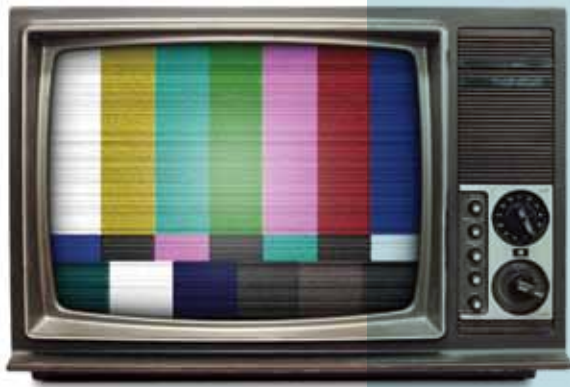




Australian Government
Convergence Review

Convergence Review

Interim Report



Comments and inquiries

Please submit your feedback on the Interim Report to the review secretariat by email to convergence@dbcde.gov.au, or by post to

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Published December 2011

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Foreword

On the eve of 2012 we face a media content and communications landscape that is changing rapidly. Tablet devices that only became widely available two years ago are now being sold at a faster rate than laptop computers worldwide. Smartphones that were launched five years ago are forecast to represent 90% of local phone sales in three years. The popularity of these connected devices is driven by a wave of new content and applications available from global services that are changing the shape of the Australian content and communications market. One of the few certainties is that the change we have witnessed in recent years will only increase in pace.

Australia is in a unique position to benefit from these changes. With the roll out of the National Broadband Network (NBN), fast broadband will be a utility available to all, providing a new underpinning to business and society. Universal fast broadband will transform access to a range of services including news and information, entertainment, education, health, commerce and the arts. It will also open up possibilities for all Australians to participate in content creation and to access services not yet contemplated, particularly for those in regional and remote areas. This new infrastructure could embed the digital economy at the centre of Australian life. With a country of early technology adopters, experienced content makers and a strong information technology base, we are well placed to maximise the potential of our communications infrastructure.

Australia's digital creative industries are in a position to benefit from these changes. We can expand our content production in traditional screen business and develop excellence in areas like apps for tablets and smartphones. These industries can flourish in a converged environment that opens up new trade routes and cultural interactions with the rest of the world, where global distribution is virtually free. Our regional ties to Asia and our working in English could allow us to build an important hub of content and technology development.

More of our social and cultural lives are occurring in the digital realm. Maintaining access to a range of information, news and current affairs and ensuring availability of Australian content remain vitally important to our democracy and cultural diversity.

Overall, the Australian content and communications industry is in good shape. We received feedback during consultations that Australians are generally well served by a strong industry. However, given the opportunities offered by convergence, it is timely to rethink our approach. Australia would benefit from a new policy framework that reflects the vitality of services provided on new and existing communications infrastructure. There should be a flexible approach to regulation that can keep pace with these opportunities. Policy and regulatory levers will need to promote open access, competition and innovation. They will also need to encourage a range of voices and provide incentives and government support to ensure that Australian and local content are still widely available in a global environment.

Whilst technology has eroded the traditional divisions between free-to-air (FTA) television and the internet, newspapers and websites, radio and streaming services, our policy and regulation is still based on the industry and service structures of the early 1990s.

Calibrating the policy and regulatory framework for the new environment is vital. The reforms recommended by the Convergence Review will require fundamental changes to communications legislation.

This interim report outlines some key areas where reform is needed to deliver a vibrant content and communications industry. These reforms have been inspired by the many submissions we have received during our work and the Committee continues to formulate its findings using this feedback. Further details of these reforms are being developed for our final report to government in March 2012.

Convergent Framework

There is an opportunity to create a new convergent framework for content and communications which will better position Australia in a global digital economy by:

- > providing reduced, better-targeted regulation
- > providing a technology-neutral approach that can adapt to new services, platforms and technologies
- > promoting emerging services and innovation
- > ensuring consistent content standards across platforms
- > enhancing Australian and local content
- > supporting media diversity
- > reducing compliance costs for industry
- > providing certainty for the market into the future.

A consistent theme of the submissions received by the Review was that parts of the current communications environment, particularly broadcasting, were overregulated and many of the existing rules were onerous and expensive, to comply with. Our starting point is to encourage innovation and remove unnecessary regulation. A range of existing regulation no longer serves its policy purpose and is costly and difficult for industry and government to maintain. Some examples are at **Appendix One**. Further details and additional proposed changes will be outlined in our final report.

More Effective Regulation

At the beginning of the Review, the Committee set out 10 principles to guide its considerations – see **Appendix Two**.

These principles highlight the public benefits which the Committee considers are important to promote in a converged environment – for example Australian and local content, diversity and protecting content standards. These benefits can be achieved in a new policy framework that uses focused regulation where necessary while maximising competition, promoting innovation and extending consumer choice.

The recommendations in this interim report represent a significant shift away from a prescriptive approach towards a policy framework that is adaptable and flexible.

1. Introduction

The Convergence Review was announced in December 2010 with the release of the draft terms of reference. The Committee was formed in April 2011 and has completed a detailed consultation process which included the release of seven discussion papers¹, meetings with industry stakeholders and public meetings in metropolitan and regional locations.

This interim report highlights the fundamental recommendations which the Committee expects will shape its final report. It is a high level summary reflecting the Committee's vision for a converged environment. It is important to note that this interim report does not cover all the issues that will be addressed in the final report.

The final report will also take other relevant reviews into consideration, in particular:

- > the Independent Media Inquiry² reporting in February 2012
- > the National Classification Scheme Review³ reporting in February 2012.

More than 250 submissions have been received by the Review and these will be taken into account when developing the final report to government. Many issues raised in this report have been extensively covered in those submissions. Any additional comments on the recommendations included in this report should be forwarded to convergence@dbcde.gov.au by 10 February 2012.

¹ The discussion papers can be found at www.dbcde.gov.au/convergence

² www.dbcde.gov.au/digital_economy/independent_media_inquiry

³ www.alrc.gov.au/inquiries/national-classification-review

2. A new regulator for the digital economy

Content and communications are fundamental to the success of the Australian economy. In light of the importance of the digital economy to our future, Australia needs a new communications regulator with the flexibility to make rules and decisions within clearly stated regulatory objectives and with sufficient powers to encourage competition and compliance.

Recommendation

It is recommended that a new independent regulator for content and communications (the regulator) is established that operates at arm's-length from government and industry, with the capacity to address technical, social and economic issues. The new regulator should have the following features:

- > Given the pace of change in the digital economy, the regulator needs to have broad powers to make rules within the policy frameworks determined by parliament.
- > The regulator should have scope to adopt flexible, managed regulation and to apply self-regulation, co-regulation or direct regulation as the circumstances require. It should also have a range of appropriate sanctions to encourage compliance.
- > Within the framework of policies and principles established by legislation, the regulator should operate at arm's-length from government except for a limited range of specified matters. The regulator should have secure funding and cost-recovery mechanisms.
- > The regulator should have broad powers to encourage media diversity.
- > The regulator should have flexible powers to deal with content-related competition issues, which will complement the Australian Competition and Consumer Commission's (ACCC) economy-wide powers.

Discussion

Innovation and investment in the content and communications sector will flourish where prescriptive legislation is replaced by a legislative scheme that gives the regulator flexible powers to address the full range of issues that may arise across the digital economy.

The regulator must act in the best interests of the Australian public. It needs to be seen to be independent of undue influence from government and industry, giving Australians confidence that it has the ability to take significant action in the public interest.⁴

The role of the regulator should not be limited to direct regulation. It should also:

- > promote the development of the sector
- > engage with industry in developing solutions to problems
- > report on the state of the market and the performance of market participants
- > protect consumers, including supervising complaints processes
- > inform consumers through education programs
- > provide advice and propose initiatives to government.

⁴ Convergence Review, *Discussion paper: Layering, Licensing and Regulation*, p. 24, www.dbcde.gov.au/convergence

The regulator will need a range of effective powers to deal with changes in industry structure, market participants, consumer expectations and new technologies. These should include rule-making as well as enforcement powers, with the discretion to exercise ‘regulatory forbearance’ – the decision not to apply regulation in specific cases.

The regulator will have a consistent set of enforcement powers across legislation including a range of scalable sanctions that provide sufficient incentives to encourage compliance.

The regulator should also develop effective procedures for dealing with complaints from the public about service levels or content. The regulator should have the ability to exercise discretion on how to deal with complaints and should not be subject to unreasonable procedural requirements. The regulator should be a one-stop shop for unresolved complaints about relevant content or services.

The regulator should have a role in helping to promote competition in a fast moving content and communications market. Further discussion about proposed competition powers for the regulator is in Chapter 7.

Our final report will expand on the role of the regulator and will take into account the reports of the Independent Media Inquiry and the Australian Law Reform Commission’s review of the National Classification Scheme.

3. The removal of content licences

Content providers on some delivery platforms currently require a licence. Historically, licencing regimes were typically established to manage or control a scarce resource. Clearly, in a converged world where content can be delivered via multiple platforms – including increasingly over the internet – managing scarcity for content distribution is becoming irrelevant and unworkable.

Recommendation

It is recommended that allocation of a licence should no longer be a precondition for the provision of content. This supports one of the Committee's key principles that individuals and enterprises should be able to communicate freely in a converged environment. Specific communications content regulation (beyond the application of the general law) will still be needed to promote public interest outcomes. If regulatory obligations are to be imposed, they should be imposed consistently, irrespective of the delivery platform.

Discussion

Many stakeholders have emphasised the need to ensure that any new regulatory framework does not stifle innovative services, or inadvertently capture the communications activities of individuals (such as user-generated content).

Having regard to the principle of freedom of communication, there is no compelling reason to continue to require a licence to provide a content service, particularly where no licence is required to provide an identical service on a different platform. Providers of content services may have obligations, where appropriate, without the need for licences. This is the case with much regulation today.⁵ Removing requirements for a licence to provide a content service will not remove the need for some enterprises to be licensed to use scarce public spectrum.

Licensing is a key foundation of the current broadcasting regulatory regime. The abolition of content licences would therefore require substantial changes to the current legislative framework. It is anticipated that these changes will result in a significant reduction in regulation. This new regulatory approach, together with a unified spectrum management arrangement, will remove or reduce many of the current regulatory imbalances.

⁵ Convergence Review, *Discussion paper: Layering, Licensing and Regulation*, p. 15-18, www.dbcde.gov.au/convergence

4. Content Service Enterprises

In a converged world, it is no longer appropriate to rely on legislation based on historical industry structures or delivery platforms. Regulation in the content and communications sector needs to be looked at in a fundamentally new way: a technology-neutral framework that applies appropriate obligations to entities classified as ‘Content Service Enterprises’.

Recommendation

It is recommended a new content and communications regulatory policy framework be built around the concept of a ‘Content Service Enterprise’. A Content Service Enterprise would be determined by threshold criteria relating to the scale and nature of operations involved in supplying content services. These criteria might include:

- > the viewer/user/subscriber base meeting a threshold
- > the service originating in Australia or being intended for Australians
- > the provider having the ability to exercise control over the content
- > the operating revenue or commercial scale of the enterprise meeting a threshold.

Content Service Enterprises will have obligations in relation to content standards, media diversity and Australian content.

Discussion

Regulation should be applied to Content Service Enterprises regardless of the technology or delivery platform used. It is proposed that obligations focus on the entity or enterprise that provides the service and the nature and scale of that service, rather than the mode of delivery. This approach is consistent with community views as reflected in recent Australian Communications and Media Authority (ACMA) research.⁶ This research indicates that Australians expect branded online content to meet the same or comparable standards as offline content.

However, it is not intended that all content providers be classified as Content Service Enterprises. Emerging services, start-up businesses and individuals should not be captured by unnecessary requirements and obligations. Despite this, all content providers will still be subject to some requirements, such as those protecting children from harmful content.

It is acknowledged there may be challenges in attempting to regulate overseas enterprises. However the concept of a Content Service Enterprise is likely to capture international brands supplying content services to Australians. There are legal and financial avenues as well as strong brand and market incentives to encourage these enterprises to comply with relevant Australian regulations.⁷

⁶ ACMA *Digital Australians* October 2011, <http://engage.acma.gov.au/digital-australians>

⁷ Convergence Review, *Discussion paper: Layering, Licensing and Regulation*, p. 21, www.dbcde.gov.au/convergence

5. Spectrum allocation and management

In a converged environment where multiple platforms are used to deliver content, the current regulatory distinction between spectrum allocated for broadcasting services and spectrum allocated for other purposes is no longer useful.

Recommendation

It is recommended that the government develop a common and consistent approach to the allocation and management of both broadcasting and non-broadcasting spectrum. This approach will separate most content-related obligations of broadcast enterprises from the licence to use spectrum. The new spectrum licensing arrangements will provide increased flexibility for spectrum use by FTA broadcasters and facilitate more innovative and efficient spectrum use.

This approach will provide:

- > new arrangements for current broadcasting-designated spectrum that will allow more flexibility in future spectrum use and greater opportunities for innovation, trading and new entry
- > spectrum planning mechanisms that explicitly take into account public interest factors, and social and cultural objectives currently reflected in the *Broadcasting Services Act 1992* (BSA) which have contributed to the diversity of the Australian broadcasting system
- > Ministerial powers to reserve spectrum to achieve policy objectives considered important by the government and the Australian community, including public and community broadcasting
- > a market-based pricing approach for the use of spectrum, and one which provides greater transparency where spectrum may be used for public policy reasons
- > greater certainty for spectrum licence holders around licence renewal processes
- > a managed transition for FTA broadcasters that provides them with certainty regarding use of spectrum into the future.

Discussion

Submissions to the Review on the issue of spectrum fell into two broad categories:

- > those which argued that broadcasting spectrum warrants separate regulatory treatment
- > those which argued the use of broadcasting spectrum should be brought into alignment with general spectrum management arrangements including the separation of content and platform.

Breaking the current nexus between the licensing of broadcasting spectrum and content obligations will lead to more efficient use of spectrum. This also serves the purpose of giving entities more flexibility to deliver content on any platform in a converged world.

Current holders of commercial radio and television broadcasting services bands (BSB) licences should be issued with spectrum licences subject to charges that better reflect the value of the spectrum. This process would provide more flexibility in spectrum use for FTA broadcasters. It would also replace the current broadcasting licence fee.

The current licence fees paid by broadcasters are not related to the amount of spectrum used.⁸ Charges for the use of spectrum should reflect the value of the spectrum, as well as any costs incurred by the government in managing spectrum use.

Changes made to the current regulation of BSB spectrum, including the nature and conditions of licences, or charges paid by licensees, will have significant implications. The Committee acknowledges that existing holders of broadcasting licences should be given certainty about future arrangements. Potential transitional measures will be considered in the final report including licence tenure, pricing and licence reissue arrangements.

Some stakeholders have expressed concerns that specific public interest factors which have contributed to the diversity of broadcasting services should be adequately reflected at the planning stage in a new legislative framework. A comprehensive and explicit set of public interest factors may need to be incorporated into the new framework.

The Australian Government has deferred the review of the moratorium on new commercial television broadcasting licences to January 2013 so it can take into account the findings of the Convergence Review. The Committee will give further consideration to possible arrangements for the use of the 6th digital television channel spectrum and the extension of digital radio in its final report.

It is not expected that the proposed transition to spectrum licences would have a major impact on the current management structure for digital radio services contained in the *Radiocommunications Act 1992*.

Over the years, various federal governments have reserved spectrum for non-commercial purposes to achieve public policy outcomes. Ministerial powers to reserve spectrum for the public good should be retained, but it is important that the decision-making process is more transparent.

⁸ Convergence Review, *Discussion Paper: Spectrum allocation and management*, www.dbcde.gov.au/convergence

6. Diversity

Submissions and consultations to the Review strongly endorsed the ongoing value to all Australians of diversity in content and communications. Platform-specific ownership rules will become increasingly irrelevant.

Recommendation

Diversity of voices rule

Ownership and control rules are still necessary to promote a diverse and pluralistic media environment. For local markets, it is recommended that a revised number of voices rule apply to changes in control involving Content Service Enterprises. This new rule will cover entities such as national newspapers, subscription television and online providers where they qualify as a Content Service Enterprise. Content Service Enterprises may be granted an exemption by the regulator from this rule where there is public benefit in a specific market.

A public interest test for significant media transactions

Current media diversity rules focus only on media platforms associated with broadcasting licence areas. A public interest test should be developed to ensure that diversity considerations are taken into account where Content Service Enterprises with significant influence at a national level are involved in mergers or acquisitions.

Removal of regulation

The new rules provide a comprehensive framework for diversity regulation. With the introduction of these rules, it is recommended that the following regulation be removed:

- > 75% audience reach rule: which prevents control of commercial television licences whose combined licence area populations exceed 75% of the population of Australia
- > 2 out of 3 rule: which prevents control of any more than two out of:
 - a commercial radio broadcasting licence
 - a commercial television broadcasting licence
 - a newspaper associated with the commercial radio broadcasting licence area
- > 2 to a market rule: which prevents control of more than two commercial radio broadcasting licences in the same licence area
- > 1 to a market rule: which prevents control of more than one commercial television licence in the same licence area.

Discussion

Maintaining a number of distinct voices both at a local and national level is important. Attendees at consultations in regional Australia emphasised the importance of local news and voices for their communities.

Current ownership and control rules

While the value of the principle of diversity was reaffirmed, submissions were divided on whether existing ownership rules are still necessary given the state of the market and new entrants and services.

The current quantitative rules have provided the market with certainty and are currently well understood by the industry. However, these rules are based around a presumption of there being only three platforms in a relevant market – television, radio and newspapers. The boundaries between these distinct platforms are increasingly blurring – for example, newspapers are available online and contain a mix of text and audiovisual material. Significant players such as subscription, mobile and online content providers are also not covered by these rules.

Existing media ownership rules are becoming increasingly ineffective. In particular, the cross-media rule that prevents a person from controlling more than two out of three traditional local media in a licence area ('2 out of 3 rule') is less relevant as many of these now operate on a range of platforms.⁹

The 75% audience reach rule for commercial FTA television is also less meaningful in an environment where network's online services are available Australia-wide. Given the diversity tests that are now proposed, together with the general competition laws, the one to a market television rule and two to a market radio rule should no longer be necessary.

A public interest test for significant media transactions

A public interest test has been adopted in other jurisdictions including the United Kingdom, as a flexible way to assess the influence of different media in a converged environment.¹⁰

A public interest test that would allow the regulator to better assess market concentration and diversity issues for mergers involving Content Service Enterprises that are significant at a national level is recommended. The public interest test should be administered by the new regulator.

⁹ Further discussion of media ownership and control rules can be found in Convergence Review, *Discussion Paper: Media Diversity, Competition and Market Structure*, www.dbcde.gov.au/convergence

¹⁰ The United Kingdom *Enterprise Act 2002*, s. 58, <http://www.legislation.gov.uk/ukpga/2002/40/section/58>

7. Competition

Convergence is providing new opportunities for existing players in the content and communications environment and is allowing new entrants, platforms and business models to emerge. The capacity to respond to content-related competition issues will be important in a converged environment.

Recommendation

It is recommended that the new regulator be given broad and flexible powers to issue directions and make rules in order to promote fair and effective competition in content and communications markets. These powers, should focus on content-related competition issues, and should be exercised in coordination with the economy-wide competition powers of the ACCC.

Discussion

While convergence provides enormous opportunities for innovative services and new enterprises, there remains a potential for industry players to act in a way that is detrimental to new entrants and consumers. Access to content may be the new competition bottleneck in a converged environment, particularly in the areas of exclusive content rights and bundled services.¹¹

Submissions to the Review addressing competition fell into two broad categories:

- > Some stakeholders argued that the market is functioning effectively and existing ACCC powers are adequate when anti-competitive situations arise (including in relation to content)
- > Other submissions expressed concern that emerging market situations could reduce competition in content and communications markets and that these situations will require a flexible operational response from the regulator.

The regulator should be entrusted with suitable powers to deal with content-related competition issues in rapidly changing markets. This approach has been adopted in other jurisdictions such as the United Kingdom.¹²

The regulator should determine the need for intervention on a case-by-case basis, based on clearly defined policy objectives and in close co-operation with the ACCC.

These content-related competition powers should also be distinguished from the general powers of the ACCC to investigate anti-competitive conduct and its existing telecommunications-specific competition powers. The ACCC should retain its primary responsibilities in relation to mergers and similar economy-wide issues. It is important to note that the Committee is not recommending that the ACCC's existing powers be reduced. Given the ACCC's current involvement in major structural changes in the telecommunications industry, it would also not be appropriate to make any changes to those regulatory arrangements at this time.

¹¹ Convergence Review, *Discussion Paper: Media Diversity, Competition and Market Structure*, pp. 23-29, www.dbcde.gov.au/convergence

¹² The United Kingdom *Communications Act 2003*, s. 316, www.legislation.gov.uk/ukpga/2003/21/section/316

8. Promoting Australian content

From the wide range of views in submissions to the Review, it is clear that Australian content remains important to our society. There is an ongoing need for government intervention to support the production and distribution of Australian content. In particular Australian drama, children's and documentary content would not be produced at existing levels without government support.

Recommendations

A new uniform scheme for Australian content

The current Australian content regime is heavily focused on the commercial FTA television broadcasters. As more content is consumed on new and emerging platforms, it is clear that these regulatory arrangements will not support Australian content objectives in the medium to long term.

It is recommended that all Content Service Enterprises that provide audio-visual content, whether linear or non-linear, be required to support Australian content either by:

- > committing a percentage of total program expenditure to specified Australian content

OR

- > if this is not possible, by contributing to a converged content production fund.

The maintenance of Australian content levels will be challenged as more content becomes freely available from overseas sources. Ultimately it is likely that increased direct government funding will be required.

For Content Service Enterprises that do not use broadcast spectrum, it is recommended that the above Australian content scheme be implemented as soon as practicable.

Transitional arrangements

For commercial FTA television broadcasters, the following transitional arrangements are recommended:

- > the existing 55% transmission quota should continue in the short to medium term
- > there should be an increase in Australian sub-quota content obligations to reflect the two additional channels each broadcaster currently operates
- > the broadcasters should be given a higher degree of flexibility in how these sub quota obligations are met.

Direct and indirect subsidy measures

It is recommended that premium television content exceeding a cost threshold attract the 40% tax offset available under the producer offset scheme. This should be directed to premium television content produced in the independent sector. This will bring premium television content in line with the current rate of offset available for feature film production and further support a vibrant independent production sector.

Interactive content such as games and other applications can make a significant contribution to developing Australia's identity and cultural diversity. It is recommended that the production of this content be supported by the 20% producer offset scheme and the converged content production fund.

Discussion

The existing system of narrowly-targeted Australian content quotas and other obligations has served Australia well but is unsustainable in a converged environment.

Australian screen content obligations should apply to all Content Service Enterprises that provide audio-visual services. The qualifying threshold for Content Service Enterprises should be intentionally set at a high level to encourage new and innovative services to operate without excess regulation.

In the converged environment, content obligations based on a revised version of the minimum expenditure model that currently applies to subscription television will provide a more consistent and adaptable measure than obligations based on content quotas. The best way for Content Service Enterprises to invest in new Australian content is by committing a minimum percentage of the total programming expenditure to Australian content.

A minimum expenditure obligation may be impractical for some content business models or enterprises that have no production capability or expertise in screen content investment. These Content Service Enterprises should contribute a percentage of Australian revenue to a converged content production fund.

Converged content production fund

The converged content production fund could be financed by the contributions of Content Service Enterprises consistent with the uniform scheme described above. This fund could also be supported by spectrum fees paid to government by commercial FTA television broadcasters, as well as through direct government funding.

The fund would support:

- > the production of key genres including drama, children and documentaries
- > the production of local, community and regional content
- > innovation in content and platforms.

Transitional arrangements

The advent of digital multi-channels has diluted the overall amount of Australian content shown on commercial FTA channels. While the FTA television broadcasters face increased competition for viewers, this sector is likely to remain dominant in the media landscape for some time and the quota system should continue for a transitional period. The current 55% transmission quota for commercial FTA television broadcasters should not be extended to multi-channels but should remain on the primary channel. There should be some increase in the existing Australian content sub-quotas but these should be applied more flexibly. Commercial FTA television broadcasters will be able to satisfy the increased sub-quotas across any of their multi-channels. Further details are being developed for the final report and the implementation of these recommendations will need to be considered in the context of the Australia's international obligations including the Australia–United States Free Trade Agreement.¹³

¹³ Convergence Review, *Discussion Paper: Australian and Local Content*, Appendix B, p. 21, www.dbcde.gov.au/convergence

Direct and indirect measures

Producer Offset Scheme

There is an artificial distinction in the different way that the current arrangements treat film and premium television production for the producers' offset scheme. Submissions argued that the offset should reflect the 'high end' nature of the investment made by the producer rather than the format of the content. Television production from independent producers which meets a certain investment threshold should be treated in the same manner as film for the application of the producer offset scheme.

Interactive content

The popularity and economic importance of interactive entertainment including new content forms such as webisodes and apps for smartphone and connected televisions is growing. Given the creativity and economic contribution made by the interactive production industry, this content should be supported by existing direct and indirect incentive schemes. It is recommended that interactive content be eligible for the 20% producer offset scheme and access to the converged content production fund.

Australian music content

Australian music quota requirements currently apply to analog music radio stations. A number of submissions have called for these quotas to be extended to digital radio stations and to internet radio services, consistent with the principle of regulatory parity.

Whilst this principle is valid, some digital radio services are developed for specific events, for example to cover tours by popular musicians, and some internet services are user directed. A recommendation on this issue will be made in the final report.

9. Promoting local and community content

One of the most powerful messages throughout public consultations was the importance of local content to communities. Local content most valued by audiences includes news and current affairs, sport, weather and local advertising. Radio has a particularly important role in delivering local services. Technology capabilities on emerging platforms which offer cost effective delivery and features like location-based apps are well suited to providing tailored local content.¹⁴

The valuable contributions of commercial, public and community broadcasting delivering geographically-targeted or special interest content was also evident in submissions and consultations.

Recommendation

It is recommended that commercial FTA broadcasters using spectrum should continue to devote a minimum amount of programming to material of local significance. A more flexible compliance and reporting regime should be implemented and the current ‘trigger event’ rules should be removed in radio.

In the longer term as more content is delivered outside spectrum based services, other incentives may need to be developed to encourage local content distribution.

Local communities and content providers should be encouraged to explore innovative ways to deliver local content, including on new delivery platforms. One of the objectives of the proposed converged content production fund is to direct resources to such initiatives that are local and innovative.

Community broadcasters make a significant contribution to producing and distributing local radio and television content. Spectrum should continue to be made available for community radio and channel capacity on digital spectrum should be allocated for existing community television services. Alternative forms of delivery that could extend these services to broader audiences on new platforms may prove to be effective.

Discussion

Feedback from consultations suggested that networking of commercial radio and television services has led to many regional and rural communities receiving reduced local information. For example, news, traffic reports and weather updates from centres many hundreds of kilometres away are broadcast in some areas.

It is often cheaper and more effective for a commercial broadcaster to provide networked services across multiple markets than it is to produce content for individual markets. Economies of scale often mean networked services can provide content to multiple areas where this would otherwise not be feasible.

Currently commercial broadcasters in many regional areas are required to provide relevant local programming. Measures that guarantee local programming should continue to apply, as determined by the regulator. However, in radio there should be no special requirements triggered by a change in control – as is currently the case.

The compliance burden for local content requirements could also be reduced. A compliance model focused on spot audits of current output rather than comprehensive reporting obligations may be more effective.

New technologies and delivery models can work particularly well for local content. Bendigo IPTV is just one example of an innovative and valuable local service the Committee saw during consultations.

¹⁴ Convergence Review, *Discussion Paper: Australian and Local Content*, p. 24, www.dbcde.gov.au/convergence

10. Public broadcasting

Public broadcasters perform a significant and evolving role in serving Australia’s diverse communities, including providing Australian and local content. Increasingly these services are also being made available online.

Recommendations

The decades old charters of the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS) do not explicitly recognise the broad range of functions performed by each organisation. It is recommended that the ABC and the SBS charters should expressly reflect the range of existing services, including online activities. This will give commercial operators increased certainty about the boundaries of public broadcaster activities.

While Australian content quota obligations continue for commercial FTA television broadcasters as a transitional measure, quotas should also apply to the public broadcasters. It is recommended ABC1 have a 55% Australian content quota consistent with the obligation of commercial FTA television broadcasters. Reflecting its multicultural charter obligations, the SBS should be required to target half this amount.

Public consultations reaffirmed the value of indigenous broadcasting and the Committee recognises the unique nature of these services. The Committee also supports the provision of channel capacity on digital spectrum for the National Indigenous Television Service.

Discussion

Public broadcasters make a significant contribution to Australian content production and distribution. The Australian and Local Content discussion paper raised the possibility that public broadcasters be subject to minimum Australian content requirements.¹⁵

The ABC invests in significant amounts of Australian content. ABC1 should have a 55% Australian content quota to bring it in line with commercial FTA broadcasters. However given the ABC’s commitment to specialist Australian programming, in science, the arts, religion and rural affairs; sub-quota obligations are not appropriate.

The SBS is particularly effective when it is telling stories of multicultural Australia. An important role of the SBS is to reflect our multicultural community to all Australians and it should therefore have an Australian content target.

Both the ABC and the SBS have extended their services online. For example, ABC’s online initiatives including ABC iView and ABC Open have broadened the ABC’s reach and impact. The lack of explicit recognition of these activities in the ABC and the SBS charters has led to debate and a lack of clarity about the public broadcasters’ mandated roles.

Updated charters would assist the public broadcasters by confirming current operations. It would also provide certainty for commercial Content Service Enterprises about the remit of public broadcasters.

¹⁵ Convergence Review, *Discussion Paper: Australian and Local Content*, p. 20, www.dbcde.gov.au/convergence

11. Content standards

This interim report is intentionally brief on content standards as other review processes are examining regulatory and non-regulatory measures in this area. These reviews include the Australian Law Reform Commission's review of the National Classification Scheme and the Independent Media Inquiry.

Recommendation

Any new regulatory framework for content standards should reflect the individual rights of adult Australians to read, hear, see and produce content of their choosing within the law. This needs to be balanced with appropriate protections from offensive content, particularly for children.

Content standards should also reflect the importance of fairness, accuracy and ethical behaviour in relation to news, opinion and current affairs.

Discussion

The discussion paper on Community Standards outlined a range of areas where content standards are being affected by convergence pressures.¹⁶ Concerns about this were taken up in submissions and reflected in the Committee's public consultation sessions. There was particular comment on the effectiveness of existing measures for content protection, such as classification and time zones and schemes for the regulation of online content under Schedules 5 and 7 of the BSA.

Three common themes emerged from consultations:

- > Australians' right to read, hear, see and participate in the content of their choice
- > the need to protect children from exposure to age inappropriate content
- > the need for measures to address illegal content in the online environment.

The regulator will have an important role in overseeing content standards.

¹⁶ Convergence Review *Discussion Paper: Layering, Licensing and Regulation*, www.dbcde.gov.au/convergence

12. Legislative structure and implementation

Current legislation that regulates content and communications has not kept pace with technological change. The Convergence Review believes there is an opportunity to create a new legislative framework that will support a vibrant content and communications sector in the coming decades.

Recommendation

To implement the changes outlined in this report, it is recommended that new legislation be developed to reflect the convergence of formerly disparate content communications industries.

The new legislation should ultimately encompass:

- > all communications infrastructure, platforms, devices and services
- > the regulation of Content Service Enterprises
- > the establishment of a new independent regulator for the digital economy, with the flexibility to adapt to the changing environment.

In its final report, the Committee will outline some elements of this framework that can be implemented in the short term and others that will require a staged transition.

A three-phased approach may be needed to implement the recommendations of the final report:

1. Transitional changes to existing legislation that can be achieved in the short term.
2. New legislation regulating Content Service Enterprises.
3. Broader reform of communications legislation.

This approach will give industry and government adequate time to prepare for change.

Discussion

Currently, the three Commonwealth Acts that provide the framework for communications regulation in Australia reflect historic industry ‘silos’.¹⁷

The *Radiocommunications Act 1992* deals with the management of the radiofrequency spectrum. It deals with particular platforms and contains a number of measures specific to terrestrial FTA broadcasting.

The *Broadcasting Services Act 1992* regulates broadcasting services and some online services. The BSA represents an early attempt to deal with content services delivered on any platform. However, in practice most of its regulatory focus is on the delivery of services through traditional broadcasting.

¹⁷ Convergence Review *Discussion paper: Layering, Licensing and Regulation*, pp. 7–9, www.dbcde.gov.au/convergence

The *Telecommunications Act 1997* provides a technology-neutral framework for regulation based on broad layers. It includes a mechanism for regulating communications content services providers. However, the opportunities offered for regulating content in a multi-platform world have not been fully exploited.¹⁸ Various new applications and services have emerged online which are not always easy to classify within the Act's defined layers.¹⁹

Submissions to the Convergence Review included a general recognition that the existing vertical regulation of industry 'silos' is not feasible for a converged market and suggested a new approach is needed.

Recommendations made elsewhere in this report including removal of the need for a licence to provide a content service and the new approach to spectrum planning will result in the removal of much existing complex legislation.

Major priorities will be developing a legislative framework for Content Service Enterprises and the transition to a new spectrum licensing regime. Other communications legislation will also need to be reviewed and over time replaced.

Existing legislation contains prescriptive and detailed regulatory provisions. The goal with new legislation is to provide a policy framework that gives the independent regulator the flexibility to make new rules (or abolish old rules) when circumstances require.

¹⁸ Convergence Review, *Discussion paper: Layering, Licensing and Regulation*, p. 9, www.dbcde.gov.au/convergence

¹⁹ ACMA, *Broken concepts: The Australian communications legislative landscape*, p. 54 (2011).

13. Conclusion & Summary

This report sets out a vision for the future. The move away from an industry and platform specific focus will create a new framework that is technology-neutral and is adaptable and flexible. These reforms will result in reduced, more effective regulation.

The implementation of the recommendations outlined in this report will provide a new regulatory ecosystem underpinning the digital economy. The recommendations in this report should to be viewed as an integrated package of reforms. They are designed to work together covering the key issues: who regulates, what is regulated and the intended outcomes.

The Committee expects a robust debate around the recommendations and their implementation. While stakeholders submitted different views about preferred outcomes, the overarching theme expressed during consultations was the urgent need for fundamental change.

Summary of key features of new policy framework

- > A new regulator for the digital economy
- > Removal of content-related licences
- > A platform-neutral regulatory framework focused on Content Service Enterprises
- > Diversity and competition measures for the converged market
- > Reform of spectrum allocation and management
- > Platform-neutral rules for Australian content
- > Promotion of local content and support for innovation in its delivery
- > Updated charters for ABC and SBS

Appendix One: Examples of redundant regulation

A large amount of complex regulation currently found in the BSA and *Radiocommunications Act 1992* will be obsolete once the requirement to hold a content licence is removed and spectrum planning and management moves to a uniform system.

The current legislation that regulates media ownership and control assumes the existence of various categories of broadcasting licence and licence areas. These rules will not continue if the concept of broadcasting licences is removed. The current rules that apply only to certain media platforms and not others would not be retained. However the policy objectives reflected in these rules would be maintained in the convergent environment by the new ‘diversity of voices’ and ‘public interest’ rules.

Listed below are some examples of regulation that would be removed as a consequence of this report’s recommendations. It is expected that the final report will include additional proposals for removing regulation. The expected changes to legislation will also mean reductions in obligations currently contained in industry codes and standards, as well as reporting and compliance regimes.

Abolition of content service licensing/ consistent planning and management of spectrum use

- > Abolishing requirements to hold a licence to provide a ‘broadcasting’ or a ‘datacasting’ service in a specified licence area
- > Abolishing rules for the category of content service that can be supplied using a radiocommunications spectrum licence
- > Removal of special rules for planning broadcasting service band spectrum
- > Broadcasting licence fees replaced with market-based spectrum charges

Media diversity ownership rules for specific media platforms abolished

- > Removal of prohibition on control of commercial television licences whose combined licence area populations exceed 75% of the population of Australia (75% audience reach rule)
- > Removal of prohibition on control of more than two commercial radio broadcasting licences in the same licence area
- > Removal of prohibition on control of more than one commercial television licence in the same licence area
- > Removal of prohibition on control of any more than two out of a commercial radio broadcasting licence and a commercial television broadcasting licence or newspaper associated with the commercial radio broadcasting licence area (2 out of 3 rule)

Local content rules

- > Abolition of special local content requirements and local presence requirements triggered by change in control of a commercial radio broadcasting licence
- > Reporting of output to move to a compliance model focused on spot audits rather than comprehensive reporting requirements

Australian content

- > Broadcast quota requirements for all Content Service Enterprises will eventually be replaced by expenditure requirements

Appendix Two: Convergence Review Principles

- Principle 1:** Citizens and organisations should be able to communicate freely, and where regulation is required, it should be the minimum needed to achieve a clear public purpose.
- Principle 2:** Australians should have access to and opportunities for participation in a diverse mix of services, voices, views and information.
- Principle 3:** The communications and media market should be innovative and competitive, while balancing outcomes in the interest of the Australian public.
- Principle 4:** Australians should have access to Australian content that reflects and contributes to the development of national and cultural identity.
- Principle 5:** Local and Australian content should be sourced from a dynamic domestic content production industry.
- Principle 6:** Australians should have access to news and information of relevance to their local communities, including locally-generated content.
- Principle 7:** Communications and media services available to Australians should reflect community standards and the views and expectations of the Australian public.
- Principle 8:** Australians should have access to the broadest possible range of content across platforms, services and devices.
- Principle 9:** Service providers should provide the maximum transparency for consumers regarding their services and how they are delivered.
- Principle 10:** The government should seek to maximise the overall public benefit derived from the use of spectrum assigned for the delivery of media content and communications services.

Appendix Three: Glossary and Abbreviations

| | |
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| ABC | Australian Broadcasting Corporation |
| ACCC | Australian Competition and Consumer Commission |
| ACMA | Australian Communications and Media Authority |
| BSA | <i>Broadcasting Services Act 1992</i> |
| BSB | Broadcasting Services Bands. Parts of the radiofrequency spectrum designated by the Minister as being primarily for use for broadcasting purposes. |
| Bundled services | A set of services that are offered exclusively or at a discount when they are sold as a package. Examples could include internet and phone services sold as a discounted bundle, or a set of television channels that are only offered as a bundle. |
| Charter (for ABC and SBS) | Sections of the <i>Australian Broadcasting Corporation Act 1983</i> and the <i>Special Broadcasting Services Act 1991</i> that establish the functions and duties that the Parliament has given to the ABC and SBS. |
| Digital economy | The global network of economic and social activities that are enabled by information and communications technologies, such as the internet, mobile and sensor networks. |
| Digital Switchover | The national transition from analog broadcasting of television signals to digital. The digital switchover program will conclude by the end of 2013. |
| FTA | Free-to-air. Generally refers to television broadcasting channels that are provided to the public at no cost to the consumer, but may also include radio broadcasts that are provided at no cost to the consumer. |
| Linear content | Content – usually audiovisual – that is broadcast according to a timetable, and which cannot be directly controlled by the consumer. An example is free-to-air television. |
| SBS | Special Broadcasting Service |
| Spectrum | The radiofrequency spectrum used to transmit wireless signals for internet, mobile telephony, television, radio and other communications devices. The broadcasting services bands are a sub-section of the full radiofrequency spectrum. |