



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

INQUIRY INTO THE BROADCASTING SERVICES ACT 1992

**PROF R.J. SNAPE, Presiding Commissioner
MR S. SIMSON, Assistant Commissioner**

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON THURSDAY, 27 MAY 1999, AT 9.01 AM

Continued from 26/5/99

PROF SNAPE: Welcome to this fourth day of hearings in Sydney. The terms of reference for this inquiry are available on the table near the door, as is also the issues paper which develops a number of the issues out of the terms of reference. The proceedings are transcribed and the transcripts are generally available about three days after the relevant hearing on the commission's Web site, and thereafter in hard copy too.

At the end of the today's proceedings, I shall invite any persons present to make oral presentations should they wish to do so, and with that introduction I'll turn to our first participant for today, who is submission number 72, and that is Merlin Integrated Media. I have a representative from Merlin and I'd invite him to identify himself now for the transcripts.

MR COOK: Thanks, Prof Snape. My name is Jeffrey Cook. I'm a director of 3V Pty Ltd, which also incorporates Merlin Integrated Media, and a few years ago absorbed Open Access Cable Pty Ltd. Our company has a wide range of production, promotion and distribution services, particularly focusing on new media and audio-visual production and distribution. We do a lot of work for large national organisations, for instance the Australian Film Commission, and also provide policy and strategic advice to a number of organisations, particularly those working in the visual arts.

One of our main activities in terms of investigating new media has been to actively build and construct large databases on the World Wide Web as well, using e-commerce facilities. I'll mention a little bit of that in the talk I'll give. I will just briefly speak to some of the issues in the paper.

PROF SNAPE: Yes.

MR COOK: One of the reasons I wanted to be involved is because obviously I represent, in my capacity here, the smaller and independent electronic media producers and distributors. That, as I mentioned in my submission, fits into what other departments of the government would call the small to medium enterprise category, but it also incorporates the lower end of that - companies starting up with just a few people. However, those particular companies, I maintain, are particularly innovative and provide a leading indicator in the activities and the possible futures of any media world because they obviously are smaller and hence flexible, and also have to live by their wits more than by other strengths afforded by larger companies.

These companies have always been at the leading edge of this production and distribution, and it often developed and trialled services that were later taken over by the major concerns and interests and medial players, who were then able to profit better by those services, because of their larger economies of scope and scales of those larger organisations. As such there's a mutually interrelated relationship between those two ends of the spectrum, if you like, the larger and the smaller firms. I will deal a little with bit with what the smaller firms have been doing.

One of the other reasons I wish to speak was because in the scope of the inquiry it mentioned that due regard be paid to the phenomena of technological convergence, and it certainly, I would maintain, is the contention of small producers that this convergence has subsumed earlier and older forms of media within its ambit, making the idea of media a common platform that now incorporates the older terms of say broadcasting, and hence rendering not only the term redundant but necessary ideas of strategy for regulation and development of those organisations.

I would say therefore, as I say further in my submission, that one could consider anything that passes from the analog domain into the digital domain to be an example or a way of stating what the commonality is between all forms of these media, and if so, once these media pass into the digital domain, that they become one and the same thing: able to be regulated by one and the same regulatory mechanism, mainly because they can be produced under the digital domain, they can be distributed under the digital domain, and therefore the common area is the digital domain. This today includes all forms of so-called analog broadcasting, all forms of so-called radio broadcasting, because at least at some stage in their production chain they pass through the digital domain. As I am sure many people have said at this inquiry, very shortly the rest of those links in the chain will pass into that digital domain.

The good thing about the digital domain of course is that it does provide a slight levelling of the barriers to getting in and producing quality - or what we used to call broadcast quality work, but we could call this high standard production value work. This means that a single person with a micro-tower of computers and a number of devices can produce a leading edge piece of material, maybe interstitial programming, animation, a documentary which can be broadcast. It can be burnt onto CD-ROM, it can be distributed via the World Wide Web, either repurposed across a Web site or wrapped around a little quick-time movie or a little AVI. It can be then played in real-time and full screen mode on your computer system. This full screen, full motion image is exactly identical - apart from a few pixels perhaps, to that being currently broadcast by the broadcast networks.

My recommendations really relate to acknowledging the need for and presence of the larger companies which I personally think are more than well looked after under the current regulations but that regulations should also accommodate some kind of support or recognition for these small firms because they are under competitive threat by the larger firms and, if not, they are certainly under duress or pressure from what I would describe as anti-competitive practices by the larger concerns.

If we begin with a little list of what I would suggest could be described as anti-competitive practice. I give a couple of small examples later on but I suppose the larger ones revolve around the Broadcast Act itself. I can state quite categorically that the current regulation that only allows a small group of people to broadcast over the given broadcast or national channels makes it very difficult for the smaller producer to have access to the one they're denied through their limiting of these

broadcast licences, and that is an access to a market. Without an access to a market these smaller producers cannot achieve economic viability.

Of course, the new media has allowed some access to this market through the Internet, but it is a further contention of my submission that this access is a temporary phase and is gradually but slowly withering away as the Internet and the promise of the new media begins to exhibit the legacies of the older media, the oligopolistic practices, the anti-competitive practices that the large concerns are using, and that this template developed over many years is now being firmly put over the top of the potential and fantastic flexibility of this new media. I for one would be very sad to see that and it would certainly challenge the economic viability of the work I provide.

Our company is a little bit indicative of some of these new concerns in that we have a small number of employees but we have a roster of 50 subcontractors which allow us maximum scalability into the market. This of course would evince some horror, I imagine, from some of the larger concerns. We, if you like, adopt the formula of the virtual corporation in being able to scale up or scale down, in being able to accommodate a wide range of budgets in production and distribution. I maintain that that's another strength in this new market, and it's a strength that the larger media operators would find hard to match.

So I really do think that it would be - as I'd very briefly discuss - great if there was some way to recognise and accommodate these small media producers in this very dynamic and new market, so that their position is maintained, at least at some level, of economic viability. In doing this, it will enrich not only those companies themselves - enable them to exist - those companies will develop innovative product and techniques which will be used by the main media players, and will foster and develop their business in the long term.

Of course, the fact that the new media players allow smaller producers to get their material made into a professional format means the potential for them, for those other voices from a range of different communities has also allowed or is able to decrease the barriers to entry of those smaller producers - enables them to get over those first few steps and perhaps get their work, in the first case perhaps, onto the World Wide Web, later into broadband, perhaps in some of the datacasting trials, and one day when we have our multiplex digital television, there's a possibility that they will still be around to provide that innovative material to those larger companies.

I could give, as I do, the Australian bookselling industry as an example. Some may say, "Well, what's the bookselling industry doing in a broadcast inquiry?" but we are looking at the issue of convergence and we do not have yet the clear example of an economic model that is operating in new media. But I would suggest that the book industry is one of those industries that is actually distributing digitally reproduced content using new media and distribution networks. That's a good example because, of course, small and independent book stores are under threat from large concerns like Amazon, who use the market strength of raising money in the states and other places to be able to conduct a fairly comprehensive loss leader strategy, meaning that

they simply underprice their product, their digital product, I would maintain, and are able thereby to take business away from the local market and take it overseas.

If I was to now move that into perhaps five years hence where we have some broadband networks who have a paper view digital distribution over either broadband or forward push datacasting, I could say that were those services to be offered in the same manner by a large overseas concern or operating offshore or by a concern operating here, and they were to adopt the same loss leader strategy, that this would create a challenge. But the people who were going to suffer first, I would have to maintain, are those small companies. So if some recognition could be made of that likely scenario in the future, that would mean that you would underpin the development of and the place for those small media companies in recognition of the benefits they provide not only within the smaller or niche markets that they also do service, but in providing service ideas, production and distribution ideas, to those larger concerns that further enriches them. In a sense they act as the research and development arm for those larger concerns.

I can give a number of excellent examples of that. The classic one I like to give - there's a great book called *Wired Cities* by J. Blumler, a well-known researcher, and in that it talks about the QUB trial. I don't mention this in my submission. But the QUB trial was the first trial of interactive television in the States in the 70s. On that trial a number of things were tested, but the two most successful projects were when a group of school students got together and worked out how to put together a channel on what was effectively a broadband trial, and they couldn't work out how they could possibly do anything except try and get a few video clips already made by record companies and put a few kids in a basement. That late night video clip test became what we know as MTV today.

Another bunch of younger schoolchildren were having difficulty working out what they could do, because *Talking Heads* are fairly boring, so they approached a number of animation firms and got together some animations and played that together with some announcements. That became Nickelodeon. That's an example where a small independent - in this case literally schools and a community-based group, admittedly with a budget now - were able to develop innovating programming strands that could not have been developed. That's outside - in America.

Here, a number of videographic enterprises that were originally developed as arts projects became some of the leading edge design elements now used for the station logos of all major television. In fact, if you took away some of that computer animation that was originally tested and developed by small firms, I would say that broadcast television as such and broadband services would be a mightily boring set of programs. It is what I call that purely Australian panache and pizzazz that adds a bit of show business from, if you like, the grass roots. They have freedom to develop good ideas and that freedom, I maintain, should be protected.

Anyway, our company has been under many challenges, particularly from larger concerns, and the examples I give are Telstra and Spike, two of the larger new media

providers. I have lost contracts to both those companies by those companies either offering underpriced or free alternative contract proposals to the ones I provide. Obviously I don't think it's the scope of this inquiry to necessarily deal with that, but do be aware that these are practices carried out by the larger firms. I'm sure you are. I just merely wish to underpin it. I would personally like the anti-competitive provisions of legislation to be tightened to prevent this, or at least to ameliorate some of the worst effects of this. Of course, it's a difficult thing.

Our history, as being a small media producer, has seen an attempt first of all to get access to the free-to-air television services. Open Access Cable was a contributor to the sixth channel inquiry, and there was some success for that allowing the sixth channel to be left with non-commercial services, at least in the first instance. Sadly, though, politics and lack of resources and lack of skills intervened, and although there are still some bright spots with the sixth channel it has still not provided the platform that would be necessary to reach critical mass of audience to provide an income stream through sponsorship underriding other things that would allow quality programming to be produced.

If we now move to the Web, we have for many years, since late 1995 in fact, been working on the Web to produce television material, we have produced material for Optus Vision, now Optus Coms, and other concerns, particularly videographic work and animation work; we have produced animation work for large Web sites and portals - particularly games and animations which are in effect the drawcard to these commercial services that are there. So let's not just say that the economic infrastructure is vital, it is also that entertainment, that theatricality that the smaller companies provide that provides one of the real drivers to bringing the audience into those channels, whether they're on-line, off-line, free-to-air, datacasting.

What is happening with the World Wide Web now is that unfortunately we're moving from a generic access, in the sort of free-to-air model of the World Wide Web, into dedicated networks, high-speed networks, which only certain markets can gain access to. A very good example is only those who are on Telstra can gain access to some of the material cached or held in a data tank at Telstra. So if I want Telstra, and I've got my cable modem, and I click on Telstra material, I'm able to access it more quickly and more easily than I can were I able to access independent, even better quality material that sits out on the World Wide Web. This way there's a preferential pointing or directing of audiences to closed loops, or closed or private network loops. This will be accelerated as we move towards pay-per-view.

So just as small producers finally get a market coming onto the Internet, the Internet itself is partitioned and segmented so that there are various tiers to the Internet, where there's a high quality, high speed broadband service that only a few people can get - a bit like pay TV versus free-to-air, whereas there's an open access network where the small players play, but it is slow and hard to access, and has a realm of other problems, now including a censorship database that is going to slow things down as well.

This means that although the new media may look to have some promise, that promise is slowly being dimmed by this partitioning. This partitioning is being done with full complicity of the large broadcasters, which is why I bring it to the notice of this inquiry. They merely wish to replicate their oligopoly in free-to-air and move it into broadband services, because it is my contention and possibly theirs that within 10 years, those broadband services will be the main form of distribution of information and entertainment around Australia. Therefore, these broadband and datacast networks should be protected and made more open in order to foster innovation and the ability for smaller players to have access and to truly participate in the information future that's coming.

I would like to just finish by drawing the inquiry's attention to a fantastic dissertation on some of the things I'm talking about by the American point of view. It's by a chap called Kevin Werbach. He works with Esther Dyson in their Edventure.com Web site. But I will list this URL for - and I'm quite happy to table this document, and I suggest if the inquiry could take notice of it, you will see outlined there, in America, in the bare bones stripped away from the artifice that the large broadcasters bring, what is really going on behind the scenes in terms of broadband distribution in some of their strategies. That's www.edventure.com/release1/cable.html. If you just go to the main Web site you have to enter a password, but if you go direct to that article.

PROF SNAPE: Perhaps if you draw that to the staff's attention.

MR COOK: Indeed. I needed to cite it because I wish to read a couple of things from it.

PROF SNAPE: We will be able to get it, so not too long.

MR COOK: No, these are just two brief things. I'm paraphrasing here. Regulation always offers a Faustian bargain. The large companies ask that they be allowed to exclude competitors as an incentive and then they will provide more high quality service as customers want. It's a vicious circle that only leads to more regulation when the promised services fail to materialise. You may notice some similarities with some of the techniques that have been adopted.

Last, but not least, the competitive alternatives. If we use the model of the Internet to be indicative of what's going to happen with datacasting and broadband - if residential customers really had a choice between a vertically integrated high-speed cable service which could include a push datacasting service that was only accessible via a certain number of homes - if they were offered a choice between that model and a comparable phone line, an open access high-speed Internet service that was open to all independent producers, then there wouldn't really be much of a fight over the architecture at all. In fact, the very closeness of such a system would become a competitive disadvantage, that light cable would only offer a limited range of channels. I'm sure that everyone would agree that the goal is competitive and unregulated markets.

Anyway, I just like the power of that statement, that really what we're talking about in this inquiry is whether the more closed and regulated still has the force of economic strength and argument, and in fact social interest and public interest argument these days, and perhaps more open access regime with appropriate regulation and intervention to ensure that that open access regime is maintained so that broadband doesn't become a closed system. I'd personally like to see an open access regime mandated on all forms of broadcasting, but particularly the Internet, so that there is high-speed Internet access, a little bit like the ISDN proposal that's going around at the moment, where ISDN is available around Australia. Were such a thing be maintained I feel sure that small and medium producers and distributors' positions would be strengthened and that within five and 10 years they will still be around and perhaps thriving. Thanks very much.

PROF SNAPE: Thanks very much, Mr Cook. I think probably in what you're saying - that as we look at barriers of one sort and another, there are two types of barriers, I guess. One is associated with market power and the second is associated with regulation. The first of those two extends throughout the economy - barriers to access of what might be regarded as essential services for delivery. For example, in the trading system it could be train line between Sydney and Broken Hill - to take an example - and should other people have access to that, the state railways to deliver their services. In this area we've got access to cables and to broadband and to the various things you're seeing. The other, of course, are regulatory things which are specifically regulatory on this industry and which are barriers to access - and you've mentioned some of those too.

I suppose in the first case one of the questions we have to address is are there special features of this industry which are not embraced by the general principles being applied by the ACCC? Already the ACCC is addressing the question of declaration of access to cables, and there are some constraints upon that. Are there aspects that go beyond this market power area that are specific to this industry in the generic sense?

MR COOK: Yes.

PROF SNAPE: Of course a cable is specific to this industry but is that any different from a railway line or an electricity transmission line, etcetera, and are there specific differences or can it all be handled by generic legislation. I think a good bit of what you said was in fact within the ACCC's area, and some of the cases you mentioned, I think, are regarded by the ACCC and by the trade practices legislation as sort of perfectly normal business practice.

MR COOK: Yes, indeed.

PROF SNAPE: Having a loss leader of soap in the front of the supermarket may not be very different from having a loss leader in this area. The consequence in one case; maybe it drives out the corner grocery store; in another case it drives the small

medial player out. But in a sense there's no generic difference, perhaps, and the Trade Practices Act recognises that as a normal practice. But I think in reading and contemplating your submission, which is what we will do, we will have to try and think more about whether there are special differences, special features of this industry that make it not just a case of that more generic thing in the market power, but of course when it's regulatory and the regulations are specific to this industry, then of course we address those specifically, of course within it and can contemplate them. That's as I read your submission and the framework for thinking about it.

MR SIMSON: My questions are - I suppose they challenge a proposition to an extent that the smaller fish may be squeezed out in terms of market opportunity. It depends, of course, whether we're talking about someone who is a content provider or someone who wants to be a content provide and a broadcaster, or someone who is just building Web sites for someone else. I was interested in your comment on Spike because Spike, as you know, just a few years ago, was a very small business itself, and it has gone on to be successful, and now you're saying it's a larger fish that is - you're alleging - behaving anti-competitively in your submission.

MR COOK: Sad but true.

MR SIMSON: I just don't quite see how - if we just focus on the content provision area - the smaller content provider is going to be pushed out. I don't quite see how that follows.

MR COOK: By the anti-competitive practice?

MR SIMSON: By anything - I mean, given the enormous opportunities that are operating for content providers on this whole array of new broadband networks that you spoke of.

MR COOK: Sure, there's potential there and, sure, there's an array there, but were the main accessible and user-accessible pathways or channels to fall under the control of the larger concerns totally; for instance, content aggregators. NineMSN is a very good example; they have cross-marketing clout that is quite considerable. There is no way that a small provider can directly provide material to those concerns and maintain a separate and independent stance indefinitely without some regulation to ensure that a certain amount of that material is sourced independently. It is a little bit like the local content regulations currently within the act. We have a lot of material being produced in-house, which is fine, but there is no allowance to ensure that the smaller firms must be able to bring their material through into those concerns.

MR SIMSON: I take it your point is any more so than any journalist has got access to be able to have an article published in the Sydney Morning Herald, for example. I mean, what you're saying is that the NineMSNs have their own sources of content and that might be from their TV stations or their magazines or whatever. Could I just throw up a couple of thoughts on that? Firstly, I think the jury is still out as to whether these big portals are going to dominate user time - you might have seen the

piece in the Sydney Morning Herald this week that shows the latest figures from America actually showing that for the first time we're seeing a stagnation in traffic to the large portals in the US and, indeed, there may well be some turn to, if you like, more diversity, and consumers may be actually turning away from these big one-stop shops on the Internet and starting to focus on niche-specific content opportunities and services on the Internet and, as I said a second ago, irrespective of that, because of broadband we are seeing a whole bunch of new networks arising who will be in competition with your Telstras, your Optuses and others. I am just wondering if you might be being a little bit too gloomy in terms of your own prospects.

MR COOK: No. A couple of things: one, I should speak about the competitive arrangements. Although I do mention materials in here that are specific, if you like, to competitive arrangements, you need to be aware that that is the kind of milieu that people work in; secondly, it is not exactly equivalent to a journalist writing an article because production costs of that particular content - if I can call it that - as a generic term, are very low. The production costs of producing high-quality broadband material or broadcast material, are incredibly high, so the production costs to present pilots and pitch against the large companies - those barriers are very, very high. The larger companies are obviously in a very good position in that regard.

Were those smaller companies to have genuine and mandated access to either broadband or some kind of contribution through the datacasting services or were this inquiry to at least foster smaller distributors, which is the main way in which those smaller companies can earn an income, then that would accomplish the same task as the unlikely possibility of the ACCC altering its rules and regulations for something which it has already agreed to.

MR SIMSON: I notice your recommendation on communications commons and so on. I suppose the question is, how workable is that?

MR COOK: The better analogy for the difference would perhaps be the telephone as opposed to the mobile phone. Were the telephone system to have been on a tier or graded system, it wouldn't be as popular as it is today; the Internet adopted that same model. Were that to have been on a tiered system of access with, in effect, a paper view or a different quality set of services it would not be as successful as it is. Were this inquiry not to recognise that the large broadcasters, in seeking to adopt broadband networks and take them over and limit access to those, were this inquiry to ensure that that didn't occur or, if it did occur, that access to independent and outside distribution systems through the Internet is maintained, you can maintain that same information commons by ensuring that that occurs, and that will mean that the same success of the telephone industry and of the Internet industry will be definitely ensured for the new media industry.

MR SIMSON: So is your concern as a content provider or as a prospective broadcaster?

MR COOK: Both. See, broadcasting, from my point of view, includes datacasting and digital distribution.

PROF SNAPE: I can assure you that the vertical integration of the industry and the structure of the industry is well within our interest and that we are giving a lot of attention to it. We're interested in your proposal that there be a common set of regulations going across the whole communications or, really, it is embracing all the digital forms. That of course would then exclude newspapers and film, I suppose.

MR COOK: No, not necessarily, and curiously.

PROF SNAPE: It depends at what stage of the process one defined the digital area, I suppose, and I suppose if one didn't put boundaries on it you would probably include the whole of life, so boundaries would have to be put on it somewhere but that was an interesting suggestion and other people have also pointed out the problems of different forms of legislation covering different media which, in the convergence, are in fact converging in technology and so we take that on board for consideration.

MR COOK: Yes.

PROF SNAPE: I think you have given us a very thorough exposition on the printed page and also in - I am afraid it is in analog form at the moment in the tape.

MR COOK: That's fine. I would just like to wrap up very briefly, though, because I know your time is pushed and I do appreciate the opportunity to be able to speak, as well. Of course the smaller players realise that their ongoing viability is also dependent on the ongoing viability of the larger players. It is not an antithetical position. What it seeks is a balance and accommodation of the two quite different ideas: one that seeks to have very open regime for transmission and reception and one that would say that the only way of providing quality services is by limiting and focusing the limited assets in a smaller market.

We're not asking for a total open slather in this by any means, but merely that there is a tendency to aggregate and close off access to the smaller markets and, if this inquiry can take note of that, then this will benefit those smaller providers. The fact that we are moving to a digital domain, which will, one day, incorporate film and will, one day, incorporate newspapers - needs to be recognised now, as you are forming - I mean, you have to make a snapshot and come up with some deliberations but if that is recognised that it is likely that this will all occur and that one must look at content and distribution as the difference there. That will separate you from the rest of life. That will also aid and abet content producers who, one day, might be individuals working from their homes - as well may contribute to this and, for small producers, that is the promise of the future; its openness and its accessibility for both producers and for small distributors.

PROF SNAPE: We take that point and as you will see from our terms of reference the starting point of this whole inquiry was in fact to do with the competition principles.

MR COOK: Indeed.

PROF SNAPE: So we are concerned about the openness and, basically, regulation has to justify itself under the terms of reference of this inquiry. Thank you very much for your contribution.

MR COOK: Thank you.

PROF SNAPE: Next, we have the Australian Writers Guild. Not yet? In that case we will have a short break and resume when we have the Writers Guild with us.

PROF SNAPE: We resume our hearings now and welcome the Australian Writers Guild, who have put in a submission, which is number 12 on our list. We have three representatives from the guild and, for the purposes of the transcript, I would ask each of you, in turn, to identify yourselves and your positions.

MS McCREADIE: Sue McCreadie, executive director.

MR GUDGEON: Mac Gudgeon, president.

MR SIMPSON: Roger Simpson, member.

PROF SNAPE: Thank you very much. We have your submission, which makes a clear point, and I invite you to speak to it.

MS McCREADIE: Thanks very much. I guess we should say that we have got a few concerns about very major issues, which we haven't as yet, unfortunately, had the chance to elaborate on, so maybe I will just briefly pinpoint some of those. Clearly the guild has had a long tradition of supporting and having input into Australian content regulation and we believe that there is a continuing necessity to have effective Australian content regulation; indeed, somewhat more effective than we currently have, but I think the rationale is stronger than ever in the era of globalisation and it is extremely important that Australians continue to have the chance to tell their own stories and see themselves depicted on our screens. Maybe we can go into details later about some of your issues.

PROF SNAPE: They are amongst our issues.

MS McCREADIE: Sorry, I understand that, but I mean issues within that, yes. Australian content is a major concern. We're obviously concerned that the pay TV regulation has not been enforceable and it has not been effective to date and the pay operators have not actually met their targets. We actually think 10 per cent is very modest and we have made representations that it should be 20. Your paper raises the issue of the national broadcaster; we think the national broadcasters are essential for diversity and the ability of broadcasters to take risks.

PROF SNAPE: The existence of national broadcasters and their act is not within our terms of reference.

MS McCREADIE: I am sure there was a reference to it in there.

PROF SNAPE: There is some overlap. We ask at one point, I think, whether the cultural objectives are satisfied through that but the ABC and SBS acts are not within our terms of reference.

MS McCREADIE: Sure, okay. Within the Australian content area, of course, we, along with many other organisations, made representations to the recent senate

inquiry into the possible deletion or amendment of section 160D, and we did believe that was the right way to proceed. We think that a report from that inquiry was an excellent report. Even though it didn't recommend deletion of 160D, it did recommend CER be renegotiated, and we believe that is essential and that a very strong case was made for that, so we were disappointed that the government failed to act on that recommendation.

To the specific issue we raised in our submission: we are very concerned at the fact that licence fees being paid for programming have not increased for a number of years and, indeed, there seems to be pressure to decrease them. My colleagues might have more to say about that but I think we have actually outlined the concerns we have and the impact, in particular, it is having on the writing community.

PROF SNAPE: Thank you. I think a number of the points which you were addressing were addressed earlier in the week by the Screen Producers Association, and I imagine that your positions on those are fairly similar to SPA, if you have seen that.

MS McCREADIE: Yes, that would be fair to say that.

PROF SNAPE: We will be hearing from the Media and Entertainment Alliance, I think, later, and I assume you have got relationships with both of those groups.

MR GUDGEON: We do have, yes. Some good, some not so good.

PROF SNAPE: Probably on the matters under consideration your views are fairly similar.

MR GUDGEON: Pretty similar I would say, yes.

PROF SNAPE: You don't have any differences of policy from those on the matters that we are considering?

MS McCREADIE: No.

MR GUDGEON: I wouldn't think so, no.

MS McCREADIE: We haven't actually seen SPA's submission and I would think our recommendations would be pretty similar. I don't know what they have said about the program licence fees; I know they are desperately concerned, as we are. What we have said is that for a number of years we have all lobbied for minimum licence fees to be attached to the quota points for drama and indeed documentary. The ABA has accepted it in principle for children's drama but not for adult drama, and we regard that as a failure really of will on their part, because there has been quite a strong case mounted over the years. I'm not sure whether SPAA has put that forward.

MR SIMSON: Could you provide a bit of background to the ABA determining the minimum licence fee on children's drama? Is that the minimum amount that a network or channel needs to pay the content supplier? Is that correct?

MR SIMPSON: Yes.

MR SIMSON: As a licence fee.

MS McCREADIE: That's right. Yes.

MR SIMSON: That licence fee of course doesn't relate to the writing aspect of it.

MS McCREADIE: No.

MR SIMSON: That's the total licence fee. Out of interest, how do they settle at \$45,000 per half an hour for children's drama? What was the magic in that calculation?

MS McCREADIE: I think that's what was being paid. That was probably the current lowest - well, maybe it wasn't the total lowest, but it was generally seen as on the low side of the current range, and what they were concerned with was that New Zealand product didn't come in, that was a lot lot cheaper, because it had already recovered its costs in the New Zealand market.

MR SIMSON: Was the New Zealand issue a particular driver in terms of the ABA and children?

MS McCREADIE: Yes.

MR SIMSON: In your view, yes. Clearly imposing or applying a minimum licence fee would be quite a significant step - some would say good, some would say bad - for the industry, depending on whether you're a supplier or a purchaser, isn't it, because you'd be saying that a program or a network could not purchase a particular - I take it you are in fact looking to apply that to drama and other areas - they could not purchase under your proposal the content, unless they paid a minimum amount?

MS McCREADIE: They couldn't get quota points for it. They could purchase it and screen it but - - -

MR SIMSON: Okay.

PROF SNAPE: And if they were over quota - which they're not in children's of course - - -

MS McCREADIE: No.

PROF SNAPE: - - - then they would not have to pay the 45,000, because they wouldn't be seeking points for it.

MS McCREADIE: That's true.

MR SIMPSON: That's right.

MR SIMSON: You're not worried that that could further create tension between yourselves or between the suppliers and the purchasers? We've heard a lot of evidence from SPAA, and on our industry visits to some members of SPAA, as to a number of changes that are occurring in the terms of trade between content suppliers and purchasers - what has been happening to licence fees, ie they appear to have been going down; presale overseas, for example; equity investment by the network or the channel into the program. I'm wondering if you may not be concerned that imposing something like that could be another needle in the haystack as far as that overall matrix is concerned.

MR SIMPSON: What would be your concern though if the minimum licence fee went up?

MR SIMSON: If the minimum licence fee went up, wouldn't the networks turn around and say, "Well, either the presale overseas has got to be higher, or we're going to insist on a high level of equity into the program" - in other words, they just recoup that? I'm wondering if you might get something there that they'll just - that the networks would compensate in some other way.

MR SIMPSON: Both the producers and the networks are very good at complicating the issue and bringing up issues like, "Well, it's a delicate balance of equity, presales, licence fees and everything else," but that's just semantics at the end of the day. The networks aren't paying enough for programs. They can participate in overseas sales as equity holders if they wish. If they wish to recoup their money in other ways, it's a free marketplace, but the cost structure has not increased and that seems to have been taken out of the participants in the industry - writers, crew, actors; especially writers who don't, I think it's said in the submission, have the same protection of a union as the other organisations do, because they're independent contractors, they tend to get paid what producers decide to give them.

MR SIMSON: It's not pitched as a proportion of the licence fee or a percentage of the licence fee?

MR SIMPSON: No. It always comes back to the proportion of a budget.

MR SIMSON: Of a budget, okay.

MR SIMPSON: If indeed it's a proportion at all. It's usually that the writers are paid a going rate, and writers try to push up that going rate through - - -

MR SIMSON: Individual negotiations?

MR SIMPSON: - - - individual negotiation. It's very difficult to do.

PROF SNAPE: Do good writers get paid better? Is there a differentiation amongst writers?

MR SIMPSON: There's some, but it's very minimal. It tends to be that the better writers are more employed than the writers with lesser reputations, which means they have to work harder rather than be paid a proper rate.

MR SIMSON: How would a minimum licence fee improve your lot?

MR SIMPSON: To increase the licence fee is another way of saying that the budget should be higher, because the licence fee is seen by networks as a proportion of the overall budget.

MR SIMSON: And in general terms, what proportion is that - in terms of drama?

MR SIMPSON: In adult drama, about half, a bit more, of a budget.

MR SIMSON: You mentioned costs, that the costs were not going up in terms of cost of producing the film - - -

MR SIMPSON: The costs of producing are going up. They are going up, but the producers are being required more and more to find economies within the budget.

MR SIMSON: Sorry, I thought you were indicating they were not going up.

MR SIMPSON: No, I'm sorry. I say writers fees aren't going up, because they're unprotected by the same sort of industry awards.

MR SIMSON: May I ask why costs of production are going up? Is that because of, in general terms, the sophistication and the technical animation - issues such as that - that are being brought in, elements of componentry that are being brought into a production?

MR SIMPSON: Ironically the new technology can actually make things cheaper and faster.

MR SIMSON: Yes, that's what I would have thought.

MR SIMPSON: But the general costs, the ordinary increase in the cost of living is what pushes costs up because it's a very people based business.

MR SIMSON: In terms of the technical side, are they in fact going down, are they?

MR SIMPSON: They are going down, but that's a small proportion. The major proportion of a drama budget is fees for people - for crews, actors, writers, directors.

MR SIMSON: I see.

MR SIMPSON: The technical component of that, if you like, is a small percentage. I couldn't tell you offhand precisely what it is. But it's a people business film production, television production.

MR SIMSON: So the main winners out of a drama in terms of the budget are the people on the ground producing the show - the actors and crews and the participants.

MR SIMPSON: The participants in it, yes. What's happening is, costs go up, producers are having to make drama more quickly. The company that I have, which made Good Guys Bad Guys two years ago, made an hour of drama in seven and a half days. That's the filming period.

MR SIMSON: For one hour?

MR SIMPSON: For one hour of drama. We're currently making a show called Stingers, also for the Nine Network, which we've got to make in six days because the budget hasn't gone up. So what's happened is that people have to work faster, quicker, more efficiently. It think it affects quality, but it's for others to argue that. I'm sure we think it affects quality. But it means that there's been no increase in the budget; there's just been a contraction in the resources. You have to make it more quickly basically; seven and a half days becomes six days, you're still producing an hour of drama.

PROF SNAPE: Are you rewriting this as they're doing it?

MR SIMPSON: We write in advance. We start the writing process about 13 weeks before the production process. The writers are involved across a 13-week cycle.

PROF SNAPE: But then as it's being filmed and they find some things work and some don't, which is inevitable, do you rewrite it at that stage?

MR SIMPSON: No, not really.

PROF SNAPE: So it's the producer who'd be rewriting - - -

MR SIMPSON: It shouldn't be rewritten at all, because it's programmed in and scheduled and cast, and the art department builds its sets and everything else. It's not an easy thing to do. You might alter the odd line, but you can't really - - -

PROF SNAPE: I meant the sentences, not the sequences, of course.

MR SIMPSON: The writers write the sentences.

PROF SNAPE: Yes, but there would be some rewriting going on.

MR GUDGEON: There's a certain amount on the set when an actor will have trouble with a line or the location.

PROF SNAPE: Yes, but you're not called in at that stage.

MR GUDGEON: No. Most of the writers' work is finished before an episode goes into shooting.

MR SIMSON: If a fourth free-to-air commercial television station was introduced and the content quotas were to stay in place as they are, what do you believe would be the impact, if any - good or bad - on your industry and your members?

MR GUDGEON: If you look at what we're seeing on our commercial networks at the moment, you could take the logo off the station promos and you wouldn't really know what channel you were watching. Because of the downsizing of the ABC and the way they're being cash starved, we're getting less and less innovative drama, we're getting less and less Australian stories that are different from what's being shown on the commercial channels. The programming on commercial channels is very similar, their drama is very similar - it's cop shows, it's soaps, it's hospital shows - and by having another network I don't think it would solve the problem. If there was another commercial network you'd just have similar material because that's what they understand and that's what they think the audience wants.

MR SIMSON: What do you think would be the impact on the budgets for shows that you've just been speaking about a couple of minutes ago?

MR GUDGEON: Hard to know.

MR SIMPSON: If there was a fourth network?

MR SIMSON: Yes.

PROF SNAPE: With the same content rules there would be an extra demand.

MR SIMPSON: 25 per cent - or an extra 33 per cent, would there?

PROF SNAPE: Yes.

MR SIMPSON: There'd be an increase in content by 33 per cent?

MR SIMSON: In hours, yes.

MR SIMPSON: That's what matters. I think we should increase the content now by 33 per cent. You don't have to create a new network to do that.

PROF SNAPE: Well, if there's a new network, you'd get competitive effects as well as size effects. So there are two effects if there is another network, whereas if it's all in the one you get size effect without the competitive effect. So adding a network with the same content rules, what would it do to you?

MS McCREADIE: One of the concerns would be how big the advertising dollar is. Clearly there's some link between program licence fees and advertising revenue. To what extent it impacts - if there is a limited advertising dollar and the revenue is therefore less, then does that impact on program licence fees, and I don't know that there's a direct connection insofar as we understand that there are programs where the advertising revenue is very much greater than the program licence fee being paid. But, nevertheless, I think that's the major question that's been raised in the past about the impact of a fourth commercial network.

PROF SNAPE: Yes, but there will be an extra demander in there and, as you say, the commercial demand would, in that scenario, have gone up by a third.

MR GUDGEON: Yes, but they may decide that there's not enough advertising dollar out there so they have to lower all the licensing fees to compete with each other.

MR SIMSON: I'm wondering though, in the context of what we've heard from SPAA and we're hearing from you, the practicalities of that. You just pointed out, Ms McCreadie, that in fact in many cases the revenues from advertising are significantly higher than the licence fees. For the budget to be lowered, to be squeezed, how much further could they be squeezed before basically you have crummy shows or people wouldn't produce them?

MR GUDGEON: It's happening already.

MS McCREADIE: It's close to that.

MR GUDGEON: The writers' fees haven't increased in the last six or seven years, and it's getting to the point where we're now in arbitration with SPAA because they're not paying enough and the writers can't exist.

MR SIMSON: You're in arbitration with SPAA?

MR GUDGEON: Yes.

MR SIMSON: You can talk a little bit more about that in a moment if you want to. But let's look at the total budget, of which you're a component of that. How much

further could that budget be squeezed and still produce drama?

MR GUDGEON: You can produce drama with a home video camera, if you want to. But the point is that you will lose good writers because they'll realise they can't earn a decent living out of writing for commercial television shows, so they'll head off somewhere else, and the overall quality of the production will definitely go down.

MR SIMSON: In your professional opinions, what has been happening to the quality of Australian drama on the commercial free-to-air networks? Has it been going up or going down?

MR SIMPSON: It has been going down and it's changing, and there has been a dramatic change away from big budget miniseries, which proliferated many years ago, to videotape, soap opera and serial production, and that has been a direct result of the squeeze on licence fees and budgets.

PROF SNAPE: Yet we've had some of the most successful ever, on the international scale and perhaps domestically, local productions, have we not? Water Rats - nothing has sold as well as that has in the past. Neighbours continues to capture a large market in many countries. Blue Heelers continues to do the same. I thought that the quality was regarded as pretty well an all-time high by some.

MR GUDGEON: Where are the Blue Murders and the - - -

PROF SNAPE: Blue Murders?

MR SIMPSON: It hasn't been shown in New South Wales.

MR GUDGEON: Oh, it hasn't been shown in New South Wales.

MS McCREADIE: It's a miniseries, ABC miniseries.

MR GUDGEON: Where are the Dismissals? Where are those good quality programs?

PROF SNAPE: I've given you some which some people say are better than anything that has been in the past. Now you're giving me some that aren't there, but how does that wash up in the - - -

MR SIMPSON: Excuse me. If I could address those three you mentioned. Two are videotaped, one - Neighbours of course, which on one level is the big success story of Australian television but it's a soap opera, low production costs with a big market in England. Water Rats supposedly sells to more countries than there are countries, so I think that that's - - -

PROF SNAPE: That's pretty clever.

MR SIMPSON: That's pretty good. 140 countries is something of a record in the world I think.

PROF SNAPE: I think actually, with respect, they say regions, and they speak of 169, and I think if you count on that basis that you get to a possible number of a little over 200.

MR SIMPSON: Pretty staggering.

MS McCREADIE: Bigger than the UN.

MR SIMPSON: It's a bigger world than I thought.

PROF SNAPE: Yes.

MR SIMPSON: And Blue Heelers, while it does extremely well, while it does extremely well in Australia, does not sell significantly overseas.

PROF SNAPE: But nevertheless they're all regarded as very high quality. The market regards them of very high quality, the viewers do, they watch them, the advertisers do, so what criterion are we going to use for saying that they're not as high quality as what was done in the past?

MR SIMPSON: The budgets are smaller. I was talking about the miniseries.

PROF SNAPE: We measure by output rather than input I think.

MS McCREADIE: But they're long running, that's one of the issues, and in terms of diversity of drama - if you're going to have diversity you need to have high quality short-form drama which is miniseries and, to a lesser extent, telemovies because they tend to be more formulaic, so I think what is that we're missing - - -

PROF SNAPE: What's the conception of quality? I mean this is one of the things that we're encountering all the time and I'm just trying to - - -

MR GUDGEON: We are talking about taste here.

PROF SNAPE: Yes, I'm trying to say what is this quality that we're talking about?

MR GUDGEON: I think it's very hard to define it but I think cultural diversity is one criteria you could bring to it, that we - - -

PROF SNAPE: That's very relevant in our terms of reference, as you would know.

MR GUDGEON: Absolutely, and it's important that we see all sorts of different stories on our televisions because these television commercial networks particularly

don't own the airways, they lease the airways from the citizens of this country and they have a cultural responsibility to show a diverse range of the stories that make up the Australia culture, and as a viewer, and also a writer, I become concerned when the programs I'm watching all seem very similar and we're not seeing the diversity of high quality drama that we used to see and that represented our culture very significantly overseas.

MR SIMSON: Let's just take a face-value view of your statement there, that we're not seeing as much. How do we know that people, the audience, wants to see that?

MS McCREADIE: They always rate very well. Miniseries tend to rate very well.

MR SIMSON: If they rate really well why aren't they being made?

MS McCREADIE: Because they cost a lot to make, a fortune, because they're one-offs. I mean Blue Heelers has been going for a very long time and the longer something goes the more they get the cost down.

MR SIMSON: But this discussion we're having doesn't just relate to miniseries, does it?

MS McCREADIE: No.

MR SIMSON: I think your observation is relating to what you see as some diminution in your eyes in terms of taste and quality of Australian drama. It just doesn't relate to miniseries, does it, or does it?

MR GUDGEON: It's another factor and if you've got a healthy mix you've got telemovies, you've got miniseries, you've got series and you've got serials, and at the moment we've only really got series and serials. We're not seeing the telemovies. We have some, not as many as we used to have, and we don't have as many miniseries as we used to have.

PROF SNAPE: So it's a loss of a diversity of format or genre?

MR GUDGEON: Yes, probably it's best for me to speak from my personal experience as a writer. 10 years ago you could come up with a project that was different. You could go to a network if it was a miniseries or a telemovie, and if it was high enough quality and judged to be of high enough quality then there was a chance you would get it made and you would be paid a certain amount and you could write something that was different, imaginative, whatever. What's happening now is that when I'm approached by a producer I'm told, "Well, we have to shoot this in six days. We can only use four outside locations. We can only have 20 speaking parts," and what's happened over the last 10 years is it's contracting down and down and down.

The writer - myself - you don't have the opportunity to tell a story in a more

interesting and creative way. You're stuck within the parameters, and that's not the producers fault; it's because they're being squeezed from the top so they have to squeeze someone, so they squeeze everyone down the line and the writer is the one who starts so they're the one who probably gets squeezed more than everyone else.

PROF SNAPE: Is that necessarily bad? A series which has been repeated on the ABC recently, which is Talking Heads - isn't it?

MR GUDGEON: Yes.

PROF SNAPE: Which has one person speaking, it is shot in one location by probably two or three cameras.

MR GUDGEON: Yes.

PROF SNAPE: And yet the writing in that is extraordinarily creative.

MR GUDGEON: Very creative.

PROF SNAPE: So while those actors in it no doubt are very, very expensive, but there is only one of them in each of it, that seems to me a very economical production which was cut down a lot further than what you just said - one location, one speaking head, etcetera - and yet that is very, very - I would regard - high quality on my scale.

MR GUDGEON: I have two responses to that. How many of those were made - it's about 10 or 12 - and after that I think the audience would probably want to look at something else and, secondly, if you took that idea to a commercial television in Australia there is no way that would get on the air.

PROF SNAPE: Yes, but I was just getting at bigger is not necessarily better.

MR GUDGEON: No.

MR SIMPSON: No, it's not.

MR SIMPSON: If I could just pursue one point - excuse me for a second. Are those top rating, the very popular drama shows, Water Rats and Blue Heelers and so on, that we discussed earlier, are they also being produced now - and Neighbours - in that slimmed down version that you mention, so that even the top - the ones that have been going for a long time - are now being produced with fewer actors, fewer locations, less time, etcetera?

MR GUDGEON: Yes, and it becomes formularised. That's the problem. You get a template put over the program and as a writer you can't move outside that template.

PROF SNAPE: Isn't it then an incentive for a new competing channel, for example,

to move outside that and to try and tap into new types of audiences. It may be you're getting the sameness because there are only three competing channels. If you in fact got a fourth competing commercial channel then in fact you may break out of that sameness mould.

MR GUDGEON: And you may also get more of the same.

PROF SNAPE: More of the same would still not be worse, presumably, and for your members it would mean more writing of the same thing, which is certainly not worse for you, unless of course the licence fees went down proportionally or more, and you have the possibility of competitive diversity.

MR SIMPSON: It's probably not for us to say whether there should be a fourth network or not but if creating a fourth network increased quotas by 33 per cent I would say why not just increase quotas by 33 per cent. You would have exactly the same result.

PROF SNAPE: No, with respect, you wouldn't, because you would still have the three channels. You would still perhaps be having the tendency to sameness that you might get with three, but when you've got four competitors instead of three competitors they may or may not be tackling greater diversity and not sure how it would go.

MR SIMPSON: No, you're absolutely right. What I was trying to say is that the squeeze on us has come from two directions. One is the licence fee hasn't been increased and the other is that quotas have remained static for a long period of time too. That's the point I was trying to make.

MR SIMSON: With regards to quotas though, I mean surely an increase in quota should only be considered if that's what the viewer wants. I mean it's a form of protection.

MR SIMPSON: Yes, it is. Quotas weren't invented for viewers; they were invented to protect a fragile production industry that wanted to develop a cultural voice. Quotas are a form of industry assistance to an industry which is very vulnerable to foreign pressures. Is that not true?

PROF SNAPE: Could I unpack that?

MR SIMPSON: Yes.

PROF SNAPE: There are two things involved in this I think. One is, if you like, a straight industry protection.

MR SIMPSON: Assistance.

PROF SNAPE: Or assistance, which you could apply to a whole range of industries

from motor vehicles, textiles - to every industry - and you cannot protect every industry in the country.

MR SIMPSON: No.

PROF SNAPE: Secondly, there's a question of culture and those aspects. I understood that the rationale that was generally advanced was in fact to protect the cultural aspects, the Australian cultural aspects, and that aspect. The question then is, is that locked together absolutely with industry assistance? So can you protect Australian cultural aspects and assist the Australian cultural aspects and ensure that they are sustained and aired, etcetera, without - and is that separable from industry assistance?

MS McCREADIE: The only way of doing it would be a massive injection of government subsidy and allow the networks completely off the hook in terms of - - -

PROF SNAPE: Would that be a good thing?

MS McCREADIE: No, I don't think so because it means it's shifting the obligation from the networks to the taxpayer. I mean we do think there needs to be more subsidy but that's another issue.

PROF SNAPE: If I may, just on that. If you are, through content requirements, getting people to watch things that they wouldn't otherwise watch, because - I mean, if they were going to watch it anyway the content rules aren't necessary.

MS McCREADIE: No, that's actually a very important point. I mean I think this is a key one because it's to do with the economics of TV program markets and how networks work, and I'm sure the networks can talk to you about this, but they don't make their decisions solely on the basis of ratings. I mean an Australian program costs 10, 20 times more than imported programs, so the fact that an Australian program rates more highly - and we know it does because we know that Blue Heelers and Water Rats and Murder Call have all been in the top three rating programs, so there's no doubt audiences want them, but Blue Heelers costs something, as I understand it, like a quarter of a million an hour. An import can cost something like \$50,000 an hour. So that's a very key point.

PROF SNAPE: Yes, they don't want them enough to generate five times as much advertising revenue.

MS McCREADIE: That's absolutely right.

PROF SNAPE: And we understand that one takes the account of both sides. That was implicit. I'm sorry.

MS McCREADIE: That is essentially though why we need that regulation. It's not because Australians won't watch Australian programs.

PROF SNAPE: No, they will watch it but not enough of them are watching it to justify the additional revenue, to bring in the additional advertising revenue that would cover those additional costs, and therefore there is a requirement that that be done. If it weren't so then the contents requirements wouldn't be necessary.

MS McCREADIE: That's right.

PROF SNAPE: So we are in fact imposing, if you like, a cost upon the community which may be very desirable for cultural, etcetera, reasons but nevertheless we are requiring that that be screened whereas it wouldn't otherwise be screened for the reasons that we've just been describing. Now, that's a cost upon the community.

MR SIMPSON: Yes.

PROF SNAPE: I am emphasising this because you said, "Well, if the government was doing it all through taxpayers' money and assisting", that was a cost upon the taxpayer. I agree. But there is also a cost on the community by in fact requiring that these things be shown and it is a question of cost versus cost; not cost versus no cost, and so with that background, we come - wouldn't it be better - well, would it be better. I don't want to put it in any way - I just raise the question. Would it be better for the assistance to be straight out of the taxpayer's pocket in dollars - dollars which may find their way, in part, to members of the Writers Guild?

MS McCREADIE: I think we would be a bit worried about that. I mean, we think subsidy is not a - subsidy has declined quite considerably in the last few years and that's an issue. I mean, several years ago we had the commercial television production fund, for instance, valued at 20 million a year and that was very valuable, so things have deteriorated on the subsidy front. But if you think of a program like, say, Blue Heelers - and assuming I am right in thinking it is worth about a quarter of a million an hour in licence fees and an import might only cost 50,000 - then that means that the gap - if there is no content regulation then presumably the taxpayer has got to subsidise that to the tune of 200,000 an hour. I think it is going to work out at a very large level of subsidy and it does seem to me it lets the networks off the hook. It means that it reduces their program expenditure even further; it has already come down from what it was in the early 90s, late 80s.

MR SIMPSON: What I was trying to cover with you earlier though is that just as a general proposition, if you argue that that the quality is not as good now as it was a few years ago - and if we could just put to one side the miniseries, which I accept are a very important part of what was going on before - you made the observation very early on that you could almost interplay or interchange the logos on the TV stations - and you're implying obviously an element of sameness. In the context of a fourth free-to-air commercial network, from what you have said today I don't sense that we would actually see any great or any significant deterioration or further deterioration in quality, in your eyes, if that were to come in and, as Prof Snape is pointing out, on the other hand there would be another 33 and a third per cent of actual programming

hours.

MR GUDGEON: I mean, it's unknowable speculation. If you did have another commercial network you may have a network which got right behind showing diverse and different programming to what is on the other channels. We have got three and they look all the same and experience would tend to say that the fourth one may look the same again.

PROF SNAPE: The point that I made to SPA the other day - and I will just mention it again - is that it is remarkable that three is just right, because I put to them, would it be better if there were two because you are complaining about quality deterioration and, you know, would the quality improve if there were two? No. Would it be better for people if there were four? No. Isn't it absolutely remarkable that three is precisely right?

MR GUDGEON: Three isn't necessarily right.

PROF SNAPE: If you won't go to two and you won't go to four, you're left with three.

MR GUDGEON: I don't think we're saying four - - -

MS McCREADIE: Four is wrong.

MR GUDGEON: - - - is a problem. We just don't know.

MS McCREADIE: We just raise concerns about possible negatives. We don't know.

PROF SNAPE: It is unusual, I must say, for suppliers to an industry not to support an increase in the number of the buyers.

MR SIMPSON: We're not necessarily against it. We are just not able to gaze into a crystal ball and say, "This will be the result."

MR SIMPSON: And particularly in a situation - just to add to what Prof Snape said - not only increase the number of buyers but if we assume that the content quotas remain, increase the number of guaranteed hours that have to be produced.

MR SIMPSON: I suppose we're just a bit battered by dealing with the networks we deal with at the moment. I suppose we're cynical enough to expect them to say, "Well, if there is an extra player in the field this will reduce quotas. We don't have the resources." I don't think we're buying into the argument as to how many networks there should be.

PROF SNAPE: As I said to one of the networks yesterday and I said also to FACTS the other day, have a look at the value of their licences.

MR GUDGEON: Exactly.

PROF SNAPE: Do any of your members write for foreign productions?

MR SIMPSON: Foreign productions made in Australia?

PROF SNAPE: Either - foreign productions made in Australia or - - -

MR SIMPSON: Foreign productions made in Australia, yes.

MR GUDGEON: Yes.

PROF SNAPE: Foreign productions made abroad?

MR GUDGEON: No. It tends to be foreign productions made in Australia.

PROF SNAPE: Is that a good source of income?

MS McCREADIE: There's not that many writers, as yet, being employed on what we call "offshore productions". Flipper - the writers are now all Australian, but it takes a while for a series, for instance, to be established and then pick up Australian writers.

PROF SNAPE: Even in Australia, you mean?

MS McCREADIE: Yes. The actors are used much earlier and crew, obviously, used, but, yes, this is the first time, I think, that there has been all-Australian writers on an offshore serial series.

PROF SNAPE: "Offshore", you mean one that is made onshore?

MS McCREADIE: It is offshore in terms of its home country, which is - - -

MR SIMPSON: Offshore American productions.

MR GUDGEON: The profit goes offshore.

PROF SNAPE: To the extent that they're using Australians, it stays here.

MS McCREADIE: Sure.

MR GUDGEON: Some does, yes.

PROF SNAPE: Is that developing as a good source of demand for your services?

MR GUDGEON: It's a small part of the writers' market. The problem is again - it's a cultural problem - that you are writing an Australian program. You are writing a mid-Pacific program, so your cultural references have to be American because that is where they're going to get their money from.

MR SIMSON: Miss McCreadie, could I go back to your comments at the start on pay television?

MS McCREADIE: Yes.

MR SIMSON: I think you said that they're not meeting their requirements.

MS McCREADIE: Absolutely.

MR SIMSON: That is not what they have told us - obviously on local content for drama.

MS McCREADIE: It hasn't been enforceable to date. I believe the legislation still hasn't gone through the senate to make it enforceable. There was some sort of confusion, I guess, when it was drafted, and it turned out that they couldn't force the licensees to do anything about it. What happened is that - as I recall the figures - the first year, instead of 10 per cent it was around 5 per cent, and there was a report just last week that only last year they still only made 5 per cent and that a number of them fell way short; that was a kind of aggregate outcome.

MR SIMSON: Just casting your mind forward - the figures that are thrown around in terms of the increase in penetration that's going to occur with pay television over the next few years is perhaps as high as 35-40 per cent on a three, four, five-year time-frame - pretty significant - and we were told yesterday - I think it was yesterday - that the Nielsen figures are actually showing in pay TV an audience reach in excess of 3 million people, which is actually pretty high. That translates back to a household penetration of about 13 per cent. To what extent do you believe pay TV is going to be a market on a sort of three to five-year time-frame for Australian drama?

MR GUDGEON: It could increase. It is very small at the moment. Unless there is some regulation, enforceable regulation, I don't think it will increase much more, because it comes back to the fact that they can buy their programming from overseas much cheaper than they can produce it here and they will continue to do that as long as they can because there is more profit in it for them.

MR SIMPSON: Pay TV in Australia isn't a great originator of programs. It is a recycler of programs and I suspect it will continue to be a recycler. It might show old Australian series, it is not showing much initiative in creating - - -

MS McCREADIE: There does seem to be a reluctance to originate programming. I mean, in the first year there was a bit of investment in the Australian feature film industry - I think Movie Vision put in a couple of features - so it is as if it is already

set up and, at that point, they're prepared to provide investment, which is useful, but there seemed to be a little bit of reluctance about originating new programming and some resistance therefore to the whole requirement - expenditure requirement.

PROF SNAPE: Good. We note in your cover letter that you refer to the submission here as "a preliminary submission" and - - -

MS McCREADIE: Yes. I'm not sure if that's allowed.

PROF SNAPE: Of course it is, yes, and we would look forward to receiving an elaboration in a full submission - or a supplementary submission or whatever we call it - at some time and read it with interest.

MS McCREADIE: Okay. Thank you for the opportunity for that.

PROF SNAPE: Thank you very much for your submission and for coming today and discussing it.

MR GUDGEON: Thank you.

MR SIMPSON: Thank you.

PROF SNAPE: We will now break for morning tea for a few minutes. I think we are having News Ltd after morning tea. I think they were scheduled for 11 o'clock but we may be able to start a bit earlier. Perhaps if we resume at 10 to.

PROF SNAPE: Let's resume the hearings and we welcome News Ltd. News Ltd. have two representatives present to speak and we would invite each of them to identify themselves for the transcript.

MR BLOMFIELD: Thank you, professor. Jim Blomfield, CEO of News Broadcasting Australia.

MR MARQUARD: John Marquard, vice-president, business and legal affairs for Fox Sports.

PROF SNAPE: Thanks very much. Mr Blomfield, are you going to lead off?

MR BLOMFIELD: Yes, professor, if I could. I have some opening remarks and then we are here to take some questions on our submission. The importance of this inquiry should not be underestimated. It is the catalyst for change which Australia needs if it is to take its rightful place in the international media stage. The need for urgent reform is highlighted by the hastily assembled digital conversion legislation package round through parliament last year at the urging of FACTS. This typifies the inappropriateness of current broadcast legislation because it retards competition and the development of Australia's digital future.

If Australia does not undertake major reform to broadcast legislation we'll be faced with a digital train wreck in which the principal casualty will be the Australian consumer. What is at stake here is whether Australians will have seamlessly integrated digital devices in their homes. It is not just about digital television sets and set-top boxes or whether they will receive high definition pictures with surround sound, it is about data and interactivity. In a world where programming won't be judged by its length, it will be judged by its depth, by how many layers of additional information, entertainment or requests lie beneath and around it.

At every opportunity we reiterate a long-held public view that regulatory intervention in the media industry is counterproductive to its efficient growth. It is counterproductive to encouraging competition and it is counterproductive to the broad circulation of information and opinion through our community. Our submission proposes three reforms to current policy that are necessary if Australia is to compete efficiently in the converged environment that will characterise the 21st century. These are, first, the removal of cross-media and foreign ownership restrictions. They're inappropriate and irrelevant. Generic laws which affect all industry are appropriate to regulate the electronic media. The second reform is the replacement of content regulation of television broadcasting by industry's self-regulation based on the compliance agreement - or a compliance agreement - encompassing current ABA requirements and the FACTS code of practice. These regulations would require adjustment to take account of a changed and converged electronic media, operating in the broadcast services band.

Third, the removal of unique and anti-competitive restrictions on digital

broadcasting. These restrictions prohibit new free-to-air television entrants before 2007; they restrict the application of digital technology and they restrict the provision of services that are available to other developed nations. If these reforms are made, the Broadcasting Services Act will then comply with the principles of the competition principles agreement. In particular, the benefits to the community as a whole will then outweigh the cost of regulation and the objectives of the legislation will have been achieved without restricting competition. These reforms are not only necessary for compliance with competition principles; they are necessary to enable an innovative Australian response to the convergence-driven industry changes which are in progress globally.

Due to convergence there are no longer any clear non-legislative boundaries between the broadcasting, telecommunications, publishing and IT sectors of the economy. The structural changes that will be unleashed when these legislative boundaries are removed will redefine the framework for competition in Australia's media industry. We believe that now is the time for them to be removed. In the nations leading the digital revolution, flexibility of new digital services is actually creating a more vibrant conventional service as well as enabling the creation of a range of new services and applications. This in turn is creating a situation where competition rather than convergence best describes the market.

It's our view that this will be the case in Australia following the successful, rational and fast conversion to digital of the broadcast services band. The digital media era rules out the need for the broadcasting industry to be treated differently. Concentration in the distribution sector is more likely to occur under current restrictions than in a free market. Concentration and influence issues would be limited by competition and the application of generic laws which affect all industry. Regulatory criteria can no longer measure the degree of influence that different types of broadcasting services are able to exert. Accordingly, it's no longer appropriate for regulation to distinguish between different delivery platforms or between the format of the content. Program standards also need not to be so proscriptive.

The impact of regulation on free-to-air television broadcasting industry has had many undesirable effects, including fostering a complacent commercial broadcast industry which offers a sameness of programming and parallel scheduling. All existing geographic, cross-media and foreign ownership restrictions are inappropriate in light of the changing environment of the broadcasting industry. They create an artificial competitive environment, impede the ability of the industry to reach its full potential, and therefore restrict benefits that might otherwise flow to consumers, both in the choice and the content of offerings.

Without change to the current legislation Australia will jeopardise many of the benefits of convergence in order to shelter incumbents and traditional markets from new entrant competition. As a nation we will not benefit commercially or socially as we should from an early digital era. As our submission says, it's no longer a question of should Australia change media law, it's a matter of how we change that.

PROF SNAPE: Thank you very much, Mr Blomfield. I wonder if we could begin by just considering the concept of influence, because the current act is based fairly heavily upon degrees of influence in the sense that the differing degrees of regulation across various types of media - broadcasting and through the cross-media rules, media more generally - on the degree of influence that different types of broadcasting services are able to exert in shaping community views in Australia. I wonder if you'd like to explore a little as to what you understand by this degree of influence that is sort of the core concept in the current act.

MR BLOMFIELD: Yes, it is a difficult area. There are some popular suggestions of how influence may work but it's not an accurate view. Yes, electronic media does have some influence, but that depends on a whole range of things. It depends on the format, it depends on technology, the spread, the take-up, ratings - many, many factors.

PROF SNAPE: Channel Ten in their submission was suggesting that advertising revenue should be used as a proxy for it.

MR BLOMFIELD: As a measure, yes.

PROF SNAPE: But as you were present I think you heard that the other day. That might be - it's obviously some measure of influence in the demand for the products, because that's what advertising would be aimed at, but it's not necessarily - it may or may not be correlated with a degree of influence in shaping community views in Australia.

MR BLOMFIELD: I don't think you can use advertising revenue to measure a degree of influence. That's impossible, particularly when you're dealing with an electronic industry that includes the ABC, which has no advertising revenue. Does that mean it has no influence?

PROF SNAPE: This act doesn't refer to the ABC, of course.

MR BLOMFIELD: No, it doesn't.

PROF SNAPE: It is referring to - - -

MR BLOMFIELD: Let's say a station decided upon a complete news format and they may have taken a decision not to pursue maximum advertising revenue - that's what I mean about formats that go to different levels of influence. So a low advertising-based news format may have a degree of influence, or a high-budget entertainment channel with small but hard-hitting news segments may have an even higher influence. So what I'm getting at is that the balance of advertising revenue can't be used to measure that.

PROF SNAPE: But would you agree that the media and broadcasting and other forms of media, including the new forms of communication, are particularly important in influencing, shaping community views in Australia?

MR BLOMFIELD: Yes, I understand that there are differing degrees of influence.

PROF SNAPE: But as an industry, if one can use that term, a communications industry is more influential in shaping community views in Australia than, say, the motor vehicle industry or the airline industry or the supermarket industry.

MR BLOMFIELD: Yes, I'm agreeing that yes, from those other industries it may well exert - but again it depends. What we're saying is that we ought be changing the rules on how media is done. I think there's a popular view that any new entrant or other entrants are going to rush and do the same.

MR SIMSON: Are going to rush and do the same?

MR BLOMFIELD: Yes. Now, that's not the case.

PROF SNAPE: No, but what you are saying essentially is the generic competition rules, as through the Trade Practices Act and the ACCC, are sufficient for this industry to meet the government's objectives and the community's objectives in this industry as in other industries, and yet you agree that this industry is different in the sense of influencing community views, shaping community views in Australia, and that is of concern to the government, and yet you're saying leave it to the same rules as affects the supermarket industry.

MR BLOMFIELD: That's correct. What we're also suggesting is that there is a great diversity of opinion throughout the media products and I think that's generally argued by all media players in a restricted or open market.

PROF SNAPE: And you say on page 10 that that is not related to ownership; and if one could push that strongly, then what you say in the beginning of section 3.2.1 if I read it correctly is that if one was to draw that to the limit what you're saying there is that if there were one owner of all the means of communications nevertheless there would be diversity of opinion because the market would want it. Is that argument really sustainable - there would be plurality of views even though there was one owner of all the means of communication?

MR BLOMFIELD: I think the idea of one owner is a long bow.

PROF SNAPE: One can work from one to two, but of course, put it another way, that the criteria that would satisfy the ACCC in terms of market concentration - for example, the advertising market or whatever - would also be satisfactory to ensure the diversity and plurality of opinion; that the diversity would simply be met because people want it; it would be on the side of demand and the side of supply would have no influence.

MR BLOMFIELD: I think it's a wrong assumption that it will fall to one or only two.

PROF SNAPE: No, I'm not trying to explore what might happen here, I'm simply addressing what you've said in these couple of paragraphs, and the logic of what you've said there leads to what I've just expressed as I understand it.

MR BLOMFIELD: I'm sorry, I can't - - -

MR SIMSON: Perhaps if we could attack this from another dimension. At the bottom of that same page you make the statement that:

A highly concentrated market has a few dominant firms accounting for most of the output. Diversity on the other hand refers both to the number of independent media companies, regardless of their size, that is source diversity, and to the variety of viewpoints expressed in the media, content diversity. Accordingly, an unconcentrated media industry may nevertheless exhibit little content diversity - thousands of media voices each saying about the same thing.

And then you say:

And a concentrated media market may nevertheless exhibit great diversity.

The only way that could happen, would it not, would be if all these thousands of media voices were saying exactly the same thing? And how could that happen?

MR BLOMFIELD: That's true, how could it? It wouldn't happen.

MR SIMSON: If it wouldn't happen haven't you got a more diverse result from an unconcentrated media industry?

MR BLOMFIELD: Yes.

MR SIMSON: But you're saying exactly the opposite.

MR BLOMFIELD: I don't believe so.

MR SIMSON: I'll just repeat it:

An unconcentrated media industry may nevertheless exhibit little content diversity - thousands of media voices each saying much the same thing and attracting similar audiences. And a concentrated medial market may nevertheless exhibit great diversity, independent voices -

I'll go on - - -

exhibiting every possible political hue and cultural view, with a few capturing most of the public's attention.

MR BLOMFIELD: Yes. I'm sorry, I'm not sure how I can help with this question.

MR SIMSON: Okay. In the Australian this morning Errol Simper, who writes with your paper, said the following:

Murdoch, a US citizen, might purchase a free-to-air network and align it with the array of News Limited newspapers. This would decrease diversity in that an existing television proprietor would have to give way.

Do you agree with that?

MR BLOMFIELD: Again hypothetical - "Might align it with." I believe those businesses will be run very independently.

MR SIMSON: He didn't actually say "might"; he said "This would decrease diversity."

MR BLOMFIELD: Yes, it would.

MR SIMSON: So it would decrease diversity if an existing - I'll just read again what Mr Errol Simper said in the Australian this morning:

Murdoch, a US citizen, might purchase a free-to-air network and align it with the array of News Ltd newspapers. This would decrease diversity in that an existing television proprietor would have to give way.

MR BLOMFIELD: Right.

MR SIMSON: So you agree with that?

MR BLOMFIELD: It could. That could happen.

MR SIMSON: Okay. Mr Simper then goes on:

There would be an easy way around this, one that certainly would not suit everyone -

"would not suit everyone" -

a demand that if news wants to move back into television it must pioneer a fourth commercial network.

What do you think of that comment?

MR BLOMFIELD: That's one way of doing it, yes, and we've often spoken to that effect.

MR SIMSON: Indeed. On that point you have indeed, as you've just pointed out, expressed a desire possible at least to get into free-to-air television. Is it the intention of News Corporation, if that opportunity arose, to do it via a fourth network, or is it the intention of News Corporation to do it by purchasing an existing network? Because clearly that will be important from a diversity perspective.

MR BLOMFIELD: We don't want to discount the fact that we may seek entry into television through an existing television network. We believe that we will most likely enter the market if we can meet the objectives of a licence through the establishment of a fourth commercial television network.

PROF SNAPE: It would be more likely to establish a fourth commercial network?

MR BLOMFIELD: There's no for sale sign on any of the three at the moment.

MR SIMSON: No, there's no for sale sign perhaps on any of the three at the moment, but there's also the cross-media ownership rule at the moment.

MR BLOMFIELD: Yes, at the moment.

MR SIMSON: Clearly, Mr Simper's comment that it might - - -

MR BLOMFIELD: I'm hopeful of change.

MR SIMSON: You're hopeful of change.

PROF SNAPE: And there's no fourth channel available at the moment either.

MR BLOMFIELD: That's correct. I'm hopeful that may move.

MR SIMSON: Mr Blomfield, an issue that we've been exploring with both FACTS and at least a couple of the free-to-air networks this week is the "what if?" What if a fourth commercial network were to come into this country, what type of network might it be? One of their arguments is that it would split the pie, it would split the existing advertising pie; might grow at one or two percentage points, not much, and I think in the words of one of the people who appeared this week here representing that group, "It would be disastrous." Could you talk with us a little bit about, if you were to do a fourth network, would it be another clone of one of the other three? Would it be for example sports focused? Would it, in your view, grow the advertising pie?

MR BLOMFIELD: Yes. There's been a lot of discussion about this advertising pie and whether it will change or whether it will be added to. I think there are examples of the fact that advertising pies do change as media change. You could look at the

establishment of FM radio in this country. When that happened, advertising pie changed. Some advertising moved, but there was additional advertising. That at times has increased and decreased, but there are dynamic movements in advertising. In other nations you've seen increases. So I think it's a misconception to continue to suggest, "Oh, everybody knows that the advertising pie won't grow." We don't hold to that. We don't believe that is the case.

It would be suicide for us to clone what the others are doing. We believe that we're in a position to bring a greater expertise, a fresh view, and substantial change to the way broadcasting could and should be done. We are not going to mimic any of the formats that are done on the current three commercial terrestrial stations. We would like to take the opportunity to really be in a position to do some very dynamic things with the new digital technology, and I think it's somewhat misunderstood. There are many new services that we would want to be offering. What we're asking is that the narrow definitions of what broadcasting is and what datacasting is and enhanced television and multichannelling and so on - we are suggesting that Australia should be in a position - as we have argued since the very early part of the digital debate, it ought to be an open and dynamic portion of bandwidth that a broadcaster who wants to pursue additional services is free to move within - horizontally, vertically - doing and providing some really different types of products and services.

MR SIMSON: I appreciate that. But if I could go back to the nature of how a possible News Corp fourth free-to-air might look because this is important to us. Could you expand a little bit in terms of the type of content that might be offered, remembering that a key theme of our terms of reference is diversity.

MR BLOMFIELD: Timing is a large issue in this, because technology is racing at the moment. If we were to establish a network next week, it would be somewhat different to a network that we may establish in two years, three years, four years. I believe that broadcasting is going to move to a file based system before too long, where you will be moving files of data and information; be that passive entertainment, be it interactive entertainment, or whatever. We believe also there's a lot of additional content out there that's not currently shown in Australia, and we don't step back from the fact that we would have to adhere to the content regulations, although we do suggest that they would need some change for the new industry. But we would certainly produce a substantial amount of local content.

We are not stepping back from the fact that the current legislation or the current rules call for 55 per cent Australian content. The number's there.

PROF SNAPE: They also have a number of subgroups within that as well.

MR BLOMFIELD: Yes, they do. They have some types and definitions, and some terribly important definitions. We respect those positions. We certainly have opinions on perhaps some ways that that could or should be changed to stop the sameness that has been repeated. Even the incumbents are talking of the fact that they are hampered by the sameness of programming that they're forced to exhibit. We don't take lightly

the challenge that establishing an additional network would take. We will have to be very bright, very adaptive, and very capable to succeed but we have that right to succeed and we have a right to fail.

PROF SNAPE: I think in 3.3 you talk about, "No Australian broadcaster would survive if it did not show Australian and local news, sport, drama," etcetera. That was leading me a little bit to think that perhaps you were saying you thought the current content rules were unnecessary, in that it would simply be a commercial reality because they were in fact in demand, that they would be shown, but I think what you just said was not necessarily that.

MR BLOMFIELD: No. We are citing some of the important portions of television as we see and know it today. It depends whether we're turning our attention to a digital future or a current analog future. Some of those programming genres are very important.

PROF SNAPE: A number of people have said to us that the cost of high-quality Australian drama, at perhaps being 2 or 3 hundred thousand dollars an hour, while people want to watch it, it doesn't generate enough advertising, or most of it doesn't generate enough advertising revenue to sustain it, and that high quality wouldn't be shown without the content rules. Do you think the advertising revenue that could be generated would sustain it, particularly in the presence of a fourth channel?

MR BLOMFIELD: That cuts to the heart of how you would operate a network. There is an assumption there that, with all of those - and they're described as an impost on the industry. We don't see it that way. You could only say that the costs and the - when you talk of the values of these networks and you talk of whether that is a burden upon them to produce this material that is supposedly not watched. That depends how you run your business, and if you're prepared to open your business plans and show the entire world as to how efficient you are and the way you operate. It's tough and it's difficult, but the whole world is moving towards more stringent local content regulations. Australia is no different. That is something that is part of, as I suggested, the challenge of getting this right, and being in a competitive position. If we don't present the consumer with a good product, we're not going to make it.

MR SIMSON: Mr Blomfield, on page 12 of your submission you say:

There is nothing to suggest foreign media proprietors would be more likely than local proprietors to influence the views being expressed in the media. The only issue relevant to the Australian aspect of our media worthy of being regulated is the protection and propagation of Australian identity and culture.

I think you have been referring to that. Yet under the objectives of the act, III Part G is to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance. It seems to us that you're taking a fairly narrow view of this issue of what's important in terms of

influence and diversity when it comes, in particular, to news and information and comment that G in some way refers to. Could you comment on that, please.

MR BLOMFIELD: I'm sorry, can you - - -

MR SIMSON: The point I'm making is that your submission refers to - to cut this to shorthand:

The only issue relevant to the Australian aspect of our media worthy of being regulated is the protection and propagation of Australian identity and culture.

MR BLOMFIELD: Yes.

MR SIMSON: Part G of the act, however, has more than that, substantially more than that, because it also talks about the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance, and I don't see that referred to in your submission. I'm asking you to comment as to why it's not there.

MR BLOMFIELD: Maybe that's an omission. We perhaps should have stepped further in that submission. We don't disagree with Part G and we would take that responsibility squarely on our shoulders.

MR SIMSON: If you don't disagree with Part G and you wish to take the responsibility squarely on your shoulders, if we can go back to the early discussion here today, the earlier points you made, in answer to questions relating to the ACCC and the act as it currently stands, as it would monitor or determine influence in the advertising market, if we need to take account of influence as it relates to Part G, how is that going to be taken account of within the existing regulatory framework, given that that is not covered currently by the breadth and the scope of the ACCC which basically looks at market economic matters, not public interest matters as G is talking about.

MR BLOMFIELD: I think you'll find that G is further picked up within the content regulations that the ABA administer.

MR SIMSON: But the content regulations relate specifically, yes, to local content - that's correct.

MR BLOMFIELD: They actually go quite deep, as you say, on content.

MR SIMSON: On types of content, but it does not go to the issue of fair and accurate coverage of matters of public interest. It does go to quantum of content.

MR BLOMFIELD: There are certainly parts of self-regulation within the FACTS code of practice that pick up that issue further. I think it's actually quite well catered for within those regulations, and I hope it is noted that we're not sidestepping and we

have no intention of sidestepping the content regulations. We do understand them and we think they are very important, and in fact they've taken a good 40 years of public comment and public input to hone those to what I think is a fairly good set of regulations. In fact Australia should be proud of them.

MR SIMSON: Optus, in its submission to us, says that there need to be rules to ensure delivery of social and consumer policy goals, and specifically Optus says this - and I'd be interested in your comment on this on behalf of News Corp:

Cable and Wireless Optus believes that social and consumer policy goals must inevitably be determined in conjunction with issues pertaining to competition, and that such public interest considerations ought to be included in the criteria to be considered in reaching any decision pertaining to media broadcasting alongside the competition and efficiency objectives -

that is, of the Trade Practices and ACCC. Would News Corp also see value in public interest considerations, as it pertains to broadcasting, being specifically included and determined in conjunction with the competition issues as they're determined by the ACCC?

MR BLOMFIELD: Stuart, I think it might be relevant if I were able to perhaps come back to you on these issues. Competition law is not a portion of my expertise. I would like to see if I can help you and more fully explain our views in competition principles and we would be happy to provide additional input on that.

PROF SNAPE: Thank you for that. I think that it would be the competition principles in conjunction with those other objectives which may seem to go beyond the purview of the Trade Practices Act and the ACC. When we were speaking with PBL yesterday they mentioned a number of ventures in which News and PBL were partners.

MR BLOMFIELD: Yes.

PROF SNAPE: Including Foxtel and Sky News, and of course why not actually a partner in Fox Sport they have an option on Fox Sport, and One. Tel, and focusing just on the One. Tel one, because we heard the views on the others as well as this, but the simultaneous action of purchasing positions in One. Tel did not seem to some people to be the actions of competitors.

MR BLOMFIELD: I think Nick Falloon addressed those issues.

PROF SNAPE: I was wondering if you had anything to add to it.

MR BLOMFIELD: Yes, it is a quite a dynamic and interesting relationship and it does stretch between war and business together. That goes back through history. If you go back to even in the 60s there was cooperation in things like TV magazines and so on.

PROF SNAPE: The Trade Practices Act didn't exist in the 60s of course.

MR BLOMFIELD: True.

PROF SNAPE: And a different attitude was taken to competition policy at that time.

MR BLOMFIELD: I don't see anything that is wrong with investments in situations like One. Tel, the Foxtel investments and so on. Yes, they do, they sit quite well, and at other times we're certainly prepared to compete very fiercely.

PROF SNAPE: Yes, it did appear to some outsiders - there was a comment in newspapers, for example, indicated - that it did seem to show a rather cosier relationship and the idea of frequent talking about, or talking about industry strategy, which obviously must have preceded such a joint purchase, did seem to be rather redolent to that of Adam Smith - the conversations that took place in coffee shops - which was, "Seldom do two or three businessmen join together in a coffee shop, that it results in a conspiracy against the public" - I think were his words, not mine, of course. Doesn't it look a bit that way to you?

MR BLOMFIELD: It's an interesting position. No, the One. Tel investment is not an area that I'm involved in. That is a News Ltd issue again. I'm more than happy to speak further to that because it is of public interest.

PROF SNAPE: Thank you.

MR SIMSON: Mr Blomfield, on page 19 of your submission you say that most concerns about media influence relate to distribution, or the distribution function as opposed to the production function. You then go on to state that:

Moreover the structure of the industry is such that if there is a concentration problem it is far less likely to occur in the upstream stage of creating content than at the distribution stage.

Could you explain why that would be so, please?

MR BLOMFIELD: The upstream production of content is extremely diverse. SPAA spoke to that issue and a lot of independent and outsourced materials arrive at that point. The distribution is certainly a narrower point than that product is distributed at.

MR SIMSON: That assumes, does it not, that at this upstream stage you've got a significant number of independent content providers. I'm thinking particularly again of the news and information area.

MR BLOMFIELD: Yes.

MR SIMSON: Why might that follow irrespective of the number of owners that there are in a particular industry?

MR BLOMFIELD: We are not saying that it will. We are identifying the fact that it could.

MR SIMSON: Do you want to go on?

PROF SNAPE: I was going to change the subject.

MR SIMSON: You change it.

PROF SNAPE: You supplied very helpfully a number of submissions which you have made to various inquiries that are going on at the moment, or recently, and to reviews of one sort or another, and I wonder if you would like to just summarise for us - not all those submissions, but if you could perhaps tell us how the options which are relevant to this inquiry - we've been asked of course to be giving a number of options, as well as preferred ones - could be curtailed by the decisions of these reviews of standards, etcetera, which are currently in train? If you could give an overview of what are the risks of the options being closed that are relevant to this inquiry by, if you like, decisions being made on the run, and in a narrower context than this inquiry is.

MR BLOMFIELD: My comments of the digital train wreck, I think really summarise the situation. Yes, there are many decisions in train and many inquiries from the department regarding digital television and we are speaking against some of those decisions and some of the draft papers and standards and most of these decisions are digital TV based. They speak to definitions of datacasting, multichannelling, enhanced broadcasting, the definition of high-definition television, which is one of the most difficult issues for the public to understand and the set-top box specifications and how they should be deployed and managed. All of these things are decisions that will probably be concluded by the end of this year, which is well ahead of the finalisation of this inquiry.

It's a matter of trying to adjust some of the things that are going to happen on the run. We provided specifically different input to the digital inquiry. Our views were not upheld and these submissions talk to issues regarding bandwidth, spectrum allocations, spectrum efficiency and all of our views regarding set-top boxes, high definition and so on. If you have any specific requests I will happily speak to them.

PROF SNAPE: Perhaps we would like you to indicate a couple, or if there are more than a couple, of critical points, but it seems to me the risk here is that highly technical decisions will be taken essentially by highly technical people.

MR BLOMFIELD: Right.

PROF SNAPE: Within their framework, for perhaps very good reasons within the framework, which may not look as such good decisions when they're against the much broader framework such as this inquiry, and what of course I think we need to be alerted to is the critical points in that that might close off valuable options that we within the terms of reference of this inquiry might wish to consider.

MR BLOMFIELD: Certainly I think the two fundamentals - the two most important, and there are many, but the two most important include spectrum and efficient allocation of spectrum that will help to grow this electronic industry and the problem in the spectrum area, although the ABA has in their draft attempted to look at this difficult challenge - and you are right, it is extremely technical; it is highly technical and being handled by technically astute players from various opinions - we are very concerned about the waste of spectrum for the new digital television systems.

The current free-to-air have been given the seven megahertz each and what we are arguing about is not just how the actual transmitter allocations in the metropolitan areas work but how all of the spectrum is used in the fringe areas around the major metropolitan centres and the waste that is going to be created if we continue to apply analog thinking to the implementation of digital spectrum. Areas, for instance, like the Central Coast are chewing up massive amounts of bandwidth if planning is done as per the suggestions of the incumbent operators.

At this point there appears only to be one; the ABA have allocated one seven megahertz channel for datacasting. We believe if reasonable technology is used that that can be a minimum of three if not more than five, so our submissions deal with those issues and we are providing independent views and research that support that situation.

MR SIMSON: Mr Blomfield, at page 4 of appendix 6 there is a table.

PROF SNAPE: It's attachment 6.

MR SIMSON: Sorry, attachment 6. There is a table that breaks down the capabilities that would be required in terms of receivers to do various things. I will just give you the opportunity to turn that up.

PROF SNAPE: For those who are trying to find it it's about the seventh or eighth last page of the whole submission bundle.

MR SIMSON: As you've heard us in the last few days we're very interested in potential breakthroughs in providing access to as many Australian households as quickly as possible so that - apart from other reasons - spectrum can be freed up. If we look at that table there, and we look down the middle box there, what is the basic box that would enable people who have an analog TV, not a high-definition TV, to receive a digital signal without having to buy a high-definition TV in a situation where if we gave it to - as you've heard in our discussion in the last few days - in a situation where many if not most households - - -

MR BLOMFIELD: Fundamental ones - basics.

MR SIMSON: Fundamental ones. What's the breakthrough? Which is the basic one that ensures continuing access to television for people with analog boxes?

PROF SNAPE: That wouldn't put the set black when the digital is transmitted in high definition?

MR BLOMFIELD: There are two things here. There is confusion about what is high-definition television. I would like you to see two steps in defining what high-definition television is, and this goes back. Let me just take some time to explore it. Australia has adopted the DVB transmission standard. It's a terrific set of standards and that was a very good decision, but it's a suite of standards and it provides for future growth and future development and new technologies as they come along so that we don't hit a technology wall.

There is a definite step in those definitions. The DVB world, or a great percentage of the DVB world - and that is all other than Australia - have used that set of standards to transmit high definition television. It's not the highest definition but it's a high definition standard. Then there is another step which involves higher technology and more expensive chip sets which take you up to extremely high definition. It almost surpasses the technology of the eyeball.

FACTS have leaped to the very far end of the highest level - at the second step. One could question whether that was a grab for bandwidth, and I think they were forced to do that to justify the allocation of seven megahertz of bandwidth, a very generous allocation. The cost of supplying that high step and that high definition is extremely high. Those chips are not developed, they're not in commercial production. The rest of the world is not deploying them - they will in time. But if you produced the screen that that highest definition was able to provide, today it would cost around 16 to 18 thousand dollars per unit. It's a much higher definition than your computer screen - the best highest definition computer screens on the market today.

MR SIMSON: But in terms of the set-top box.

MR BLOMFIELD: The set-top box, if you're on the first step, can do very good high definition television, higher than standard definition, and higher standard digital is superior to PAL, as we see it today - standard definition.

MR SIMSON: I noted that.

MR BLOMFIELD: So you can do a high definition within that first step that would be quite appropriate, and what we have consistently said is that's what high definition television should start at. There's nothing to stop future growth, and when the cost-effectiveness of screens, chips and deployment come down you can move to it. It's a forward and backward leap of a compatible set of standards. So to produce a

set-top box - coming back to your question - it has been made very difficult by FACTS accepting that high end. That prevents that very issue, that prevents the cost-effective supply of a set-top box that would take the digital signal, decode it and produce it onto an analog screen if you want it, or a digital screen or whatever.

The manufacturers are going to make screens as they're commercially viable - they're not going to produce something that won't sell - so screen resolution will improve but you could decode it and put it onto an analog set. Those are the sorts of set-top boxes that are being deployed internationally in the countries using the DVB standards, and there are many millions of them. The pay industry typically uses those same first step of standards. When you have orders in the volumes of millions, chip sets are cheaper, development is cheaper and there are things you could do with that set-top box. If the rest of the world is using it, like any device, you get scale, you get volume.

MR SIMSON: So can we just go back to this table in the attachment. Where in your view does the basic box fall? Is it the 20 to 50 dollars? Is it the 25 to 70 dollars? Are these incremental?

MR BLOMFIELD: They're incremental from a base. An effective basic and, as it's known, world set-top standard would probably today at manufacture, not at retail - manufacture would be around 180 to 210.

MR SIMSON: Australian dollars?

MR BLOMFIELD: No, US dollars.

MR SIMSON: Just so I'm clear on this, where this issue sits at the moment with government, has the FACTS position been accepted in terms of the definition, if I can put it that way, that's going to be required to be delivered by the set-top box or is that still being determined?

MR BLOMFIELD: It's still being determined. Standards Australia are about to publish a draft on that issue. There are two issues here. One is the transmission standard and the other is the receiver standard set-top box.

MR SIMSON: I think I'm talking about the receiving standard.

MR BLOMFIELD: The receiver standard will depend. You see, what is happening is they're accepting a high transmission standard that makes a cost-effective set-top box difficult to achieve because you're going to have to use the high chip sets.

PROF SNAPE: So it depends upon the transmission standard in a sense.

MR BLOMFIELD: Yes. That's where it starts.

PROF SNAPE: That's one of these crucial decisions that I was trying to elicit.

MR BLOMFIELD: Yes, our submission here suggests that if they insist - if they absolutely believe that the only thing that is going to save television is going to high definition - and it's not happening anywhere in the world - they have a right to suggest they should do that. We're also suggesting they should simulcast because they can within that seven megahertz - the first step of standards. They can select a screen resolution that is far superior than just about anything that any of us have seen today, still in that first step. Then you can get volume, you can get scale and you can get cost-effective set-top boxes. You can get a situation where you don't go to black.

MR SIMSON: In that scenario, if I could take you to page 2 of attachment 6, where there's a list of capabilities - it comes under the heading of Customer Proposition - that could come from this change. Have you been able to find the right page?

MR BLOMFIELD: Yes.

MR SIMSON: Just starting at the bottom of page 1 of page 6 and then over the top of page 2 of page 6 where those arrow points are.

PROF SNAPE: Page 2 of attachment 6.

MR SIMSON: Page 2 of attachment 6. I don't need to go through all of those, but generally would most of those be deployable or operable from a basic set-top box?

MR BLOMFIELD: Yes.

MR SIMSON: Most of that functionality would be available from a basic set-top box.

MR BLOMFIELD: Yes, they are. I need to add to that a little. The set-top box has a very important feature in it, and the basic set-top boxes, the ones that I'm speaking about, have a data port. The data port makes the set-top act somewhat like a computer where you can add peripheral devices to it, whether it's higher forms of interactivity, etcetera, at retail - add devices to that set-top box. So the data from the data port will drive those additional devices. You may not get - to point 2 - near cinema quality pictures with wide screen but certainly - - -

MR SIMSON: Without a more elaborate box.

MR BLOMFIELD: Well, that's the higher chip sets, if you are transmitting a very high standard. I'd like to add, it's interesting that we hear the incumbents saying that it's terribly important that they move to cinema quality high definition and surround sound and those improvements. You have to ask the question what is it that is good on high-definition television, really high-definition television? The products that are useful there for movies and sport. What are the two things that the free-to-air is backing out of today? Movies and sport. So I am quite puzzled as to why this

consistent argument for extremely high definition television has been run when the very and only great products that benefit from extremely high definition are what's not working.

MR SIMSON: Indeed, just reading your submission and your definition of datacasting and the sort of things you'd like to do and the points you just made, you could actually set yourself up as a de facto broadcaster by datacasting, couldn't you, if you were to do the things that you've been speaking about?

MR BLOMFIELD: Yes, you could. We don't have a definition at the moment, which is a real problem, because we're 18 months away and we have a lot of hurdles to go through before we may succeed at datacasting, but you can draw that from that, yes.

MR SIMSON: Yes, I'm using broadcasting with a small B. But you spoke about sport, you spoke about movies and all these other bits and pieces, and programming options that would be available, and indeed in a situation where you were not able to obtain a free-to-air licence because of no change in a number of the existing policies, how far could you go, do you believe, as a broadcaster, by exploiting the datacasting technology and its capabilities?

MR BLOMFIELD: Yes, bits of bits. Until we have a definition of what datacasting is, as I said earlier, we disagree with the need to do that.

MR SIMSON: You prefer to have a free-to-air licence.

MR BLOMFIELD: Yes. That's where we'd go. If datacasting is an area that we can go to, we would certainly do everything we can to get to that. I accept, and it is unfortunate, that Australia is going to get a definition of datacasting, and that will come from the minister later this year. Yes, we have high opinions of what datacasting might be. I also accept that we will not be in a position to become a de facto broadcaster. Yes, our submission talks of various things which is the fact that we believe the definition should be a two-way situation, that the user requests a product, the product is delivered and then viewed. It's not point to multipoint in real time.

MR SIMSON: Which would be broadcast.

MR BLOMFIELD: Yes. It could be point to some points or point to point, and the user unravels those files or that data, either over a period of a time or at a selected time by the user. Does that mean that we can still be a de facto broadcaster? Perhaps. I fully expect there will be definitions, including whether it's free or advertiser based, whether it's subscription, and so you can start bringing definitions down. But I hope that Australia is not in a position to suggest that we ought to restrict technology to get that definition and that difference between broadcasting and datacasting.

MR SIMSON: If you were to obtain a fourth free-to-air licence, how would you either look to achieve economies of scale with your existing newspaper interests, and also leverage content of your newspaper interests?

MR BLOMFIELD: There would certainly be some opportunities, particularly in a datacasting situation, to enhance some of the services there. But the two businesses would be run very independently because, yes, there are conflicts in what you're proposing; yes, there is advertising that will be fought for, and we do that in many parts of our company. Indeed, there is very good internal competition.

MR SIMSON: Indeed, to support your point, the Ten Network this week provided this inquiry with calculations that showed a combination of a metropolitan newspaper - not including classified advertising by the way - display advertising - including a combination of advertising from a major metropolitan newspaper and advertising from a free-to-air network would, in terms of market share, be quite significant particularly in terms of national advertising dollars. It would be a large share of the marketplace.

MR BLOMFIELD: Yes. But as I say again, there would be competition within. Bundling of advertising in those areas I don't think would be something that would come about.

MR SIMSON: But of course you vigorously cross-sell advertising across your newspapers?

MR BLOMFIELD: Newspapers unfortunately are not part of what I can offer you. I'm not sure how the dynamics of that portion of the newspaper advertising system works.

MR SIMSON: And we've also heard participants this week make the point that, particularly as far as national advertising is concerned, they as free-to-air - at least one free-to-air participant certainly perceives newspapers as competition in the national advertiser market.

MR BLOMFIELD: Yes.

PROF SNAPE: I'm trying to get a handle on where the economies of scale and scope are and we would be very grateful for any information you could give us on that, perhaps subsequently, if not now, and - - -

MR BLOMFIELD: The difficulty in adding too much in that, is that without some definitions of where we might be taking this industry, it's almost impossible - we're not in a position to have the luxury of being able to cut a business plan today because we don't know what this datacasting industry is. We have strong opinions on what we could do with it, most definitely, but we believe that there may well be some very tough restrictions on that industry. It depends entirely on what the product is.

PROF SNAPE: Yes. I am trying to go a bit beyond the datacasting and think more generally, and there have been various forms of vertical integration and some other points. There has been some perhaps disintegration, I suppose - that is, contracting out. There have been some developments by some of the free-to-air television stations of contracting out more drama perhaps than they used to do when they did a lot more in-house. In news in the world as a whole - within Australia, too - there is the Rugby League, the interests in the suppliers of the sport there and, in Britain, the attempt to buy Manchester United as an input into the process and there is sort of vertical integration there. Any comments on the importance of that vertical integration going backwards, first of all?

MR BLOMFIELD: I think there are some very beneficial things that are going to come out of this. I mean, we are taking a longer view on where we may well be going in this and again I suggest that I don't want people to think that we're going to go and mimic some of the things that are being done today. We want to bring a very dynamic and very substantial change to what is happening with media and, some years out, we are looking at huge changes and the indirect benefit to industry, I am sure, will be substantial.

PROF SNAPE: Let's come downstream rather than go upstream and think of what I was asking one of the participants the other day - I think it was Seven, but I am not quite sure - and that was the ownership of the stations rather than the network itself.

MR BLOMFIELD: The broadcast stations?

PROF SNAPE: Broadcast stations.

MR BLOMFIELD: Right.

PROF SNAPE: How important is it to own the stations themselves rather than just be a network supplier? Now, Nine, of course, owns some of its stations but it is a network that then contracts with some independently owned stations itself, as does Seven and as does Ten.

MR BLOMFIELD: Yes.

PROF SNAPE: Is it important to own the stations; that is, in the newspaper, is it important to own the printing press as well as the content provider or is it the content provision that is important?

MR BLOMFIELD: Certainly the content is important and I believe content will continue to be an outsource function - not entirely - but, looking at the networks, they have substantial in-house, but the majority - particularly of dramas and other areas, it is not economic to have all of the structures to make all of that in-house. As far as owning stations, yes, that is dependent on your success. Nine do extremely well by owning three metropolitan, the three largest - - -

PROF SNAPE: But in thinking of where you might go in this and understanding that detailed plans have not probably been done but, nevertheless, there must be conceptual planning, would it be important to owning the stations in the network that you're envisaging?

MR BLOMFIELD: Yes, I think it is important in doing that because in moving forward we will be deploying some very complex technology and it may well operate substantially from a central base, as does network television today. Media is opportunity; you have to move quickly and you need to be able to make decisions on how those distribution platforms operate, so you certainly don't want to repeat overhead in every one of those areas. Again, I think the thinking is that there are five but it may not, in the future, work like that. In the future I think you will find that - - -

PROF SNAPE: There are five - - -

MR BLOMFIELD: Major stations.

PROF SNAPE: Existing - - -

MR BLOMFIELD: Existing, yes.

PROF SNAPE: Yes.

MR BLOMFIELD: The way they are run at the moment.

PROF SNAPE: Thank you.

MR BLOMFIELD: That may not be how it works in the future. You're seeing great changes in technology for transmission technologies and so on. You will be deploying systems that are taking the content and inserting local materials in many points. It may well be that we should be looking at a complete national coverage; not five cap cities. It could be 180; it could be 300.

PROF SNAPE: It may not be desirable to own all those stations? I am trying to see where is the vertical integration important.

MR BLOMFIELD: The infrastructure could certainly be outsourced, potentially.

PROF SNAPE: Yes, and you spread your risks, don't you? I mean, if you buy all those stations some may not succeed. If they are outsourced it is someone else's risk; that is, if the station is owned by someone else, it is someone else's risk, and if you think that your advantage is in the content - - -

MR BLOMFIELD: It is a very complex issue of how the local content is provided. We certainly intend to distribute a lot of localised content and not just push a

complete network signal across and say, "This is what it is. Everyone should take the same signal."

MR SIMSON: Mr Blomfield, currently, News Corporation is a stakeholder in Foxtel, in Fox Sports - I am talking here about the pay television sector - and via BSKYB in Sky News. You have major newspaper interests; you wish also to operate a free-to-air station, whether it be by purchasing an existing one or also, if you could, creating a new one. I mean, that would be a fair chunk of the media, wouldn't it, if that were to come about?

MR BLOMFIELD: Yes.

MR SIMSON: How would you see the relationship in a business sense, in a commercial sense, between the pay television interests that you have and a free-to-air television station?

MR BLOMFIELD: It is actually a good example of our ability to invest in industries that actually compete against each other and there is a lot in the establishment of a fourth network that works against our pay TV interests, but we are prepared to do that.

MR SIMSON: But you could cross-sell to advertisers between your fourth free-to-air network and your pay TV.

MR BLOMFIELD: Hypothetically, yes.

MR SIMSON: I am just trying to understand how - just going back to your former answer, your previous answer. Perhaps you could expand on that a little bit?

MR BLOMFIELD: Sorry, the?

MR SIMSON: You said that it was an example of - - -

MR BLOMFIELD: It covers a lot.

MR SIMSON: - - - you having - these weren't exactly your words but I think what you were saying is "two separate businesses".

MR BLOMFIELD: Yes, that can compete.

MR SIMSON: Yes.

MR BLOMFIELD: Yes.

MR SIMSON: I am just asking, how would they compete and why, as the owner of both, far from competing between them, would you not leverage them?

MR BLOMFIELD: They're fighting for an audience and I don't quite see how you would make pay and free sit together.

MR SIMSON: I mean, you could run lots of ads on your new free-to-air network for people to subscribe to your pay television network. You could, as I said a second ago - - -

MR BLOMFIELD: At the risk of reducing audience to your network, yes, you could.

MR SIMSON: Yes, you could, but also - - -

MR BLOMFIELD: I don't know if that would be a smart - - -

MR SIMSON: They would also be paying for it but doesn't that go to the fundamental question which I am trying to drive at here, that, given your significant stakes in pay - and they are significant in an Australian context because of the Fox Sports investment, which is a major investment - why do you want a free-to-air station?

MR BLOMFIELD: The reason we want a free-to-air station is the dynamics and the new products. It can be bought with a free-to-air station. Again, there is an assumption that we're going to be doing that same model that is currently existing. We're saying, "No, we're not. We're doing many new things." There is transactional services, Internet services, additional Internet services, greater, faster Internet services, that we will be bringing through that bandwidth.

MR SIMSON: In looking, let's say, at a time period three to five years, could you hazard a guess as to what you would see to be the household penetration of pay TV in Australia at the moment? I think the figures we have heard this week is that it is around about 13, maybe 14-15 per cent.

MR BLOMFIELD: Yes.

MR SIMSON: Could you forecast, even dare speculate, as to what sort of penetration of households you would anticipate in a few years' time, and you choose what time period and however you wish to do it.

MR BLOMFIELD: If I was to do that it would only be a guess. I don't know if I can predict for you where that may go.

MR SIMSON: Okay.

MR BLOMFIELD: As an investor it is important that we note that we're not an owner; we are really a minor shareholder in the Foxtel organisation now, but I hope there is growth, and I think there is room for pay to expand significantly.

MR SIMSON: It is interesting that in the Foxtel consortium - if I could choose that word - the significant stakeholder is a telecommunications business, Telstra.

MR BLOMFIELD: Yes.

MR SIMSON: What is the News Corporation position with regard to telecommunication carrier also being able to be content providers and, indeed, in this case, a pay television broadcaster? It has been put to us in some submissions that the two should be very clearly separated.

MR BLOMFIELD: I think it's terrific. I think the more people that want to get into this market and start providing some decent entertainment, the better. We will always say that we stand for free and open and, hopefully, a lot more competition.

PROF SNAPE: May that competition not be facilitated if the gateways, the channels, the conduit, whatever, is not owned by one of the competitors for the product; that is, separation of ownership of the means of transmission from those who wish to be supplying content? Would that not be the most competitive - - -

MR BLOMFIELD: I think you will find structural change and you will find different ways of operating this linear defined business that we seem to be looking at today. Yes, there will be different owners of pipes; there will be different owners and suppliers of content and, I think, they will be quite diverse.

MR SIMSON: But the critical issue here - from the potential of competition principles - is access. I mean, it is a content provider being able to obtain access on a platform that may be owned by a carrier who is also involved in the business of content provision.

MR BLOMFIELD: Not a lot of carriers at this time - maybe it can change, but not a lot of the carriers are actually content makers. They invest and they do have some content but - - -

MR SIMSON: Well, the two biggest ones are in this country, both Telstra and Optus.

MR BLOMFIELD: What content do Telstra - - -

MR SIMSON: Through the Foxtel consortium.

MR BLOMFIELD: That's a provision agreement, provision of content, and that's deployed on a network. Yes, they're network owners.

MR SIMSON: But they're also an equity holder, a significant equity holder in Foxtel, which is a pay television operator who provides a suite of content channels, and Telstra have seats on that board of Foxtel.

MR BLOMFIELD: I understand, yes. There is content produced within that organisation, yes, that they own.

MR SIMSON: And the same applies with Optus.

MR BLOMFIELD: Right.

PROF SNAPE: And of course also applies on the free-to-air, where they own the stations and the licence as well as the network, and if I were to be a potential content provider wanting to gain access to the broadcasting through a station - - -

MR BLOMFIELD: I'm not aware of anything that would stop you doing that. I mean, they draw from extraordinary sources.

PROF SNAPE: But if they're producing a competitive product and if I'm producing a sports product which is going to compete with Fox Sports, I think I would have a great deal of difficulty in negotiating access to the Foxtel cable.

MR BLOMFIELD: I'm not sure if I can help you on how that area works. I could make requests to Foxtel to speak to that issue, but if it's a viable product, if it's a good consumer proposition, I'm not sure that that's right. I think you would find they would be very interested in deploying that product.

PROF SNAPE: If it was directly competing with their own product, I doubt it, whereas if it were completely independently owned - if the paper was independently owned, I think I might have a greater chance of negotiating access.

MR SIMSON: And indeed this very issue was raised in the submission from Fairfax. Page 7 of the Fairfax submission.

PROF SNAPE: The second part of the Fairfax submission.

MR SIMSON: The second part of the Fairfax submission, which I think is the part that was written by the staff, and I'll quote from page 7 of the second part of the Fairfax submission:

As disclosed in Telstra's prospectus, Foxtel enjoys rights of exclusivity on the Telstra cable for its home video entertainment services. However, Foxtel services -

then it goes on -

do not include telephony or on-line services, and Telstra independently offers BigPond cable.

But it makes the point that Foxtel enjoys rights of exclusivity on the Telstra cable for its home video entertainment services, which is a problem, is it not, for prospective new content suppliers such as Fairfax?

MR BLOMFIELD: Again, as I say, it's a hypothetical situation as to whether you would or would not gain access there. I think it's supply and demand. Everyone has a right to go and negotiate distribution rights.

PROF SNAPE: In this case everyone doesn't, because there's apparently an exclusivity agreement with some of the content, but apart from that exclusivity thing, people may. But then, even if they are able to negotiate access, it could be a pretty tough negotiation if I'm supplying a sport that would directly compete with Foxtel Sport.

MR SIMSON: And indeed the Fairfax submission goes on that the Foxtel set-top box is not owned by Telstra, which is the main carrier entity to which access obligations attach, so what we're discussing here are two potential blockages, if I could use the term, to new content providers.

MR BLOMFIELD: I don't think the set-top box comes into that. It's a different technology. It's an analog technology deployed under very different business.

PROF SNAPE: Yes, but it's still who has the ability to grant access to that box that's the question, or to enter into contracts for access to the conduit.

MR BLOMFIELD: I think really these are issues that are probably appropriate for Telstra and that opportunity is probably going to be presented next week.

MR SIMSON: That's a fair point.

MR BLOMFIELD: If you like, I can certainly alert them to that issue.

MR SIMSON: We're just putting to you a proposition or a picture, if you like, of the media framework that exists in terms of pay television and the various ownership entities within pay, the various access arrangements and constraints that exist in terms of both cable and set-top boxes, and this whole matrix of already cross-affiliations between various telcos and content owners and the difficulties that this may present to prospective new players as content providers.

MR BLOMFIELD: I don't doubt that all of that is right at the threshold of change. The digital revolution is I think going to make substantial changes in all those areas.

PROF SNAPE: I wonder if I could move just briefly to anti-siphoning, which you'd be probably pleased to talk about.

MR BLOMFIELD: Very.

PROF SNAPE: But it's a question I put yesterday and I assume that I'll get the same response, and that is that you refer in the annex on anti-siphoning, on page 4 of it, and describe what you would like, and I think that it can fairly be described as non-exclusive rights for both pay TV and for free-to-air TV, so each would be restrained to have non-exclusive rights to them. Why is a list still necessary? Why not just make that applicable to any sport?

MR BLOMFIELD: I don't see that a list is necessary. It's not a list of exclusive arrangements for free-to-air. It's not a list of product that they should get exclusive rights to. It's not a question of what advertising is in there. The list was drawn originally to continue to transmit culturally significant sporting events on free-to-air. We suggest that that's not necessary.

PROF SNAPE: And you'd be quite happy to have no list but to have a regime of non-exclusive agreements so that both were able to get access to any sport?

MR BLOMFIELD: Yes, as long as that was applied in a way which was across both sectors of the industry.

PROF SNAPE: Yes, I'm saying symmetrical.

MR BLOMFIELD: Yes.

PROF SNAPE: Yes. Good.

MR SIMSON: Can I just observe - or perhaps pose the question to Mr Marquard - that on the one hand, wearing a couple of other hats at least this week, you've made your position clear on anti-siphoning and the problems that presents in terms of you obtaining access to content to be able to be shown on pay television, and yet I read again in the Australian today that Optus Vision - which I appreciate is not your business but I'm just drawing attention to it - has infuriated the Australian Football League by dropping live coverage of games into New South Wales and Queensland. I'm just observing that on the one hand there's concern about access; on the other hand there's already content that's available that, if this report is correct, is not going to be shown.

MR MARQUARD: You're right. I can't speak for how that decision came about - and I did read that. At the end of the day it does come down to, though, having - that issue is, I would have thought, a minor issue. The issue is having a set of rules in place which restricts fair competition and acts as a barrier to us and is heavily entrenched in favour of the incumbent free-to-air operators.

MR SIMSON: Okay.

PROF SNAPE: Well, I do apologise that we haven't given you quite equal time to PBL, but we're not far off it. Rather than to invent some more questions to ensure that equality, I think I'll just now thank you very very much for your contributions and

submission, and the very useful submissions that you attached to it so that we didn't have to go and chase them all up - it was very helpful - and for your patience this morning and answers to the questions. We do look forward to a few elaborations.

MR BLOMFIELD: We will certainly speak to those points that we said that we would do.

PROF SNAPE: And we look forward to a supplementary submission along those lines. If you need any jolting on that, the transcript will be available we hope in two or three days and it will be on the Web, which will remind you of the conversations.

MR BLOMFIELD: Thank you.

PROF SNAPE: Thank you very much.

MR BLOMFIELD: Thanks very much.

PROF SNAPE: Good. We've got a few minutes, and then we'll resume at 12.30 for the Muslim Women's Association, which is a short submission.

PROF SNAPE: We now have the Muslim Women's National Network of Australia and we have a representative from that association. I'll ask you, if you would be so kind, to say your name and position for the transcription service and then to give us your presentation, please.

MS MAHMOOD: I am Najma Mahmood. I'm the secretary of the Muslim Women's National Network of Australia. As we are a network, we represent all the Muslim women's associations in Australia and the Christmas Islands. We cover probably most of the non-English-speaking-background women and Muslim women. If non-Muslim women have a problem we are open to discuss with them. We have a good relationship with the Catholic Women's Association. We tend to build bridges with them and go to most of their association meetings and give talks to them so that they can understand about Islam. The same applies to them; we do invite them over and they do come and talk to us.

PROF SNAPE: Good.

MS MAHMOOD: Our main concern, I think, just representing the Muslims and the Muslim women, is that somehow in the media Islam - and the Muslim women maybe - have been represented in a very negative attitude. This has gone on for quite a while and the people who are being interviewed, if there is a problem - like, say, just like the Gulf crisis or something, and then in Australia they need to speak to someone about the problems - they always go for the person whom they have always had. It's the same old person whom they interview and he has the same old stereotype answers, which doesn't really reflect on the Muslims of Australia at the moment. We have come a long way from what the Muslims must have been 30 years ago or 20 years ago.

I think the Muslims who are representing Australia now are very diverse in their culture, in their attitudes, and this is one of the attractions of the religion, so we feel - and we're always fighting - that the world, or Australia - we'll start with Australia first - should know what a vibrant religion Islam is and what an interesting lot of people the Muslims really are. We are not representing maybe the fundamentalists of the Middle East. We are people just like anybody else. It's just that our religion is a little bit different, just a bit different. We are all trying to get there, up to Heaven, but in a different way.

I think some of these negative attitudes that come out, or negative practices, are really not so much the religion, it's the culture. We have to remember that among the Muslims we are represented by Malaysians, Indonesians, people from South-East Asia, the Middle East, Iran, Iraq, Somalia, African countries, so they all bring their cultural habits here and the general attitude of the people in Australia is, "Oh, well, you know, a woman in a hejab, well, she's a Muslim. She is downtrodden. She is that or this, and all Muslims are, you know, people with the sword every ready to fight."

Sure, I mean some of the examples of Muslim people here in Australia, that you've seen, you do get that idea but that is not the majority of Muslims in Australia now I think. This is why we're very keen that you should really look into new people too when you're going to have something in the media, in newspapers or television, radio - it doesn't matter - you know, have a list of new people whom you can talk to and speak to them, get their viewpoints on the Muslims of Australia, so that at least then Australians will understand that we are just like anybody else.

PROF SNAPE: Is there something in the structure of the media or in the structure of the broadcasting industry which you could identify which is causing the problem?

MS MAHMOOD: I think one of the problems that they did say was that we are not given too much - because of cutbacks probably in broadcasting, you know, you don't have enough money so you can't spend so much, so probably you cannot spend as much for cultural events or cultural ideas or anything. So it's constrained, and probably that's one of the reasons why we really can't get across to the people of Australia what the Muslims are all about, and if you don't have that then there's no understanding. The thing that really comes across is really sensationalism, things that really catch the eye. Probably if you're commercialised that's where the money is, that's where people entrusted it so they want to look at something that really catches the eye, but that doesn't help the Muslim community to have a better understanding and blend in with the Australians.

MR SIMSON: Is this a problem, as you perceive it, something that is getting worse or has it basically been about the same in your recollection?

MS MAHMOOD: Probably getting worse not better. Certainly not better because I don't think - this is what I've been saying, you know. Whenever there is something - you know, they say, "Oh, there's a program on Islam or Muslims," or something on TV. You put it on, it's an ancient thing that is outdated, that has really no relevance to what it is today, and you get someone who keeps coming back over and over again and talks about the same sort of issues. I think you need new - - -

PROF SNAPE: Are you in touch with SBS television at all?

MS MAHMOOD: We just sent them our newsletter. That's about the only communication.

PROF SNAPE: But it may be there's a preparation of some program, or discussion with SBS might be the way to go.

MS MAHMOOD: Yes, that would be. Because the other thing also is the Muslims here have been represented only by the Arabic speaking community because they were the first to come here, and the majority of them are from a low socioeconomic group. They are not all very well educated, so what comes across is - "Well, all Muslims are like that."

PROF SNAPE: Yes.

MS MAHMOOD: Just like the women, you know. I mean everyone is supposed to be in a hejab, and even the men - I mean their behaviour is - - -

MR SIMSON: In the news and current affairs area is the coverage getting better or worse of your community?

MS MAHMOOD: It's probably sort of - - -

MR SIMSON: It's about the same?

MS MAHMOOD: Yes.

MR SIMSON: So you've had the stereotypes for some time?

MS MAHMOOD: Yes, we have, and it would be good to improve a bit.

MR SIMSON: Have you ever complained to the Australian Broadcasting Authority or to the networks or the channels about coverage that you've found incorrect or offensive?

MS MAHMOOD: No, not really, we haven't. It's only now I think we feel that it's about time that - you know.

PROF SNAPE: I think that you might try to pursue that.

MS MAHMOOD: Yes.

PROF SNAPE: I mean to make to them the sort of point that you're making to us and it's probable that there aren't many Muslims in the industry and they don't know where to go.

MS MAHMOOD: No, probably not.

PROF SNAPE: And if you have got your sources; you know that if you ring someone up they will talk to you. That's the way that journalism often goes. So it might be, I think, an idea if you actually took some positive actions to tell the media, the channels, etcetera, the sort of things that you're telling us directly, because they would hear it better possibly coming directly than through us. I think it's a very good point that you made and we take in on board, and thank you very much.

MR SIMSON: Thanks for coming in.

MS MAHMOOD: Thank you.

(Luncheon adjournment)

PROF SNAPE: We resume our hearings and welcome AOL Bertelsmann Online Services and I would invite the representatives to identify themselves for the transcription service and then to speak to their submission. Thank you.

MS RITZ: Thank you very much. My name is Dorothee Ritz and I'm business affairs director of AOL Bertelsmann Online Services.

DR WAYN: My name is Brett Wayn and I am the director of content of programming for AOL Bertelsmann Online Services.

PROF SNAPE: Thank you. I should mention that the microphones in front of you are just for the transcription service. If you feel you need some help in speaking to the audience then there are other microphones there that do work the amplification.

MS RITZ: Thank you.

PROF SNAPE: So who is to commence?

DR WAYN: We will proceed?

PROF SNAPE: Yes, thank you.

DR WAYN: Mr Chairman and members of the commission, thank you for this opportunity to discuss with you the digital future and the future of online services, and whether in the future consumers will continue to enjoy the choice, innovation and convenience that they have today when broadband access becomes widely available. AOL's mission is to create a global medium that is as essential to people's lives as telephone or television, but more useful.

AOL has 17 million members worldwide with services in more than 10 countries. We see three key factors for success in the broadband digital future. Firstly, let consumers' choice rather than regulation determine success in the digital online marketplace. Secondly, open up the broadband infrastructure on which online services rest, whether that be broadcast spectrum, cable, telephony or other modalities, and finally, resist the temptation to artificially make an old law like the Broadcasting Services Act from 1992 fit with new services which are themselves much younger than the legislation.

I would like to paint you a picture of the way we see the Australian household of the 21st century. In the study one of the parents may be doing the income tax return on a device like a PC. In the kitchen another parent will be paying utility bills and ordering groceries on a touch-screen panel built into the fridge. In the lounge a teenager might be watching music videos or playing games on a wall-mounted flat panel device which can also function as a television. In the rumpus room the youngest children are learning a foreign language with other kids from across the world on a PC-like device designed just for children, and finally outside the house

Fido the cyberdog, or more likely one of the human householders, would be connected wirelessly to the Internet and online services with a portable communications device.

The various devices in the house are interconnected by a household network. This in turn is connected to the neighbourhood network and thence a global network. The householder would elect a service provider - as they now elect provision of certain utilities, like telephone, pay TV and electricity - and/or a variety of modes, either terrestrial cables made of copper or hybrid fibre coax or through the airwaves. Indeed a household may choose more than one modality of service transmission for different reasons. The kids games network, the banking network, the entertainment network and the education network may be a bundle of services provided by the same provider, who may or may not also be the telecommunications provider, or indeed separate services provided by multiple providers.

The consumer will choose a mix of products and services. This is indeed what happens with the Internet right now. Australians can make a local phone call with Optus or Telstra, choose from over 650 Internet service providers and visit millions of Web sites and services online as they see fit. For the broadband future a competitive environment must be created and to use the analogy of electrical power a standard, such as 240 volts, is agreed to and enforced but the consumer has the free choice of power company, electrician to wire the house and consumer devices to plug into the AC network to achieve what he or she desires.

The data network standard already exists in the form of TCP/IP, the protocol of the Internet, and consumers are already making such choices. This 21st century household is not far away. A range of services are already capable of carrying TCP/IP into the home and a number of vendors are already supplying home networking technologies and, in the form of the Internet, a significant number of households are already wired for families to do many of these things online. Furthermore some of these so-called futuristic services already exist. This is an example of a television enhanced with data applications. A limited amount of relevant interactivity is superimposed on the broadcast signal. Is this a PC or a TV? Should such a device be legislated under broadcast law?

More advanced interactivity also exists through enhanced teletext or digital broadcast platforms where the information is primary and the video and audio are secondary concerns. Indeed PCs themselves are already capable of reproducing streaming audio and video at varying quality. Is this a PC, a TV or a radio? Completely independent of your device or the modality of transmission, for tens of millions of people and millions of Australians Internet and online services have already revolutionised their daily lives, giving them more choice and control in the way they communicate, learn, shop and do business.

Today the Internet is a true field of dreams. Untold numbers of entrepreneurs have discovered that if they build something, a Web site, a business or a new access service, that thousands, even millions, may come. Always open for business, always

open to new ideas, the Internet is perhaps the most dynamic force in our society in economy today and the most successful sites and services have one thing in common, they give the consumer what they want. In today's online marketplace openness and competition have truly made the consumer king. They can choose from a wide range of Internet and online service options, all with varying price plans, features and products.

AOL is the largest consumer online service in the world and we have been building online communities and content for more than 10 years, much longer than anyone else in this industry. We have also developed our own networks, pioneered new technologies, incorporated emerging standards like the Internet into our products but throughout our rapid growth we have remained focused on the consumer and the online community. The technology, constantly changing, is just a means to an end.

One of the reasons that we and many other businesses like ours have succeeded in this is because consumers have open access to all competing services. To date all that has been required is a modem and a phone line and the consumer chooses who he or she wants to do business with. No artificial or anti-competitive barriers to entry have been placed between the consumer and their right to choose.

Now in Australia we have the chance to create a new medium. It is not telecommunication, telephone, print or broadcasting. It is truly new and Australians have always been great consumers of new technologies. We have a chance in Australia to be amongst the world's best, leading in this arena rather than lagging behind as we have historically done in other media because of our small size and relative isolation.

Until recently technology clearly separated our communications infrastructure into neat cubbyholes. Phone companies handled telephone calls; cable companies distributed television programming. Now new broadband technologies are emerging which will permit the delivery of high-speed online service. With new bandwidth, new online services and new technology emerging with even more powerful pipes there will be new opportunities and more choices for consumers. How the consumers chooses to use these services must be determined by market forces.

As this commission meets to examine how broadband and datacasting will change this new medium in industry, AOL would like to share a perspective detached from the technology debate or the telecommunications and broadcasting law, but in terms of what's right and best for consumers. As we enter the era of broadband access, however, Australia is confronted with a choice: do we promote the open marketplace free of entry barriers and rely upon competition amongst thousands of suppliers or do we move towards a closed marketplace where success is determined by the ownership of spectrum, local loops or one of the wires into the home?

Telephone companies are selling access over their lines on a non-exclusive basis, providing for an open, competitive environment in which consumers have a large range of choices. This should also be true for broadband access over their lines. The

cable industry should be offering choice and not requiring consumers who want a high-speed cable connection to the Internet to also buy the on-line service affiliated with the local cable company, especially if the consumer already has another service they like and want to keep. Consumers should not be obliged to pay twice. It is up to the cable company which owns an on-line service to do a better job than its competitors to prove that it has the ability to give consumers what they want. Forcing choice of a service just because a connection is purchased would be as anticompetitive as an ISP blocking traffic to a competitor's Web site.

Market forces are already at work. Internet on-line services are able to steal audience from television because consumers are making an informed choice. This shows the number of users simultaneously connected to AOL in prime-time US viewing at the end of 1998. Over 900,000 simultaneous users, more people than are watching CNN or CNBC. Indeed, it has been true in the past that nothing was a more powerful attractor of mainstream consumers than television, but now we know that our customers and those of other service providers give up television more than any other activity in order to spend time on-line. Broadband is capable of creating a - - -

MR SIMSON: Could we just have another look at that slide, please?

DR WAYN: Yes, sure, we have copies for you also.

PROF SNAPE: This is the US, is it?

DR WAYN: This is AOL subscribers in the United States, and when we surveyed them and asked them what activities they were spending less time with to access the internet or on-line service the number 1 activity they said they gave up was television.

MR SIMSON: Would you mind also going back to the previous slide?

DR WAYN: Certainly.

PROF SNAPE: That was also US, was it?

DR WAYN: Yes, this is from Nielsen and our own peak simultaneous user data. It compares the number of peak simultaneous users on AOL, which is the red line with the quarter-hour peak viewing of both CNN and CNBC.

MR SIMSON: These are individual users?

DR WAYN: Certainly on AOL they are individual users.

MR SIMSON: Individual users and individual viewers?

DR WAYN: Yes.

MR SIMSON: So they're human beings?

DR WAYN: Correct.

MR SIMSON: That AOL number there related to users in the US, obviously?

DR WAYN: That's right, yes. Broadband is capable of creating a whole new world filled with incredible possibilities for the consumer on-line experience. To fulfil this potential, we will have to be prepared to answer three important questions: first, how can we ensure that consumers can obtain high-speed on-line service from the provider of their choice regardless of which broadband technology happens to be available to them. Second, how can we ensure that success in the broadband marketplace will be based on lower prices, better service and the power of an entrepreneur's idea and not by ownership of the delivery system. Third, how can we ensure that old laws are not artificially applied to new and very different media.

History has also shown that when technologies converge there is a danger that regulatory structures made for a different time may have a damaging impact on investment, innovation and consumer choice. Let me be absolutely clear: from our perspective, the broadband infrastructures on which on-line media rests, whether cable, television, telephone or broadcast, must be open. Broadband infrastructure and potential is readily available. AOL has an abundance of spectrum. First there is the existing analog copper already owned and paid for by Australians. There are also new HFC networks partially owned and paid for by Australians.

MR SIMSON: Just to interrupt for a second, Dr Wayn, is the second one referring to the cables?

DR WAYN: Hybrid fibre co-ax networks.

MR SIMSON: That's the Optus cable and the Telstra cable.

DR WAYN: Optus cable and Telstra cable. Finally, of course there is broadcast spectrum, also owned by Australians. To take these one by one, in the case of the copper cable plant, Telstra telephone infrastructure is paid for by Australian consumers both directly and indirectly. This common resource should be open for new services and technology on a competitive basis. We believe firmly that the local loop should be declared. Secondly, HFC cable - - -

MR SIMSON: Again, just before you go on, could you just - - -

DR WAYN: Hybrid fibre coaxial cable.

MR SIMSON: The local loop. Just explain that a little bit more for me.

DR WAYN: The copper wire between residences and telephone exchanges.

MR SIMSON: Thank you.

DR WAYN: In the case of HFC cable, residential cable systems exist because of public funding or because the right of way was permitted by public authorities. Australians therefore, we believe, have a right to benefit from some of this infrastructure. We also believe it is the role of government to ensure open access to this infrastructure for all Australians. Finally, in free-to-air unallocated broadcast spectrum, we believe that government should ensure access to as much spectrum as possible for new public and private data services. We also believe that the allocation process of spectrum should be designed to ensure that services are offered to consumers at a reasonable price rather than simply guaranteeing that the highest bidder wins the spectrum, which history has shown leads to business failure in some cases rather than consumer choice.

In conclusion, AOL believes that consumers and competition and not regulation will be the determinant to success in the digital marketplace. There is a real and apparent threat of overregulation. The broadband infrastructure, whether copper, glass or wireless, must be open to competition, and finally, the convergence of media makes it necessary to determine the applicable legislation, licence and supervision by function rather than by platform. It makes no sense to apply existing laws created for one medium to new media which are only marginally analogous, and which did not even exist when the law was drafted. Thank you again for giving me this opportunity to share our view with you, and we look forward to your questions.

PROF SNAPE: Thank you very much for that. We'll just reposition ourselves. I was wondering if you might just wish to enlarge a little bit on the allocation of spectrum when you said "not necessarily to the highest bidder", and I wonder what sort of criteria you were thinking about in that allocation.

DR WAYN: I think that there are emerging standards worldwide in the cost of data transmission. Certainly, there are any number of investigations in Australia and other places that have looked at best practices in the telecommunications industry. Many of these have been addressed along the lines of wire line communication rather than wireless, but it's certainly possible, I believe, to determine what sort of fair pricing regimen could be created for wireless communication. Perhaps then the regulation of the spectrum when it becomes available for purchase by private companies could actually have factored into that some sort of price regimen determined by best practice, which would be one of the criteria which the purchaser had to meet in order to provide the service. That would therefore mean that companies could of course bid whatever they wished for the spectrum, but knowing that they had to guarantee, in their business case, some equitable price of access for the consumers.

PROF SNAPE: So you'll make the access terms as a condition of the auction.

DR WAYN: Yes.

MR SIMSON: Just developing Prof Snape's point, as is currently proposed with a simulcast of digital and analog, what is your estimate as to the amount of spectrum

that's going to be available for datacasting from 2001 and, most importantly, whether you believe that's going to be adequate for the people that you're aware of - perhaps people in your digital convergence group - to be able to fulfil their business ideals?

DR WAYN: Are you referring to the amount that's going to be available in Australia?

MR SIMSON: Yes, the amount that's going to be available for over and above what the free-to-air needs, and the ABC and SBS, the amount that's going to be available for the new datacasters, if I could put it that way: yourselves, Fairfax News and whoever else.

DR WAYN: On the one hand, content has a way of filling up whatever bandwidth is available, and on the other hand over time technology has a way of making more and more bandwidth available for the same amount of content. So I think it's a difficult question to answer, looking for it a long way into the future, because as we've already seen with the difference between, for example, analog and digital cellular communication, CDMA and other technologies now enable a larger number of simultaneous calls to be packed through the same bandwidth. I do think our point that there is plenty of bandwidth currently available is certainly true.

MR SIMSON: That's non-broadcast spectrum bandwidth, of course.

DR WAYN: That's across the board, and in a way I think because it is unclear yet as to what the consumer platform of choice will be, it's somewhat artificial just to constrain the discussion to broadcast.

MR SIMSON: But just developing that point, when does AOL plan to begin datacasting or would you believe that you're already doing so?

DR WAYN: Are you talking about in Australia?

MR SIMSON: Yes.

DR WAYN: We don't have a comment on our position in Australia but I can tell you that in the United States we have already begun broadband trials on DSL circuits which is a wire line communication, and we have announced the formation of an AOL TV group in a number of alliances, but again I don't know the date on which that product will be released in the United States.

MR SIMSON: Could you talk with us a little bit about - in terms of the American trial - the sort of services and products that you're planning to offer consumers in the initial period.

DR WAYN: Sure. We see two different types of technology actually; one being AOL broadband and the other one being AOL TV. We look at the way consumers behave, and already there are people who watch television and there are people who

use their personal computer and there is some crossover. Interestingly enough though, many of the people that we surveyed who were using the personal computer when they're using it do nothing else. In fact, about 55 per cent of our members when we ask them, "What else are you doing when you're on your PC and connected to AOL on the internet?" the answer was, "Nothing." That's because we believe that the PC one-to-one interactivity up close to the screen is actually very involving.

So therefore if you're going to build applications for a "PC environment", there are certainly some video and audio applications that are relevant, but they're not necessarily like broadcast television. It might be the ability to download music or to play a short video clip or to look at rich graphics or animations in a game. On the television side, television already does, in its current form, a very good job of broadband transmission. There's enough bandwidth, even in analog VHF signals to transmit compelling moving pictures and sound.

The question then of overlaying interactivity on top of that is very real, but whether or not one tries to reproduce on TV the experience one has on a PC is the open question. We actually think that a TV which is a largely passive experience viewed at a distance, perhaps by more than one person, can have some interactive elements, like the ability to call up a player's profile while watching a sports match or perhaps to do a limited amount of shopping, but that it doesn't necessarily make sense to do the home finances using spreadsheet technology on a television. That's possibly better on a PC.

PROF SNAPE: So a sit-forward and a sit-back technology will continue, or division will continue.

DR WAYN: I can't say that with absolute certainty because nobody really knows yet.

PROF SNAPE: No, but that's your best guess.

DR WAYN: When we look at consumer behaviour, that's what we infer.

MR SIMSON: I just want to be clear on this. It's conceivable that you could offer datacasting in Australia utilising some of the broadcast spectrum but accessed via the PC?

DR WAYN: No, I think there are a couple of ways to look at it. When we look at the AOL TV product, it's a set-top box product which will be primarily downstream.

MR SIMSON: Could you just explain what you mean by that?

DR WAYN: The video, audio and interactive media will come down either via a cable or via an antenna and there will be some sort of back channel which may be an analog phone line; it may be over the cable plant. It could even be on a cellular network depending on the type of interactivity that the application required, whereas

the broadband applications on the PC would be almost certainly wireline not wireless and would require a greater amount of bandwidth either through cable modems or DSL or similar technology.

PROF SNAPE: You referred just a moment to ago to the return path perhaps through a mobile phone. Is that being done at all at the moment anywhere?

DR WAYN: I'm not aware that we have actually done that. I know that the discussions have taken place about a variety of modalities of back channel, and one of the things that we believe very strongly in, in both the broadband arena and the AOL TV arena is that whatever applications we develop should be largely platform and technology agnostic.

MR SIMSON: Would you envisage that in the, again, formative period in Australia, that it's likely that when you get into datacasting that's going to be more so over the PC. I understand you're making a distinction between AOL TV and AOL broadband, but can we just look at datacasting generically at the moment.

DR WAYN: Yes.

MR SIMSON: You believe your consumers are more likely to access those sorts of services over their PC rather than their TV?

DR WAYN: No, I think the likelihood is, and this is again a guess and not a fact, that consumers would access datacasting services over a television set-top box device.

MR SIMSON: Why do that rather than at the PC where you say they spend a lot of their time at the moment?

DR WAYN: I think it depends on the content. There are limitations in the ability to develop complex interactivity over a datacasting service with a back channel, compared to a high band with symmetrical connection as would be offered by DSL or cable modem.

MR SIMSON: So the shorthand of that is that the presentation and the functionality is superior on a TV than a PC.

DR WAYN: I think it really depends on what one defines as datacasting. Again, rather than being mired in definitions we look at behaviour. For something that has a lot of pictures and sound with some interactivity, that's probably going to be on a TV-like device and possibly connected through broadcast technology with a limited terrestrial back channel. For something that has a very high degree of interactivity and rich media it's likely to be connected on a PC-like device through a wireline service of some sort.

MR SIMSON: And will demand be greater for the former or the latter service?

DR WAYN: I don't believe that I know the answer to that question.

MR SIMSON: The reason why we're pursuing this line of questioning is that we're obviously trying to get some feel as to the demand that's going to exist from consumers for datacasting services over the broadcast spectrum. We've been asking a number of people the question this week because it's important in understanding, therefore, the demand that might exist for set-top boxes for example for the equipment that is going to be required to facilitate those connections.

DR RITZ: May I make one comment? If you look today, as much as Internet on-line services are on the growth, they only capture a much smaller amount of the market than television - more than 98 per cent of households do have a television - not all of them multimedia enabled. But the number of television households in the market are much higher than the computer provision at this time. On the other hand a lot of these people have a large interest in this new medium. They might have interest in certain applications that at the moment are more running on the computer.

There will always be some applications that are more suited for the computer. I mean writing e-mails, you just have to be close to a computer to write it. It's probably not the ideal application that you want to do sitting five metres away from your television screen. On the other hand, all these people that already use on-line applications on the computer want to use it, as we have said in our vision on the future, on multiple places in the household and in the business world and they probably want to stick with their one provider, the one service of their choice. Probably also with the same interface.

If you take the EPG, the Electronic Publishing Guide, for example, it is something that is probably more created out of the on-line world because navigational tools, navigation to multiple choices of programs rather than the fixed programming that is more what television offers these days, that is an application that is probably stronger these days on the PC platform, but this is an application that is very obviously a very important application that will be taken to the TV platform as well.

MR SIMSON: What do you intend to do in terms of your marketing campaign to hasten, to fast-track the uptake of set-top boxes? I'm asking this because we had comment from OzEmail, who appeared here earlier this week, who offered the opinion that some datacasters will be giving away set-top boxes to obtain access to the consumer, for want of a better term. Could you provide us with your thoughts on this, please?

DR WAYN: We don't have any stated plans for the marketing of AOL TV yet anywhere in the world. So it's not something that I could really comment on.

MR SIMSON: Okay. How important, from your perspective, will be the pricing of the set-top box in facilitating the take-up of the datacasting, and have you done any studies in terms of relative price points which might be significant here?

DR WAYN: The studies may well have been done; I certainly haven't seen them personally. I think if you look back to the way that AOL developed though, because in itself AOL as an on-line service was a new technology along with a number of other services like Genie, Prodigy, Delphi and so on, prior to the commercial Internet. With the emergence of any new technology it is almost always true that first of all the market emerges in the very, very early adopters and then it goes through to the early majority and then into the mass market. It's rare that a new technology is suddenly adopted en masse by the mass market regardless of price point.

It's also true that the price of technology falls over time, so I suspect, and again this is an opinion and not a fact, that it may be that those people who already have PCs connected to the Internet may buy set-top boxes and/or cable modems which is already something we see, and be prepared to pay a higher price for them sooner in order to have the new gadget. Then, as is almost always the case, it requires those people to like what they see and to regularly use it to recommend it to their friends who don't have it, and often new technology is spread by word of mouth. Then as more and more people buy obviously, from the vendor's point of view, they can afford to price the product lower and lower, and perhaps then that's the way these products will reach the mass market.

MR SIMSON: I was interested in your comment on page 8 where you define whether a service is a broadcasting service, "The following criteria should" - and I think this is the operative word - "cumulatively be taken into account: whether the service is predominantly audio or visual in character." Does that mean, for the purposes of datacasting you're not intending to make available moving pictures?

DR WAYN: Again we don't have any stated intention with datacasting in Australia or in the United States. My view, that we expressed earlier about what might be occurring in the set-top box environment, would be an overlay of data and interactivity on top of existing pictures and sound.

MR SIMSON: When you say "existing pictures and sound", they are pictures and sound that are coming across your TV from the TV stations or are they your pictures and sound?

DR WAYN: I think either would be possible. We already develop content in the Internet environment. If we think that the consumers want us to develop this sort of audio and video content in a datacasting environment, that would be a service that we would be willing to provide.

DR RITZ: The environment where we made the point as to overall opinion is defined broadcasting and not datacasting, because datacasting is an overall variety of services and applications.

MR SIMSON: I see, fair enough.

DR RITZ: We don't even know what's coming in two years. We didn't know two years ago what we do. So our major point there is that there is a need to define broadcasting for reasons that we know. The main objectives, what is broadcasting and not what may be datacasting, it comes back to this point that we made: it's programming, it's one to multipoint, it is more audiovisual, it has an important impact on the public because of these points, and datacasting works in a different way. That was the point.

PROF SNAPE: The point that you're making there I think, in linking it to the act and to our terms of reference that we have to take account of, is that I think you're saying that the degree of influence of what you're terming "broadcasting" and you quote the act, "The degree of influence in shaping community views in Australia," that there is a distinction between what you're terming "broadcasting" and the rest of the digital media.

DR RITZ: Yes. I mean the Broadcasting Act was made when you have mainly just five channels where the information goes to the public. The impact on the public if you have just five TV channels where you get information across, that has a bigger impact as if you - today there are thousands of resources if you take these kinds of on-line services into consideration as well, how information gets to the public. So the impact of the one information that is put out, one of the ways of the thousands has less impact than if you only have five different information - that goes out to the public.

PROF SNAPE: I take that point and I see your point in arguing that any regulation should be technology agnostic, and yet I don't completely see how such regulation which is technology agnostic - then how these other objectives that we are called to take account of, the cultural/social objectives, can be implemented. For example Australian content, which is an objective within the act; children's content and again the influence question. If these new technologies are so interchangeable, if you like, is it sustainable to have legislation or to have requirements of Australian content of various types, and of children's content and so on and in this context of legislation which you're talking about, a regulation, which would be technologically agnostic?

DR WAYN: I think the question is partially answered by addressing which law we're talking about.

PROF SNAPE: I'm talking about the future.

DR WAYN: Correct. The truth of the matter is at the moment that Australians who use the Internet probably spend 70 per cent of their time on US Web sites. One of the reasons for this is that it's a much larger market that's more mature. Advertising revenue, subscription revenue and commerce revenues are much greater in the United States than they are here, therefore more compelling content is developed at a faster pace by American Internet and on-line content creators than is true in Australia. There also exists economic conditions in the United States that aren't reproduced here, one of which, for example, is the capital gains tax, another of which is the very,

very technology-friendly US stock market which has enabled companies to actually fund development and acquisitions far more aggressively than is possible in Australia.

I would argue that if economic conditions for content creators in digital media were substantially changed in Australia, that one wouldn't need artificially to ensure that there were certain prerequisite amounts of Australian content. I think Australians like Australian content. I just don't think Australian content providers are in a financial position to be able to provide the content that Australians want.

PROF SNAPE: We've heard quite a bit of discussion on this in the last few days in the context of the free-to-air in particular, and it has been that while Australians like Australian content in the drama area for example, the cost of making decent Australian content in drama, a good Australian drama, is perhaps 200 to 300 thousand dollars an hour, and it can be similar quality that can be imported at \$50,000 or less an hour from the United States. So even though they might prefer Australian content they have to prefer it six times as much to generate the revenue that can make that a line ball decision.

DR WAYN: My background is actually in television production and I am very sympathetic to Australian television producers because, the truth is, for whatever reason, American content seems to export itself around the world more profitably, on a more regular basis, than Australian content, although there are plenty of cases of Australian television programming that has succeeded on a global basis. I think the point with digital media is that the content creation costs are however significantly lower than broadcast television and there are already Australian Web sites that have made a global impact. One such example would be an Australian Web site which we actually carry on AOL but is also on the Internet, called Dark Horizons by a young Australian man called Garth Franklin, and he is a sort of an underground Hollywood movie buff, if you like, and his Web site was nominated for a Webby award last year and his Web site is constantly quoted in the Hollywood trade press. This is an example of somebody who purely created the Web site on their own, off their own bat, with no funding, no subsidy, nothing other than passion, and he has found a global audience for his content.

PROF SNAPE: Yes, but again in the context of what you're saying is the technologically neutral or agnostic regulation would you be saying still that there should be Australian content regulation for what you deem to be broadcast?

DR RITZ: Broadcasting, yes. For datacasting, I don't see it because the resources are not limited and the financial entries to provide this content are small, so the market will regulate itself with regard to datacasting. We are not broadcasters so we can't speak for that industry but, if it needs regulation, then it definitely needs the regulation on the side of the broadcasting and not of the datacasting because the objectives and the parameters of datacasting are very different from broadcasting.

PROF SNAPE: So we really are forced into - if we have that objective and if we accept that, as you were, for the purpose of discussion, that the regulation may be

necessary on broadcasting, then we are forced into making these distinctions between broadcasting and other things, even though we may not really want to and even though that distinction may become - however, it is drawn - obsolete very quickly.

DR RITZ: Yes, but if we look at legislation it should look at the function that certain contents take rather than on what platform they are on and for datacasting services, it doesn't make sense to make a distinction of certain regulations in the on-line world out on the Internet, over the telephone line, and taking this to different devices platform. There are certain functionalities now on the Internet that do carry certain video applications are others are more just communications. This will be the same on other platforms, as well, so legislation should look more at the service itself and the function rather than, is this broadcasting or not because, otherwise, what we do is basically extend the Broadcasting Act artificially to new services just because we try to make it fit.

PROF SNAPE: Right.

DR WAYN: Also I think another observation to make would be that broadcasting is fundamentally passive from the point of view of the consumer; ie, it is the programming director at the commercial and government-owned broadcasters that makes the decisions about the material to broadcast. The user can choose between the five channels, or more if they have cable, but they can't actually choose what is programmed within each of those pieces of spectra. I fail to see how, given the very, very nature of user-determined navigation on the Internet, it would be possible to create a regulatory environment where you could say that an Australian user of an Internet service - regardless of how that service was delivered - would be guaranteed to see 30 per cent Australian programming.

PROF SNAPE: Yes, but on the other hand, if you are talking about thinking of multichannelling, then the consumer may have quite a bit of control on what they're watching.

DR WAYN: Yes, although that really depends on the ability of technology to deliver more or less unlimited amounts of data down pipes. I mean, it is technically possible to surf the Internet on a set-top box and the data that may be coming down from the server might be pushed down the broadcast channel but it may be that through the back channel the user requests the server to pull down a Web site that is not actually cached on the server and, when the bandwidth is available, that amount of data is broadcast, as it were, to the user, so therefore the service provider itself does not have direct control over the channel in that respect.

PROF SNAPE: Would one be able to enforce Australian content regulations when you are multichannelling?

MR SIMSON: That's when a free-to-air is multichannelling.

PROF SNAPE: When free-to-air is multichannelling.

DR WAYN: Sorry?

PROF SNAPE: How would one go about enforcing Australian content regulations in the form that they are at the moment if one is multichannelling?

DR WAYN: I'm not a technician. I think the answer though is that if it is anything like the Internet is today, enforcing certain types of pushed programming or content, is, practically speaking, impossible, even though, technically, it might be possible.

MR SIMSON: But as I understand it, the free-to-air may multichannel without you having to request it. I mean, they will simply just show you different angles, and you have heard the examples. Now, you may not have requested that; that is being pushed at you; that is being broadcast. Okay?

DR WAYN: Yes.

MR SIMSON: Is that where you are perhaps coming from, Richard?

PROF SNAPE: Yes. I am thinking that they may, but then on the other hand you may be able to choose in this multichannelling.

MR SIMSON: I see. Select multichannelling.

PROF SNAPE: That's right - that you can select what you're getting from those multichannelling.

DR WAYN: Yes, or perhaps indeed one of the channels - in inverted commas - which the multichannelling broadcaster provides you with, is a channel which allows you to access the Internet.

PROF SNAPE: Yes.

DR WAYN: So perhaps if we are talking about six channels within a spectrum allocation, one of the channels which is user determined mustn't be regulated by broadcast law but the others, which are more like broadcast, should be.

PROF SNAPE: That really gets very, very complicated, doesn't it, particularly if you are trying to enforce an Australian content and you have got this switching between the various things and you don't know what you're getting, in a sense.

DR WAYN: It is a very complicated industry. Yes.

MR SIMSON: May I take you back to your previous observation with regard to the amount of time that Australians are spending on the Internet, looking at US Web sites because, one of the points - or one of the arguments - that has been put to us today by proponents of change in the existing regulatory arrangement and policy arrangement

is that Australians are spending more time with new media. On other words, there is more diversity of content available to them and I am thinking particularly here in the news and information areas. It was put to us that a lot of people are now getting news and information off the Internet, but I am just wondering if that is in fact the case amongst Internet users if they're spending 70 per cent of their time on US-based Web sites.

I mean, the extent to which people really are changing their news and information media consumption habits.

DR WAYN: If it is true that people who use the Internet watch less television and read books and magazines less - which we have seen in some studies - if it is also true that in the case of Australian users of the Internet that they're spending time on US sites more than they are on Australian sites, one could infer that those Australian users of Internet services are seeing more news from international services via the Internet than they formerly saw Australian news.

MR SIMSON: Have you any local research on this?

DR WAYN: I don't have any local research on it, except to say that our principal news provider is the ABC, so we in fact elect to have the Australian Broadcasting Corporation providing our news because we feel, philosophically, in the world of AOL, that even though we are part of a global organisation that each of our local businesses must be characterised by a local service with local content. We do that entirely voluntarily because we believe it is what the audience wants.

DR RITZ: You might also be interested in the fact that the audience so far has a perception that the Internet is kind of like an American thing and we haven't educated them enough that there actually is good Australian content out there. They go to the US because they have heard that the advanced new technologies are all coming from the US and all the content is there. The good thing about the Internet is it is unlimited; there is no limited space, and there is good Australian content there. We probably just haven't done a good enough job to teach people really that it is there; people probably don't know.

MR SIMSON: I am just raising the issue that has been put to us by a number of people, that there is now a much greater level of news information but, particularly, also comment and opinion on the Internet that is therefore rendering obsolete various rules and regulations that currently exist, and I am just testing that with you to see, in reality, whether that is actually so.

DR WAYN: In reality, I think, the Internet gives consumers a much greater variety of information than they had before the Internet. The other interesting phenomenon is what we would refer to as "member generation" content and certainly in Internet news groups, on AOL message boards, in chat rooms, one of the things that our members and, I believe, a lot of Internet users do when they're on-line is spend time communicating with each other, so then the opinion that they're receiving from others

on a global basis is, arguably, of a different value than the opinion of, say, a journalist in a foreign country, reporting on local events. I would argue that in fact it enhances the ability of consumers to gain a perspective on news and current affairs because the sources are very mixed.

MR SIMSON: So perhaps I am viewing too narrowly who is a commentator, who is an expert, who is an opinion-maker?

DR WAYN: Yes.

DR RITZ: And I think where it's actually from - which country it's originating - does not matter that much to our consumers as it probably does to us or to regulators because, as long as they get a valuable opinion, they don't care if that is a member from the UK or from Canada or from the US; they value the opinion. The beautiful thing about the Internet is that it is borderless and, in a certain way, it's also nationless; it is a global community and people treat it as such. They are looking for good information but they are not necessarily looking for good information from a particular country or from a particular person.

DR WAYN: We allow our members, for example, to search the member directory and participation in the member directory is voluntary but I can search on AOL in Australia for people who are AOL France members who are interested in scuba diving, so if I wanted to go scuba diving in France I now immediately have the ability to source, as it were, from the horse's mouth, experience of French scuba divers as to what is a good place to dive, whereas before I might have had to rely, for example, on a travel agent.

MR SIMSON: Let's take perhaps a similar topical example of scuba divers in France and the problems in Albania and Yugoslavia. Have you any traffic or evidence of visitation around that particular issue by Australians?

DR WAYN: We, on the Australian service, have - and have done since the beginning of the war - had an area devoted to Kosovo and the crisis. There is a similar area in the United States and - you might correct me if I am wrong - I believe that there is a 24-hour seven-day-a-week on-line chat room devoted to the events, and these areas have certainly - I don't have the figures at hand - proved popular with our members not only in Australia but all over the world.

PROF SNAPE: When you spoke before that the ABC was your news supplier, who pays whom?

DR WAYN: We pay the ABC.

PROF SNAPE: It is one of those transactions that you might have thought could go either way: if they thought it was advertising the ABC, then - - -

DR WAYN: No, there is no advertising because of course that is against their charter. They do advertise their own product.

PROF SNAPE: Promoting, I am sorry.

DR WAYN: We value their ability to create content and therefore we are prepared to pay for it.

MR SIMSON: You spoke about access in your presentation. Are you experiencing difficulties of access to the supplies of broadband cable or HFC cable in Australia?

DR WAYN: We haven't begun discussions with any of the broadband or other alternate suppliers.

MR SIMSON: Because you're not serving broadband content?

DR WAYN: At this point in time, we're not.

MR SIMSON: Yes, page 5 of your submission, please. This is the original one. On page 5 it says this:

Some datacast material -

etcetera, etcetera -

may be relevant to programs that are being broadcast by the TV networks. It may be possible to call up this AL material as a window within the broadcast program.

Presumably that would require the permission of the owner of that broadcast program?

DR RITZ: Depending on who puts together the packages. We would see it from consumer perspective. If I'm seeing a sports program, for example, as we have seen there, from a consumer perspective what I want is the footy game going on and then maybe a window where I can see the scores of a different place that go on at the same time and maybe a weather service because I want to go and play football myself tomorrow. I mean at the end of - the question who is actually owning the platform - is it the person that is owning the set-up box or is it the person putting together programming to put together these packages? - in the end it becomes one big program.

MR SIMSON: I appreciate that. I suppose what I'm coming at is your ability to reconfigure a broadcaster's program. In this case you would be putting a window over their particular copyrighted piece of content.

DR WAYN: That assumes one needs the permission of the broadcaster to display the content in the same window.

MR SIMSON: That actually was what my question was driving at.

DR WAYN: I can go and buy a PC right now and I can run AOL software on it and I can also put in a TV tuner card and I can bring free-to-air television up in the window, which is channel 7's copyright or the ABC's copyright, while using AOL in the background and listening to 2SM.

DR RITZ: We would like to give the consumers a choice how they own their TV screen or the PC screen, or whatever device they have it on. It should be their choice if it's only television, if it's television and a data service running at the same time, if they want to have the programming guide at the same time open or not.

MR SIMSON: A final question. You've mentioned the programming guide and I want to ask about that because on the same page you talk about the electronic TV guide and from what I've read in the US this is really an important piece of information, a very important bit of the gate, if you like.

DR RITZ: Sure.

MR SIMSON: The entity who owns the electronic TV guide has a lot of control over consumers.

DR RITZ: True.

MR SIMSON: Could you talk to that point and just fill us in on that?

DR RITZ: Are you asking who should own it?

MR SIMSON: I am asking that. I am asking whether you would envisage that in an Australian context there would be multiple electronic TV guides, would there be one standard guide. How you see this working out.

DR WAYN: If I can look at the real world, rather than what might be, nobody owns the programming guide in Australia right now. I can pick up a newspaper; I can see it on the Internet; I can ask my friends. I think the reason that there is something of a frenzy over the ownership of the EPG is because that in the electronic screen environment is very, very valuable commercial real estate and who controls that can control a number of things. First of all they control the eyeballs so that they can advertise and promote on that for profit and, secondly of course, they could by giving prominence to certain types of programming over others encourage people to choose something that was in the commercial interest of the owner of the property. Frankly I think provided that it's clear to the consumer who owns the programming guide and also, as in the real world, provided there are choices of multiple programming guides, I don't see that as an issue.

PROF SNAPE: That's not the way it was viewed in the airline booking systems, however.

DR WAYN: No.

PROF SNAPE: Where in fact legislation, particularly in the US, was introduced to control what people perceived to be the problems of it.

DR WAYN: Airline booking systems of course require the cooperation of all airline vendors, and if one airline, say, American Airlines, control the system - the case that I believe that you're referring to was the suggestion that when a travel agent called up a flight the American Airlines flight displayed first and then everybody else.

PROF SNAPE: That's right.

DR WAYN: A programming guide may have that functionality if one was to search the guide by genre, "Show me all comedies," and if Channel 9, for example, owned the programming guide perhaps Channel 9's comedies would display ahead of Channel 7's and Channel 10's.

PROF SNAPE: Yes.

MR SIMSON: Wouldn't you say that's a problem?

DR RITZ: The consumer has the choice. If they want to have the Channel 9 programming guide then it's not a problem. If they have the choice also to choose, for example, the AOL programming guide, because I use that on my computer and use that for the other device, then it's not a problem. So it all comes back to consumer choice.

DR WAYN: Channel 10 on its current Web site at 10.com.au has a programming guide that's only Channel 10.

MR SIMSON: That's perhaps not so surprising, but we're looking at - yes, okay.

PROF SNAPE: We are perhaps again thinking of who's owning the gateways.

MR SIMSON: Yes, a potential barrier. You identify a whole bunch of them up there.

DR WAYN: Yes.

MR SIMSON: Access barriers, and in the US on pay television we know ownership of the TV guide is absolutely critical.

DR WAYN: Perhaps then, to my point earlier about spectrum regulation and options, one of the mandates could be that there's some sort of price determination made by the government. Perhaps another mandate is that the government itself controls the programming guide and that anybody who wishes to multicast or carry an EPG has to carry the official programming guide, and that that's regulated by the TEO or a similar watchdog, and if that upsets the media owners, well, so be it, then they don't bid for the spectrum option.

PROF SNAPE: I guess the senate proceedings will be listed first.

DR WAYN: Yes, indeed.

PROF SNAPE: That wouldn't be unfair, would it, for a minister?

MR SIMSON: Just one final point, if I may, because we've had quite a deal of evidence with regards to offensive material, and not just relating, by the way, to the Internet. In fact we've had evidence of material that people don't like - stereotypes - and I don't mean offensive necessarily in a rude way but I mean stereotypes of children on television programs that people think are wrong and incite particular activities. The recent legislation change in terms of the Internet in this area, as I understand it AOL was able to actually suggest a solution to the problem.

DR RITZ: Yes.

MR SIMSON: That was interesting, because you've done that, whereas some people might have seen it was in your interest to go for the free-for-all totally libertarian approach, and I just would be interested in someone who is at the cutting edge of new media to give us your comment as to the extent to which people should be helped, assisted, blocked from getting to stuff that in this case our political people thought was not wise.

DR RITZ: To make this point very clear we supported the objectives of this legislation but the way it was then resolved we did not support, because there are certain things. On the one hand to solve the problem you have to get the originator and this legislation doesn't talk about the originator of the content at all. It's clearly addressed at the distributors, who are just kind of like the secondary responsables, and what we did was not support - and you refer to the blocking of overseas content which is now in the bill. We actually wanted to show that there's a different solution that actually does work, because what is now in the act doesn't work and a lot of people have explained why it doesn't work, and we showed a solution which is filtering and giving the end consumer the tools to block themselves, at the end-user level, giving them the choice. Providing them with the tools, making it very easy for them to use them, is the only effective way and is also the only way that we don't allow the parents or those responsible the false sense of security that actually the ISP can block content, because they can't.

Taking this in a broader sense we talk about different platforms. Again it will be that the most effective way is providing the parents, the consumers, with the tools - and maybe the technical solution is different on the next platform, I don't know, but providing the end user with the tools to make that choice themselves and providing a very safe experience for their children, maybe also like religious objectives, or educational objectives or whatever, to block or filter out or make different choices for the programming of the person that they are responsible for.

MR SIMSON: Thank you.

PROF SNAPE: That has been a very helpful presentation and there's a great deal in the submission, including the attachments which were the submissions to those other inquiries, and thank you very much for those and for your exposition.

DR RITZ: Thank you for giving us the chance to talk with you.

DR WAYN: Thank you.

PROF SNAPE: Thank you. We will now take a break for perhaps a quarter of an hour and then we resume afterwards with Macquarie Bank, if Macquarie Bank is here. So we will resume at approximately 5 to 3.

PROF SNAPE: Welcome back, and we now welcome Macquarie Bank and we have two representatives from Macquarie Bank and we would ask you each to identify yourselves for the transcript, please, and then whoever is speaking first to speak to the submission, please.

MR BEST: Thank you. My name is Bill Best.

MR LERNER: My name is Jonathon Lerner.

PROF SNAPE: If you would just like to say your positions in the company, please.

MR BEST: I am an executive director in the equity capital markets division of Macquarie Bank.

MR LERNER: I am an executive within the same division.

PROF SNAPE: Thank you. Mr Best, you are going to speak?

MR BEST: Thank you. We have made a submission which is short, and we think simple, and it is really based on our experience from the recent Ten Network Holdings IPO. In essence we're proposing that the Broadcasting Services Act should be amended to fall in line with, in particular, the Qantas Sale Act, so that there is an exemption to the foreign person definition in the BSA relating specifically to what we would term as institutions, fund managers, superannuation funds. The Qantas Sale Act defines or excludes a foreign-owned fund manager from the foreign person definition where that fund manager is managing more than 60 per cent of its funds on behalf of Australian persons. That would seem to us to be a very logical and reasonable approach for the act to take.

In essence these fund managers are custodians of the Australian superannuants, and to the extent that they're precluded from participating in listed media companies because of the foreign ownership restrictions, that is impacting on the maximisation effect or the appropriate allocation of the superannuation funds for Australian investors. That is the essence of the submission. It is supported by our experience in the Ten Network Holdings IPO.

From that experience I can say that there is an enormous amount of misunderstanding amongst the institutional market as to exactly how those provisions apply. In particular the definition of "beneficial owner" as opposed to the "applicant" for shares is widely misunderstood. We had the somewhat ludicrous situation where institutions that we perceived as being a hundred per cent foreign owned were indicating that the beneficial owners were in fact Australians and therefore they felt they had the ability to apply for shares, whereas other institutions that had a lesser level of foreign ownership and had a better understanding of the act were precluding themselves from participating because they understood that it was both the applicant and/or the beneficial owner as opposed to applicant for shares is widely

misunderstood, and we had the somewhat ludicrous situation where institutions that we perceived as being 100 per cent foreign-owned were indicating that the beneficial owners were in fact Australians and therefore that they felt the ability to apply for shares, whereas other institutions that had less level of foreign ownership and had a better understanding of the act were precluding themselves from participating because they understood that it was both the applicant and/or the beneficial owner who could be classed as foreign.

PROF SNAPE: Good.

MR BEST: In our submission we also provide a table of the 20 leading Australian institutions and classify them according to their ownership. Of those 20, some nine are 100 per cent foreign-owned. I think another nine approximately are Australian-owned but have a level of foreign ownership. In many instances, particularly for those institutions that are listed, it is almost impossible for them to estimate their level of foreign ownership at any point in time. They have to have effectively an instant read of who has been purchasing their shares on the market, who has registered under the act, and in fact what level of foreign ownership that party has, so that can be traced through to ultimately arrive at their level of foreign ownership.

We had an experience subsequent to the Ten Network Holding's float where we were asked to contact the register by a foreign owner who was interested in buying shares, to ascertain whether in fact there was the capacity to do so. The register could not tell us. In fact a month later the register still couldn't tell us the level of foreign ownership in that stock. So we had to go back to the institution, who's a large foreign institution who wants to invest in the Australian media, and tell them that we could not give them an answer.

PROF SNAPE: Thank you very much. It's a simple point perhaps, and an important point. You were telling us the difficulty of monitoring the current rule. What about the monitoring of the alternative rule - that is, that you were suggesting that more than - at least 60 per cent of the funds were in fact Australian funds that they were managing. Would that not also be subject to variations up and above and below 60 per cent so that you can be bobbing in and out? And how easy is that to monitor?

MR BEST: I don't have an answer for that. I agree with you it would be subject to that. I suppose for the larger institutions their mandates tend to be at least 12 months, so that to the extent that they're managing funds for a wholesale superannuation client they should be able to calculate pretty accurately the level of the foreign ownership of their funds. But I agree that is an issue. I would suggest that it's not as difficult an issue as the current position under the BSA is.

PROF SNAPE: Part of that would be a very important part of the answer, really, wouldn't it?

MR BEST: Indeed, it would, and I imagine that there are - I'm sure there are people who are qualified to answer, because there are people who are responsible for monitoring the registrar of Qantas and institutions who potentially would breach that rule if they have less than 60 per cent of their funds owned by Australian superannuants, who must have some internal mechanism of identifying when that happens.

PROF SNAPE: So you don't have any direct experience of how difficult that would be?

MR BEST: I don't.

PROF SNAPE: Anyone in Macquarie Bank that you could draw upon to - - -

MR BEST: There's potentially someone within our investment management area, some of our marketing people who are marketing to wholesale funds, who might be able to.

PROF SNAPE: It might be helpful if you could put in a supplementary note - - -

MR BEST: Sure.

PROF SNAPE: - - - to give us the experience of Macquarie on that, because if we were to be convinced by your argument in principle but then were to recommend something that was even more difficult to monitor than the current - - -

MR BEST: I understand.

PROF SNAPE: - - - we might be looking a little bit foolish.

MR LERNER: The argument in principle, by the way, has to do with the foreign ownership - has to do with the control of the fund itself, and these managers are just passive people. So that the level of foreign ownership doesn't go to the heart of our argument.

PROF SNAPE: Okay. Thank you. Do you have any direct experience about the valuation of TV licences in Australia?

MR BEST: I don't, no.

PROF SNAPE: Okay. I think in that case I should thank you very much for the submission. It's brief and our questioning has been brief, but that doesn't detract from the importance of it. Thank you very much.

MR BEST: Thank you, and I we'll look forward to coming back on the supplementary.

PROF SNAPE: We turn to Radio 2SM, and thank you for your submission and thank you for coming. We have two representatives from Radio 2SM.

MR MURPHY: My name is Chris Murphy. I'm the CEO and chairman of Radio 2SM and Digital One, the holding company for 2SM.

MR SPURWAY: I'm Mark Spurway, the chief general manager of 2SM.

PROF SNAPE: Thank you. We have your submission. Who is to speak to it?

MR SPURWAY: If I can, please. One of the reasons we wanted to put a submission in to the Productivity Commission was based on four or five points that we felt are pressing in the industry at the moment, and I'll go through these in order of the submission that you received.

The first one is on digital radio, the broadcasting policy. 2SM as an independent station endorses the DRAC - which is the Digital Radio Advisory Committee - recommendations which were handed to the Federal government in August 1997. These recommendations included the automatic access of existing commercial and public broadcasters to the Eureka 147 digital spectrum by the year 2000. That actual date has now lapsed in planning process.

Following the DRAC report the government, under the current minister, decided to set up a steering committee to look at the legislative time-frame. That steering committee is now in place and the report will be tabled to the minister by the end of this year or early next year. This is about two years behind what the DRAC committee recommended. One of our fears is that because the Federal government has already announced a digital television policy with a launch date of January 2001 we believe the radio industry is falling behind in the digital approach, which discriminates against the radio industry, both public and commercial.

It's not about technical specifications of the Eureka 147 system, because they've been long evaluated by the ABA and the Department for Communications over the last decade. It's basically I think the government have got into a log jam with digital television and the ABA planning process with the department is carrying that with it, and it's leaving other broadcasting areas behind. One of the reasons we're very strongly focused on digital radio broadcasting is because there are efficiencies of scale, with smaller transmitters required, the size of a filing cabinet to transmit 20 stations. It also ensures a better environmental outcome for future digital transmission compared to the current analog systems, and we did put this in the submission.

There will be a large capital cost for digital radio broadcasting, as there is with television, and we have a strong view that existing broadcasters should not be charged by government for entry into the digital technology. In fact, to encourage the broadcasters to take up the option there should be tax concessions for plant and

equipment and receivers over perhaps the first five years. As digital radio requires new receivers simulcasting on existing AM and FM frequencies must continue for a considerable period. This is one of the major recommendations in the DRAC committee report. Some have suggested that should be up to 20 years, but in reality, depending on when there's saturation of digital receivers will depend when the analog services can be turned off.

Another major issue facing AM broadcasters is the current competitive disadvantage of the AM band. The Broadcasting Act as it stands at the moment in our view is anti-competitive because of the current mix of AM and FM broadcasting licences. The restriction of commercial FM licences since the introduction of the service first on air in 1981 - the licences were issued in 1979- since that time there's been a strong growth of listening and revenue to the FM band at the expense of the AM band.

In Sydney there are four FM commercial broadcasters and five AM commercial broadcasters; the same in Melbourne. 70 per cent of the advertising revenue is now placed on the four commercial radio stations in Sydney, leaving 30 per cent between the five AM stations. The growth of the FM band has been so strong in the past 10 years that the future viability of AM stations will be restricted to talk and information formats. This means that AM stations cannot make a competitive decision about the type of format they want to do as FM stations can. However, there are no differentiations of cost between the AM and FM band.

The stations have the same applicable government fees, they have the same operating costs. The only difference, operating costs are basically internal, which comes down to marketing. We believe that all commercial stations - and the ABC, frankly - should be given the option to convert to FM ahead of any new FM licences being issued under stage 2 of the ABA planning process. As has happened in most overseas countries, the restriction of FM licences has been lifted in the past 15 years, which allows the existing AM operators to convert or take up the opportunity or not take up the opportunity to use the technically superior sound of FM.

The current policy really in television terms means half the radio stations in Sydney are broadcasting in black and white, while a minority of the other licences are in colour, which is the FM licences. While the digital radio planning policy remains unannounced, it is the long term goal of the industry. There still needs to be analog services for at least 20 years and that's one of the reasons why we argue the toss that there should be FM services. The latest figures available from the ABA indicate the current poor state of AM broadcasters. In the financial year 97-98 the 19 metropolitan AM stations grossed \$139 million, a total profit of only \$3.8 million in total. In comparison, the 20 FM commercial stations grossed 268 million, with a total profit of 68 million, and of this 25 per cent of metropolitan stations were in loss in the same year, 97-98. All of those AM.

The costs of running an average AM station in the metropolitan area is 7.5 million, with revenues around 7.7. These are figures which would be in the

supplementary document that you would have received. And on the FM side, their average costs are 9.5 million, which is basically more costs in the marketing area, with revenues though of 12.7 million.

One of the other areas we looked at also was the effect of radiation from transmitter facilities in residential areas, always a hornet's nest. Just briefly talking on this, this is one reason why we strongly believe digital broadcasting should be fast-tracked. In Sydney for instance we have six high-powered AM sites at Homebush, right in the middle of the Olympic sites. These were all basically built in the 1930s when it was a major industrial wasteland. There were no houses around it, there were certainly no sporting facilities around it. Sydney is not the only city facing this problem. In Melbourne you've got major sites in most of the major suburbs. One for instance is 3UZ, which is Sport 927 They are in the middle of Heidelberg, in a residential area now.

This issue is going to become very critical in the next five or 10 years, as will occur in Homebush post-Olympics. At the moment there's a lot of housing development going on close to all the major transmitter sites. We believe environmentally and also for reasons of interference that the residents once they're in there after the Olympics will start pushing very hard to get those sites out of Homebush. There are leases involved with that, but the stations do not own any of the sites at Homebush; they're all leased from government authorities.

So we run the risk over the next I think five to seven years of being in a position where we could be forced off those transmitter sites. The alternatives in Sydney are not many. In fact basically, unless you go on to the ABC sites right out in the west there's not very many sites available at all. And that's one reason why we think digital radio broadcasting will allow us to get on to more efficient sites and the analog sites will be phased out at some stage.

We have a small submission on cross-media ownership as well. Our view is there shouldn't be any controls on cross-media ownership between radio and television stations. However, there should be some controls on foreign ownership of electronic broadcasting. At present there's no limit on overseas ownership of radio, so the possibility of all commercial radio stations in Australia falling to foreign ownership is a real threat to us, and the cultural independence and diversity of views in this country I think could be threatened with that. There is a view that foreign ownership should be restricted in the metropolitan markets to around 50 per cent.

The other issue is level of ownership of licences in each market. At the moment under the act there are two to a market, which is sufficient given the number of present licences. If there are to be a number of new high-powered AM and FM licences issued in the future, the ownership rule could be then comfortably relaxed to, say, three to a market. In New Zealand, for instance, they totally deregulated in the 1980s and there was a lot of heartache for the first two years, but after the two years the actual ownership situation settled down. In Auckland, for instance, there are 32 commercial services now, 18 of those being surveyed in a potential audience

survey of 882,000. In Sydney we've got nine commercial stations and five public stations being surveyed.

What happened in New Zealand, there was a scramble for ownership in the first two years. It has now settled down, with a number of stations operating under the one company, and in some cases up to five or six stations are actually owned by the same company in the same building. The only provisions in New Zealand are based on revenue. The stations, under anti-competitive legislation there, can't exceed a certain revenue based in each market. But as a model we believe in Sydney if there were 18 commercial radio stations issued on AM and on FM here, you could still have a current mix of ownership. There are currently six owners of Sydney commercial radio stations. You could actually take the ownership out to three and still have the same level of ownership across the spectrum.

PROF SNAPE: Thank you very much. That's very interesting. We have had a lot on television and not so much on radio, so it's nice to get a bit on radio.

MR MURPHY: I think that's the way it is in Australia at the moment.

PROF SNAPE: Yes. Is analog tying up spectrum in the sense that if you're going to be broadcasting for 20 years, simulcasting or simultaneously broadcasting in both, is that going to be tying up analog spectrum that could be used for other purposes?

MR SPURWAY: It could be if they're going to be more like the community licences, for instance. In some countries - Denmark, I think, have just shut down the AM band. There's nothing on it. So I think where the department are coming from is basically they're just trying to get to a stage where the AM and FM - I mean, AM has been around since 1920 and FM since around the war. I think the planning process in the department of saying, "Well, it's analog, it's old technology, eventually it'll have to stop" - there is a view that if the commercial radio was cleared from the AM band, for instance, that could be then turned over to all community stations in a high-powered level - - -

PROF SNAPE: So you see it's a problem with not analog versus digital so much as the AM versus FM?

MR SPURWAY: In the analog services, yes, AM versus FM is a real issue in competition - - -

PROF SNAPE: But if you were able to close down the analog earlier on, within the 20 years that you're foreshadowing, then would that be of significant community advantage?

MR SPURWAY: It's certainly going to give the option for listeners - new technology and additional services - because under the provisions of the DRAC committee report they are looking at all community stations also being allowed access onto digital. I think in Sydney it could be up to 40 stations. And with the

proliferation of datastreaming that comes with digital broadcasting it will allow a quite diverse range of product.

MR MURPHY: Is the question related to the potential FM interference with television analog broadcasting?

PROF SNAPE: No. Let me go back a step. In the area of television we hear that because of the requirement to broadcast in both digital and in analog until 2007, that's going to be tying up a great deal of spectrum. We've been exploring whether it would be advantageous to find a way of bringing that date closer so that they could stop broadcasting in analog and then that spectrum would be available for other purposes. I am asking whether it's the same thing in radio.

MR MURPHY: I think overall it's to do with the problems that we're dealing with at the moment. If you talk to Bosch or Mercedes to try and find out when they're going to start producing cars that they're going to import into Australia that are actually going to have a digital receiver or digital radio in their car, they hit us over the head with the same question and say, "Yes, but what's happened? The radio industry, the government, and ABA, don't actually have a policy. When you guys have a policy, we'll start telling the home base what we should do." I think overall, whilst we stand off the issue of digital, the analog problem just grows and creates a bigger problem.

Yes, I hear fundamentally what you're saying: if we were able to shut down the analog system quicker - I agree - I think it would be much better for everybody, and everybody would be happy. I mean, the world is moving at a massive rate towards digital, and in Australia we're sitting here at the moment, particularly in the radio industry - we sort of seem to be the poor cousins of the media - sort of left on the side, and we don't even have a directive at this stage.

PROF SNAPE: Do you see a way, once the matter is settled, of in fact hastening that conversion so that you wouldn't have to keep broadcasting in both for as long?

MR SPURWAY: I think the issue there is there are a number of broadcasters who may be hesitant - particularly those affluent FM stations at the moment - about embracing new technology and destabilising the current status quo. In reality, it's a case of - which has happened in past policy - you have an option to take up the option for 12 months. If you don't take up the option of digital broadcasting you lose the right to actually take it up. So therefore you get everyone on as quickly as you can. Once everyone has committed to do it, it's then a marketing issue to get people to buy the receivers, as the television industry is going to have to face. The radio industry is going to be in the same position.

PROF SNAPE: Is that the policy, or is that your suggestion of a policy, that you would have 12 months to get on or you don't get on? That is your suggestion, is it?

MR SPURWAY: It's a suggestion of a policy. It is certainly being discussed at a

department level, because there has to be a period where existing operators who are given the right to go to digital will actually make the decision. If they have five or six or seven years to make the decision, they won't make it - a lot of them - in the short term.

MR SIMSON: But we would then have to buy new radio sets.

MR SPURWAY: That's one of the reasons why we're looking at this long period of simulcasting, because it's going to take some time to get up to saturation.

MR SIMSON: And as I understand it, they cost hundreds of dollars.

MR MURPHY: Can I just step in, because I've had this argument a thousand times.

MR SIMSON: Sure.

MR MURPHY: It's the same issue as what we're doing with CD players. CD players in the early eighties were 12 or 14 hundred dollars. It was some sort of prestige item, an item that the whole family once used to save for for their Christmas present or whatever else, and as we all know now you can buy CD players for 2 or 3 hundred dollars or a hundred dollars in some cases. It's like your laptop computer that for one minute is \$6000 and a year later it's \$3000. You're dealing with the same issue, and also dealing with a situation where radio now, and a big part of radio is your car. Once we've got a clear policy on this, I think you'll see the floodgates open up, particularly the German manufacturers - the luxury car, initially, and then going on to the bigger makers such as Ford and the Japanese and so forth - you'll find that most Australians will be able to access digital radio in a sense free without buying a receiver, because it will be in their car.

MR SIMSON: Yes.

MR MURPHY: We're in a situation where even the big fellows behind their hands in secret meetings all know the benefits of digital. They know there is less radiation, they know it's a better delivery system, they know it's cleaner and we can offer more services. All of a sudden people in Sydney will be able to listen to reggae music because of the bandwidth that's exposed, and they'll be able to listen to jazz music and all different forms of music and different types of programming, international sports. That's what's going to be available to the Australian people through this extra bandwidth.

What we're dealing with at the moment is you've got us down here - the little guys - I'm a solo owner, one of the few in Australia, who came back to Australia with a view that, you know, this is a very exciting place to be into the 21st century - you know, digital is at the forefront, this is terrific. I got back here four years ago, I bought 2SM, I thought, "This is a terrific opportunity for me, for my family, for Australia," and we've put a lot of money and a lot of time into it, and it's quite frustrating - to be really frank - to have hit this wall, because what we're really dealing

with is the fellows on the other side of the fence trying to protect large, large revenue streams. You don't have to be a rocket scientist to work out some of these figures here that you see with AM and FM.

But, as I say, those fellows on the other side of the fence know that digital is coming. They know it's a better delivery system. They know it's more efficient. They know that there's more revenue streams and more programming opportunities. But at the moment - we're in the middle of a political ping-pong match - I'd just like to see some sort of clear directive because I think - you know, I will personally go and see, if I have to, every car manufacturer and hardware manufacturer in the country to motivate them and set up programs and marketing opportunities to get this thing going. We just need some assistance and directives that Australia should have the same opportunities as the rest of the world presently has. The Canadians have taken a very aggressive, positive view on this. I don't want to see Australia again - with the technology of this issue - get left behind another 10, 15 years.

MR SIMSON: What's happened in Canada?

MR SPURWAY: They have embraced the system we have in this country. The commercial and public broadcasters commenced on air in October last year in Vancouver, Toronto, Montreal, and Quebec. The first phase is basically to get all the metropolitan markets up onto digital, which they now are - - -

MR SIMSON: Simulcasting, though?

MR SPURWAY: Yes, simulcasting. Again, they've got a very similar policy to what the Australian framework certainly proposes. They have actually run into some hurdles with the legislation over datacasting because they've restricted that to 14 hours a week and it's become a bit of a minefield, so they've actually got to go back to the parliament and change that.

MR SIMSON: This is datacasting over radio?

MR SPURWAY: Yes.

MR MURPHY: That's right. Digital radio allows datacasting.

MR SIMSON: Yes, I appreciate that.

PROF SNAPE: And they have been then able to define it, have they?

MR SPURWAY: Yes. What they have basically done is it allows for what is called program associated data to be streamed, but only for 14 hours a week, and the broadcasters are saying this is not enough.

MR SIMSON: Any moving pictures?

MR SPURWAY: It's very hard to get moving pictures at the moment because of the kilobit range, but technology probably eventually will deliver some of that, but it won't be - - -

MR SIMSON: Sorry to interrupt, I don't mean to - - -

MR SPURWAY: No, no, the main focus is the audio stream. Under the act or under the guidelines each station will get 256 kilobits. To get CD-quality sound you've got to have 190 kilobits. It doesn't leave you a lot left over. With that you can do limited program-associated data, which is stills. You could have album covers, you could certainly display weather/traffic information. What they are doing in Canada on all the major freeways is actually putting the - the roads and traffic authority over there is using it as an emergency system, and there are sensors in the freeways for ice, snow, and also just general road conditions which you can actually get on your digital receivers.

The next phase for the Canadians is to look at it from an emergency - to work with government on that issue, because you can actually stream into the cars and into homes, but they're very advanced on it. They are running into a situation where they are now lobbying very hard Detroit and most of the American car manufacturers. They have the Europeans basically going in the right direction, because the Europeans have adopted the Eureka 147 system. The United States have yet to make a policy, and I think that's been a problem - a determination for cars.

PROF SNAPE: Just coming back to the costs - and I understand what you were saying about CDs and so on, but there's no technical reason why you will expect the cost to remain substantially higher than - - -

MR MURPHY: No, it's the same philosophy.

PROF SNAPE: - - - than analog receivers in the future?

MR MURPHY: Yes, that's right. It's like those cameras, the little mini camera that just came out. Somebody bought me one in New York and it was \$800 a year ago and I dropped somebody at the airport the other day and I was checking the duty free store and I saw it was \$250. We're just talking about the initial cost of production and low production runs, catching up with mass production, and obviously the consequences of that.

Can I just bring up another point here, because I think this issue gets a bit confused with an overall what I call banner which you've been involved in all this week. People are getting pretty locked up with a concept called digital radio. I prefer to call it digital delivery systems because whilst we're sitting here in Australia getting over-consumed about what's digital radio and what about the receivers and what about this, we're looking at this little pea, and all of us are sitting here focusing on it. Whilst we're doing that, presently there's over 5000 digital radio stations on the Internet.

Presently, a lot of them receive by analog systems such as the telephone line, but with the onslaught of broadband and satellite delivery systems they become digital radio. There's no difference. Let's clarify it. Digital delivery systems are fast. Whilst we're focusing on a pea in Australia, in a sense there's a tidal wave coming this way of products that are available and most of them initiate out of America. Most of those 5000 radio stations are initiated out of America. So you've already got people sitting here in Australia sitting on the Internet picking up audio services out of Los Angeles or New York or Texas or whatever it may be.

MR SIMSON: But they're not over the broadcast spectrum though, are they?

MR MURPHY: No, but you're talking about the uptake of computers. If you just look at a catalogue in your Sunday paper, all your computers now are sitting there with large speakers on the side, the new modems, and you've got now - Foxtel and Optus vision will be announcing in the very near future, they will actually have radio on their cable bandwidth. They will actually have audio services. So next week or next month us and all our other radio fellows will actually have competition in that area. People go home and instead of maybe going to the kitchen or turning on the clock radio, whatever they have in the kitchen, to maybe catch up on talk radio or music, they can actually go there and flick that over to channel 37 - - -

MR SIMSON: On their computer.

MR MURPHY: No, on the television.

MR SPURWAY: On your pay TV channels. They'll have about nine or 10 audio feeds. You've got all the spare channels from 40 to 49. So they will be able to - - -

MR SIMSON: It's interesting as to whether they come within the Broadcasting Services Act or not.

MR SPURWAY: Probably not.

MR MURPHY: Presently they don't.

PROF SNAPE: I'm not going to comment.

MR SIMSON: We're just talking aloud. Are you streaming over the Internet at the moment?

MR MURPHY: No, we're not. We have been working on development of Internet radio. I have personally for four years because I was in the music business for 22 years, and one of the areas of the music business is going through is, we're also going through a stage where you're going to, in the near future, see a dovetailing of broadcasting, music delivery systems being done digitally.

MR SIMSON: And music on demand.

MR MURPHY: Yes. So we're working on that area, which is fascinating, because I personally as an Australian don't want to sit here and see that my kids - the only way they've got access to audio services on the Internet is to listen to Howard Sterne out of New York. So we are taking a very proactive view in the type of staff and the upgrading of all our technology to have an Australian Internet radio so we can sit here and do arrangements with the large ISPs to supply audio services created out of Australia. I see no reason, just because they're Americans, why we have to sit here and be on the receiving end of their fight of the onslaught - it's a tidal wave, I'm telling you, of 5000 radio stations. Again, the analogy, we're looking at a pea here, and it will be irrelevant.

MR SIMSON: Is that 5000 narrowband or broadband?

MR MURPHY: Presently it's either. At the moment it's narrowband - well, it's narrowcasting, in a sense. It's 5000 2SMs - 5000 radio stations already in existence sitting on, in large clusters - you might have heard of broadcast.com which just got bought for \$1.5 billion just the other week because what they've done is created huge clusters which will sit on the back of a Yahoo search engine or an AOL or whatever it may be. At the moment, because of the next layer of technology which you've heard about - I heard AOL speaking about it - is broadband. Suddenly when you get broadband your computer suddenly has the same quality as an FM radio station; some say better. So those radio stations are coming down. Presently they're coming to us in Australia because most of our services are through what they call a dialler, the telephone wire.

MR SIMSON: A copper wire?

MR MURPHY: Yes, a copper wire, but in the future obviously through broadband which will be your cable or satellite or whatever else. My only view on this is if we're able to break open the digital floodgates, everybody, even the big fellows, will just say, "Let's forget about this, let's all move to the next stage now," and everyone can start working with the car manufacturers, the hardware manufacturers, to create solutions.

MR SIMSON: So your concern is that you could face increasing competition from broadband delivered digital competitors, both Australian and foreign.

MR MURPHY: That's right.

MR SPURWAY: Absolutely.

MR SIMSON: Just on a related point, I'm interested in what you had to say on cross-media. If I turn the question around backwards, why as an independent radio operator you're relaxed about the relaxation of cross-media?

MR MURPHY: I think a perfect example is digital television. Right now digital television has got all the resources and the time spent on them. Digital television will allow, as you've heard and you know now, direct access to the Internet. If you have direct access to the Internet, you have direct access to digital radio. So at the end we're all going to end up in a similar sort of boat, and I don't think the actual two are a threat. Television is already protected with the foreign ownership issue, which I'm reasonably big on, in the sense of - well, to protect it. So again, it's not that I want to brought out by a television network tomorrow, I just think that the overlayering of the two issues is just going to come anyway.

MR SPURWAY: If you go back to the seventies, back before the current act, when there was cross-media ownership between television and radio, they existed in harmony for 30 years - 1956 to perhaps the eighties - with the Macquarie Network and Channel 7, apart from any newspapers - but they also owned the Macquarie Network.

MR SIMSON: Could you tell us, please, the cost of converting 2SM in Sydney to digital, or what you estimate that to be?

MR SPURWAY: If we were a stand-alone operation, to do it by ourselves with say six sites, which you'd probably need - because with digital radio you need smaller transmitting facilities on medium density buildings, so for instance, you'd have one here in North Sydney, you might have one at Hornsby and you'd have one down Sutherland, so you'd need about five or six sites just to get the coverage and your radio locks into whatever the strongest signal is. Our estimate is around \$3 million to do it.

MR SIMSON: That much, is it?

MR MURPHY: It all depends. I say that because I know what we're supposed to do is to cry poor and how much it's going to cost and everything else. In saying that, again if we're able to be proactive in the issue, if it's an internal cost - and when I say internal, inside out building, the renovation of putting in two digital sound desks of \$250,000, revamping all our equipment and so forth and so on - no, it's not going to be \$3 million. If we're able to be proactive about this and go and approach our partner, other AM people, other FM people and start developing strategic alliances, and go to the big engineering firms and say, "Okay, why don't you guys operate these systems for us. We'll lease them for you as a cluster, as a group" - and that's what my frustration is. It's like if this barrier is pulled down and we've got some policies in place, there are enough intelligent people in this country - I know we try hard not to be sometimes, but there are - that we can all start to work together in creating those issues.

MR SIMSON: That cost you mentioned of 3 million, just putting aside cooperation alliances for a moment, to what extent is that scalable in the size of your radio coverage? Is that pretty much what you'd have to pay whether you intend covering the whole Sydney or half of Sydney or whatever - - -

MR SPURWAY: That would be the whole of Sydney. The one thing about digital radio multiplex sites, you can actually, as I said, broadcast up to 20 stations from a transmitter the size of a four-drawer filing cabinet. What that allows you to do is then get into consortiums with other stations, and on our estimates, if every radio station in Sydney got together as another company, as a transmission company, the capital costs would be high but the leasing costs on a yearly basis would be about 60 to 70,000 dollars. That's for the transmission facility.

MR SIMSON: Individual?

MR SPURWAY: Each - which allows you the entry point which is not going to hit you too hard. The level of costs, as Chris has mentioned, will be internally in the station because you have to have digital production equipment, digital mixing, and if you want a datastream you've got to have all those facilities. That then comes to a cost, depending on the level of service you want to provide, whatever the station is. If it's someone like the ABC, they're going to be up for huge costs because they have scores of studios to fit out. But a lot of stations now are actually moving towards it because their equipment that they're actually replacing now is all digital so they're getting more digital mixers and instead of having reel-to-reel tape-recorders we're having digital mixing systems now. So stations are actually moving towards it, despite there being no policy.

MR MURPHY: That's a very interesting point, particularly for someone like myself. Mark comes in and hits me every couple of months with, "We've got to do this and it's going to cost this" and I say, "Well, how much of this equipment are we going to be able to use when we go digital?" "Well, some of it; maybe not all of it." So you're perpetually in this sort of seesaw situation of whether you should upgrade analog equipment. Again, we're not the multibillion dollar organisation, it's a family-owned business, so we have to sit there and analyse, whether it's 50,000 or 200,000 dollars. It would be great to know where we're heading because then we can say, "No, we're not going to spend \$125,000 fixing this old equipment, we'll actually put that money into putting a digital desk in." So we're in this perpetual sort of go-forward, go-fast type of environment.

PROF SNAPE: Of course when you said that a number of companies might get together and establish that facility themselves, it could of course be that it's done independently of any of the - - -

MR SPURWAY: Absolutely.

PROF SNAPE: - - - as a transmission company formed quite independently.

MR MURPHY: And we're pushing for that.

MR SPURWAY: Yes, absolutely. We'd prefer that. I think like what has happened in the UK and like what has happened with the recent privatisation of the NTA here,

there is the ability of a body to come in and say, "We'll look after your transmission." I think the days of radio stations owning their transmission sites are coming to an end.

PROF SNAPE: NTL hasn't put that to you?

MR SPURWAY: Yes, we've had discussions with NTL. I think, yes, they're very interested but they have only just started taking over the NTA. I think long term, yes, they'll be a commercial player - absolutely.

PROF SNAPE: That's been very, very interesting and it's helping to fill a gap. I'm being told I have to ask something. Will you be able to, with digital, get little radios, Walkmans and things?

MR SPURWAY: Yes. One of the things that in some respects will help us is the Canadian companies ploughing millions of dollars of research into digital, but in the UK the BBC as part of its charter have to spend a lot of research and development on it. They've been operating now for two years. They are developing, in concert with a number of manufacturers, small Walkman units with the new technology which are click and drag. Basically instead of having knobs on it, you'll just press a small screen which turns it on. It will be like a mouse or a computer screen.

PROF SNAPE: What about the contents standards, cultural standards and so on?

MR SPURWAY: I think it's being reviewed. FARB, the industry body, have just reviewed the content. I certainly have no problems with the content. At the moment it's fixed for new music for the younger formats. It's fixed at about 30 per cent. As it goes into the older 40-plus demographic with easy listening and classical where there's difficulty getting locally produced material, it goes down to about 10 per cent.

MR MURPHY: Australian content.

MR SPURWAY: Australian content, yes.

PROF SNAPE: No problems with all of that?

MR SPURWAY: No.

MR MURPHY: When I was in the music business it was a major debate. I'd like to say something in closing.

MR SIMSON: Yes.

MR MURPHY: The other issue is that, as you're aware, the Australian Broadcasting Authority and the minister for communications have been in the middle of also a part of what's delaying digital. It's not just digital television, it is this issue of the new FM licences and so forth. I just want to say, the new FM licences in any major market are going to put probably people like myself and other businesses like

myself in other major cities out of business. I don't care what anyone tells you. That's a fact. So it's a great mechanism for a couple of offshore companies to come in here, some of them based in tax havens, to purchase and pay 25 to 35 million dollars for FM licences here in Sydney and potentially in Melbourne, and it's terrific for those companies that are based in those particular tax havens to have those positions, and for people like us to be pushed out of business. I think it will be quite a sad day for Australia.

MR SIMSON: Thank you.

PROF SNAPE: Thank you very much. You've been very helpful.

MR SPURWAY: We'll add to that submission with a couple of other - - -

PROF SNAPE: If you would please supplement - yes.

MR MURPHY: Because there's so much confusion about digital we've actually created, using a Canadian model - it's called A Day in the Life of Digital. It's like a sampler waking up next to your digital clock, what the services are. We'll get copies of that for you.

MR SIMSON: Thanks very much.

MR MURPHY: Because in three pages you understand what it is.

PROF SNAPE: Great. Thank you very much for that. As I said at the beginning of the day, I would invite anyone who wishes to make an oral presentation if they would wish to do so. Again, no takers? So I say thank you very much and we will now suspend the hearings for today and resume at 9 o'clock tomorrow morning. Thank you very much.

AT 3.53 PM THE INQUIRY WAS ADJOURNED UNTIL
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