCEPTABLE ON A JURISDICTION-BY-JURISDICTION BASIS.

AS WE BUILD ON THE FOUNDATIONS OF SUCH A STRATEGY I AM SURE WE WILL BE DOING OUR BEST TO WORK TOGETHER TO PRODUCE A MARKET PLACE THAT IS INFORMED, STABLE AND PREDICTABLE.

THE INDUSTRY WILL WELCOME SUCH ARRANGEMENTS I AM SURE, AND SO TOO WILL THE PEOPLES OF THE ASIA-PACIFIC REGION.

THANK YOU.