



Pay TV OZ Content (Non) Compliance

On 6 February, the ABA announced that 'The majority of pay TV broadcasters and channel providers spent money as required on new Australian drama in the period ending 30 June 1996'.

Oops! One month later, figures included in the ABA's *Working Paper on Australian Content on Pay TV*, published as part of the investigation currently being undertaking at the direction of the Minister, revealed a rather different story.

Of the eleven 'predominantly drama channels' currently transmitted, only eight spent the 10% of their program budgets on new Australian drama 'required' by section 102 of the Broadcasting Services Act. The eleven channels combined had program expenditure of \$24.6 million for year 1995/96 and should have spent \$2.46 million on new Australian drama. In fact, they spent \$1.74 million (7.1%) on new Australian drama. One didn't spend anything at all.

The ABA notes that it is unable to take enforcement action because the legislation imposing the obligation doesn't work. It requires *licensees* to spend 10% of their program budgets on new Australian drama. But the pay TV industry is structured so that the companies who hold the licences are generally not the ones who produce the channels and hence incur the program expenditure. So the licensees incur no program expenditure but the channel providers who do have no legislative obligation in the first place.

The ABA indicates that 'the way the relevant law is drafted needs Parliamentary attention'. It also gives an odd spin to the news about the industry's partial compliance with spirit of the legislation:

'It is clear that Parliament intended pay TV would be subject to a lighter level of regulation than free-to-air commercial television. The ABA considers that regulation which has the effect of decreasing the diversity and choice offered by pay TV to Australian audiences would be undesirable. To a major extent, the diversity and choice provided by pay TV will continue to consist of programming sourced from outside Australia.'

What Minister Bob Collins actually said when introducing the relevant legislation in 1992 was:

'The Government's aim in setting Australian content regulation for subscription satellite services [subsequently amended to all subscription television broadcasting services] is to send a signal to the industry that it has a role to play in the development of the Australian film and television industry.'

The Parliament made absolutely clear what it wanted in relation to Australian programming—10% of program expenditure on drama channels to be spent on new Australian drama. It's a much clearer requirement even than the provision that directs the ABA to make a standard about Australian content for commercial television. And the same legislation required the review currently being undertaken by the ABA to look specifically at increasing the 10% to 20%.

It's very clear that the Parliament had the new medium's contribution to the Australian production industry very firmly in mind when it dealt with

the issue. It's rather less clear where the ABA gets its idea that pay TV is all about diversity and nothing much to do with Australian-ness.

Industry Views

In its submissions, and at an Industry Forum organised by the ABA, the CLC and the Confederation of Australian Subscription Television (CAST) at the ABA on 12 March, the pay TV industry indicated its support for self-regulation of Australian programming:

'Over time, self regulation will result in the production of value added and innovative Australian product in response to market forces, namely demand – a result which is unlikely in a commercially artificial system of legislative quotas'.

Commercial TV was regulated because, unlike pay TV, it had near-universal access to Australian homes using the public resource of the airwaves, and a highly protected market structure.

Even if it was felt that Australian programming requirements were appropriate to pay TV at some stage, industry representatives argued that it is simply too early in the development of the business to be imposing requirements now.

However, if Australian program requirements were inevitable, the industry preferred the current expenditure model, with some changes, rather than commercial TV-like quotas. The changes, it was argued, should include:

- more flexibility about the types of programs on which monies can be spent (allowing spending on docu-



mentaries, lifestyle programs, gameshows, standup comedy, short interstitial programs and other programs which suit the particular channel's programming format);

- the ability to count spending on any Australian programs, not just 'new' programs; and
- the ability for commercial stations to count towards the free-to-air quotas programs which have already counted towards the pay TV

expenditure requirement. Currently, this is only allowed for feature films.

Production industry groups are likely to propose an increase in the required Australian program expenditure threshold from 10% to 20%, and an extension of the Australian program expenditure requirement to some channels other than drama channels.□

Jock Given

Paul Chadwick

AFTER SEVEN years at the Communications Law Centre, Paul Chadwick is leaving the Communications Law Centre to concentrate on his own interests.

Paul, initially on his own, then with Bruce Shearer, established the Melbourne office of the CLC in 1990, three years after the Sydney office opened at UNSW. They have since been joined by Jenny Mullaly, Vic Marles and Liz Sadler.

Paul brought to the task extensive experience as a working journalist at the *Sun News-Pictorial* and *The Age*, extraordinary knowledge of Australian and world media and an intense commitment to an independent, investigative, accountable, ethical journalism and media industry in Australia.

In an article in *Metro* magazine last year, Paul wrote of a 'bigger conception' of journalism – of journalism as 'a sentry who watches and warns, a guide who searches, maps and explains, a scribe who listens and records, a witness with the courage to speak, a host to debates among others, an advocate for the weak, and a keeper of the collective memory'.

Such a conception of journalism might be seen equally as a vision for an organisation like the Communications Law Centre, whose character and continuing existence owe so much to Paul's work. He will be hugely missed.

His position as Co-ordinator of the Victorian office is being taken over by Vic Marles. Vic has been closely involved in negotiating and managing the Centre's affiliation with Victoria University of Technology and the renewed funding commitments from the Myer Foundation and the Reichstein Foundation. The Centre is currently seeking to fill a part-time position as a policy researcher.□

Jock Given

Pay TV - The Numbers

Service	Subscribers	Date
Optus Vision	165,000	January 1997
Foxtel	140,000	January 1997
Austar	117,000	February 1997
Galaxy	100,000	December 1996
Total	522,000	

Penetrative Predictions

Forecaster	Australian Pay TV Households as a % of all TV Households
Foxtel	60% in 10 years
Deutsche Morgan Grenfell (quoted by Optus Vision)	55% saturation level
Galaxy	40% saturation level
David Keig, Keig and Co	40-48% by 2001
James Capel	35% by 2004
BTCE Communications Futures Project	30% by 2005

Pay TV Overseas

Country	Pay TV Households as a % of all TV Households
France	18
NZ	20
UK	21.5
USA	
- basic package	65
- premium services	30-35

Source for all tables - ABA Working Paper *Australian Content on Pay TV: Investigation in Connection with subsection 215(2) of the Broadcasting Services Act 1992*, March 1997