PRODUCTIVITY COMMISSION
INQUIRY INTO BROADCASTING

SUBMISSION FROM THE
FEDERATION OF AUSTRALIAN
COMMERCIAL TELEVISION STATIONS

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SUMMARY OF SUBMISSION

Governments everywhere in the world have intervened in the broadcasting industry to secure a range of economic, social and cultural objectives. Australian Governments have done so for many reasons. Some of these reasons are now of diminishing relevance, while others remain highly relevant on social, cultural or economic grounds. This submission assesses key broadcasting policies, in order to ascertain whether the public benefits outweigh the costs to the community of the restrictions imposed on the industry, or on competition within the industry.

Currently, Australia has one of the best and most comprehensive free-to-air broadcasting systems in the world. It offers diversity of programming, quality, national coverage and local services, and programs reflecting our identity as Australians.

This has been achieved through a structure of broadcasting developed over many decades. It involves a hybrid system of advertiser-funded and government-funded broadcasters. The advertiser-funded commercial free-to-air services are the predominant element in the system. These locally-licensed services are highly competitive and efficient. They provide much more local service and locally-produced programming - the costliest service components - than would be expected in a country with such a small population. They are able to do this because of long-standing (though recently reviewed) regulatory limits on the number of commercial services in each licence area.

These impressive (and costly) service levels are already proving hard to maintain in the face of limited advertising growth and expanding competition from other media. Any major deterioration in the operating environment would mean that stations (individually and collectively) could no longer provide anything approaching current levels of local service and Australian programming while operating profitably. The most significant change in the operating environment would be the introduction to major markets of new commercial free-to-air services.

Last year's digital conversion legislation recognised that there is a fine balance between profitability and quality of service that has to be retained over the financially-challenging period of transition to digital television. The digital legislation provides enormous consumer benefits. It also retains an operating environment in which broadcasters can meet their existing public interest objectives, as well as newly mandated requirements: high definition television, simulcasting, equivalent digital coverage and closed captioning. The consumer benefits of this legislation far outweigh its unusually prescriptive nature, and any detriment resulting from the restrictions on competition it contains.

The community expects that a strong and vibrant free-to-air industry will provide quality free television - a service which is overwhelmingly the main source of entertainment and information for Australians. In this submission, FACTS directs attention to the central importance that free-to-air television plays in the lives of ordinary Australians. The key policies already referred to are essential for stations to meet the objectives of the legislation,

such as diversity, responsiveness to audience needs, high quality local service and innovative programming.

Stations could meet these objectives more readily if changes were made to some broadcasting policies which are not achieving their objectives (for example, requiring the production of certain types of children's programs that children are not watching), or which force schedules and resources into catering for types of programs which are not in demand by the audience.

Television licence fees also fail the test of overall public benefit. They have been allowed to expand to the point where they clearly impair the efficiency of the industry, and its capacity to meet community expectations. These taxes - which are unique to commercial television and radio - divert resources which would otherwise be used to meet public interest objectives such as diversity, responsiveness to audience needs and high quality programming. They should be re-assessed.

The current Australian program quota system administered by the ABA is prescriptive and inflexible, and acts as a constraint on industry growth and development. By inhibiting diversity and responsiveness to audience needs, it also runs counter to key objectives of broadcasting legislation. Consumer demand has seen Australian character, culture and identity reflected on Australian commercial free-to-air television. Within the existing industry structure, these consumer imperatives will continue to produce the results which quotas seek, but will do so in a more efficient and responsive manner. A continuing requirement for an overall level of Australian programming (a "transmission" quota) would provide community reassurance that extensive local programming would continue, while allowing sufficient flexibility for licensees to respond to changing audience tastes.

Other significant aspects of broadcasting regulation have proved their worth. The anti-siphoning rules ensure that major sport is still found on free-to-air television, which Australian audiences demand. Without these rules, major sport would migrate to pay television. The costs to the pay television industry are far outweighed by the public benefits of the regime.

The co-regulation system serves the public well, and promotes the objects of the Act. It does so at some cost to the industry but imposes minimal restriction on competition between stations.

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Appendices

1. PREFACE

FACTS, as the representative body for all 46 free-to-air commercial television services, welcomes the opportunity to submit its views to the Productivity Commission's inquiry into the Commonwealth legislation which regulates the commercial television industry and some other important broadcasting sectors.

While this submission represents the shared views of FACTS' members, some stations may also make separate submissions on other specific issues, such as the ownership and control provisions of the *Broadcasting Services Act*. Those specific provisions are therefore not dealt with in this document. FACTS will also provide a separate submission concerning the current rules for foreign-managed Australian investment funds.

2. WHAT BROADCASTING REGULATION SEEKS TO ACHIEVE

Why Governments regulate broadcasting

From its inception, Australian broadcasting has been subject to a complex regulatory motivation. Like almost all other countries, Australia has intervened in the broadcasting marketplace in order to ensure important public interest objectives are achieved by commercial broadcasting. Over the decades these have included a wide range of social, cultural and economic objectives, which are worth setting out in detail.

Social objectives for free-to-air broadcasting relate to:

- The free flow of diverse and fair information and opinion to sustain an informed citizenry
- The dissemination and regulation of election campaign debate and electoral information with broadcasting as an integral part of the democratic electoral process
- Censorship of unsuitable material on television and the protection of children
- The delivery of broadcasting services across the entire nation, including remote areas, and the delivery of services of local relevance
- The support of key social values relating to race, languages, equal opportunity and assistance for the disabled
- Contribution to national and local community interests and activities including sporting and community services activities.

Cultural objectives include:

- The development of a sense of cultural identity
- The creation and dissemination of programs of high quality and innovation
- The support of the successful export of artistic material as an expression of the community's cultural voice, internationally

Economic objectives often cover:

- The delivery of an adequate range of high quality free-to-air television services to consumers
- The development of an efficient television advertising industry to help fuel the economy
- The maintenance of an efficient and competitive free-to-air television broadcasting industry, able to meet a wide range of consumer (viewer) demands
- More recently, assistance in the development of a national information economy.

These kinds of objectives have been reflected in broadcasting regulation in every liberal democratic society[1]. They have been reassessed in other countries with the introduction of commercial broadcasting services - unknown in most European countries before the 1980's - and with the growing impact of convergence and new digital technologies in communications.

There has been a shift in the regulatory paradigm worldwide to take account of new technologies. The view of broadcasting as an economic service, freely traded in the competitive marketplace, has been increasingly recognised, by limiting market intervention to areas where clear public interest benefits are achievable. But the additional dimensions of broadcasting continue to be seen as important too.

Governments have re-affirmed their commitment to achieving the kinds of social, cultural and economic objectives outlined above by continuing the existing pattern of public interest regulation.

There has been a process of fine-tuning of free-to-air regulatory arrangements in both the United States and the United Kingdom, for example. However the fundamental policy approach that links free-to air broadcasting with the achievement of important social, cultural and economic goals through legislative/regulatory intervention in the marketplace has remained resolutely in place.

The key trends in policy-making in those countries has been to:

- ensure that the objectives and benefits of the *existing* free-to-air television system are successfully translated relatively unscathed into the digital domain so it can continue to deliver its public interest benefits

- explore and test the degree to which new media technologies including Direct-to-Home satellite, cable and broadband services can be regulated in order to assume at least some of the obligations which are currently imposed on free-to-air broadcasters.

In short, there is little basis for the surprisingly widespread belief that the regulation of broadcasting will be *fundamentally* changed by the impact of convergence and new digital technologies in communications. Indeed, in Australia itself developments such as the recent *Broadcasting Services Amendment (On-Line Services) Bill* demonstrate Government and public concern to bring new services under the broadcasting regulatory umbrella.

The *Broadcasting Services Act 1992* - recasting broadcast regulation

The *Broadcasting Services Act 1992* (the Act) was intended to comprehensively recast a broadcasting regulatory system which still reflected its origins in the early 1940's. It foresaw the introduction of many new broadcasting services, some of them quite different from existing free-to-air services. It also recognised that traditional regulatory approaches needed to be supplemented or replaced by new regulatory mechanisms which were generally less prescriptive and intrusive, and which included elements of self-regulation. At the core of this

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[1] Appendix 6 contains a brief review of broadcasting regulation in other countries of relevance to Australia.

regulatory approach was the notion of graduated regulation according to the key characteristics of individual sectors (with "degree of influence" seen as the central factor).

There is some inherent tension between the "light-touch" regulatory approach reflected in many areas of the Act and the continuing strong expectation, both from the community and the Government, that broadcasting will continue to play a major social and cultural role in the community. This strong view of broadcasting as unavoidably interwoven with the social and cultural life of the community and the nation is often not easily reconcilable with the alternative view that broadcasting is simply a service to be freely traded in a competitive marketplace.

These tensions are apparent in the Act as it was legislated in 1992. They have played out in many of the broadcast planning debates since then, with social and cultural factors emerging as more significant elements in many planning decisions than the words of the Act might suggest.

Major amending legislation since 1992 has generally given more emphasis to social and cultural factors than to broadcasting as a freely traded service. The introduction of the "anti-siphoning" list was an early instance of this. So too was the 1998 digital conversion legislation for free-to-air services. The tenor of that legislation reflects a strong desire for assured social and cultural outcomes from the digital process, and the chosen mechanism is detailed and quite prescriptive regulation[2].

Amendment of the Act since 1992 has been in response to particular problems or perceived needs. It has not been systematically reviewed and amended. There are gaps in the Act, and areas which need rethinking. The most significant such area is in relation to cable television. This submission deals in more detail with this issue later. For the moment, it is sufficient to say that, in 1992, cable was obviously not envisaged as a major means of delivering Pay television. The Act has no mechanism for regulating it because its structure is quite distinct from most other broadcasting services. As a result it falls through a very large crack, and is virtually unregulated. For reasons set out later in this submission, this omission poses current regulatory problems, which will increase as Pay TV assumes more dominance.

How the Act operates

The objects set out in Section 3 of the Act are sufficiently generally expressed to allow, on the face of it, widely differing regulatory approaches on specific broadcasting issues[3].

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2 In this respect, it is very similar to the 1996 Telecommunications Act in the United States, which set the framework for the introduction of digital television in that country.

3 "3. The objects of this Act are:

(a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and

(b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and

(c) to encourage diversity in control of the more influential broadcasting services; and

(d) to ensure that Australians have effective control of the more influential broadcasting services; and

(e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; and

Subsections (a), (c), (d), (g), (h), (i) and (j) reflect key social objectives. Subsections (e) and (f) reflect important cultural objectives. Subsections (a) and (b) reflect economic considerations. However, the regulatory policy set out in Section 4 of the Act is intended to shape the way in which these objectives are to be implemented[4].

Section 4(2)(a) is a particularly important provision. It reflects a need for regulation to strike a balance between the achievement of public interest outcomes for commercial free-to-air broadcasters and their need to operate as successful and efficient enterprises.

Indeed, the entire scheme in the Act is about striking balances of one kind or another between a range of potentially conflicting obligations and opportunities for commercial free-to-air broadcasters. They are often delicate balances which have been developed through experience in the Australian marketplace and influenced by the uniquely Australian mix of social, cultural and economic realities that contribute to local television industry conditions.

FACTS believes the Commission needs to take full account of these realities in its analysis of current arrangements in Australia for the regulation of broadcasting and the performance of the free-to-air commercial television industry.

The next Section of this submission summarises the key features of the marketplace in which commercial television free-to-air services operate. In later sections, we assess the benefits of key elements of the Act, and expand on the deficiencies noted in passing in this Section.

(f) to promote the provision of high quality and innovative programming by providers of broadcasting services; and

(g) 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; and

(h) to encourage providers of broadcasting services to respect community standards in the provision of program material; and

(i) to encourage the provision of means for addressing complaints about broadcasting services; and

(j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them."

[4] "4. (1) The Parliament intends that different levels of regulatory control be applied across the range of broadcasting services according to the degree of influence that different types of broadcasting services are able to exert in shaping community views in Australia.

(2) The Parliament also intends that broadcasting services in Australia be regulated in a manner that, in the opinion of the ABA:

(a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services; and

(b) will readily accommodate technological change; and

(c) encourages:

(i) the development of broadcasting technologies and their application; and

(ii) the provision of services made practicable by those technologies to the Australian community."

3. A SNAPSHOT OF AUSTRALIAN FREE-TO-AIR BROADCASTING

(a) **Australia has one of the most comprehensive free-to-air broadcasting systems in the world**. There is no national television marketplace of comparable size and economic development which offers free-to-air services of such diversity, quality and local relevance as those available in this country[5].

The Australian free-to-air system comprises a highly competitive commercial free-to-air broadcasting industry, two well-focussed and largely complementary national broadcasters, and a small community sector, in a unique hybrid commercial and public broadcasting system. By contrast, US free-to-air broadcasting is almost totally commercial in character, while UK broadcasting (the other major international broadcasting model) is still heavily influenced by public broadcaster concepts.

Australian free-to-air television broadcasting is not a static system. Over the past twenty years, there have been significant structural changes:

- the introduction of SBS television, now available in almost every significant market across Australia
- a third metropolitan licence in Perth
- the introduction of satellite-delivered commercial free-to-air services for viewers in remote areas
- the “aggregation” of regional commercial television markets which previously had a single commercial free-to-air licensee into two-station or three-station commercial markets
- the introduction of second commercial free-to-air licences to a number of smaller markets
- the introduction of a small community television sector.

The overall broadcasting environment has changed significantly over those years, with the proliferation of radio services (commercial FM, community radio, more regional and metropolitan radio licences) and the introduction of Pay TV services. The latter were envisaged as a largely complementary sector, but are in practice a growing competitor for viewers and advertising revenue.

(b) **The commercial free-to-air television industry is central to the delivery of these benefits**. The 46 Australian commercial television services provide free-to-air services

[5] The only countries in which there are long-established commercial and public free-to-air television services are the United States, Canada, the United Kingdom, Japan and several South American nations. Most European countries have allowed commercial television free-to-air services only within the past 15 years. The United Kingdom introduced competing commercial free-to-air television services to the BBC/ITV duopoly only in the 1990’s.

into every community around the nation (four of these services reaching the remotest communities by means of satellite delivery[6]). Over 98% of Australian homes have television sets. More than 80% of their viewing is of commercial television[7]. Commercial services undertake around three-quarters of the television industry's expenditure on programs.[8]

Commercial television services are based on three networks in the five mainland capital cities, which cover 64.4 % of the population. There are three network affiliate stations in each of four main 'aggregated' markets (regional Queensland, northern NSW, southern NSW and regional Victoria.), with some localised programming and their own advertising streams, covering 26.8% of the population. There are also two-station markets in Tasmania, Darwin, Mildura, and Griffith, in regional and remote Western Australia and remote central and eastern Australia, with 7.2% of the population. Solus (single-station) commercial free-to-air markets operate in Broken Hill, Riverland, Port Pirie and Mount Gambier, and account for 1.6% of the population[9]. (**Fuller details of industry structure and ownership are set out in Appendix 2**.)

In Australia, network affiliates acquire a program stream from the network, typically in exchange for a percentage of their advertising revenue. The affiliate inserts some local programs of its own and all of the advertising it broadcasts, whether sourced locally, regionally or nationally. (This differs from the US system where networks provide a program stream which includes commercials, and pay affiliates to carry it.)

Programming costs - the bulk of which are attributable to Australian programs - routinely make up close to 50% of metropolitan station costs and over 25% of expenditure in regional stations[10]. Regional stations have much higher operational costs, because of the need to provide transmission to small audiences over large areas[11].

(c) **Australia is a difficult operating environment**. Australia is a very small market by international standards. The population of 18.8 million people (or approximately 7 million households) is scarcely one-third of Britain's, and has less than 7% of the United States' population[12]. It is roughly equivalent to the English-speaking Canadian population, and both countries share many of the same problems in achieving local television service across scattered markets, with high levels of local and national programming. As in Canada, a significant part of Australia's population is in communities spread across millions of square kilometres.

It follows that this small and scattered population base generates only a limited amount of advertising revenue. Commercial television achieves a solid share of main media advertising revenue - around 35%, which has remained more or less constant since the

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6 The location of these 46 services is set out on a map in Appendix 1

7 See Chart 1 in Appendix 4

8 The industry total for 1997/98 was estimated to be approximately $1.1 billion, with ABC and SBS expenditure on Australian programs estimated by FACTS to be approximately $250 million.

9 Population figures are drawn from *Licence Area Population* (ABA, 1998)

10 See Charts 10 and 11 in Appendix 5

11 See Chart 11 in Appendix 5. "Other" includes technical and operational expenditure and sales costs

12 See Chart 1 in Appendix 5

mid 1980's[13]. However, commercial television revenue of $2.76 billion in 1997/98 is modest in comparison with US commercial television revenue of $44 billion and UK revenue of $7 billion[14].

Television is inherently an expensive medium to program and operate. It is particularly expensive where it involves high levels of local service across extensive areas, and the provision of extensive, high-cost local and national programming. Television can operate relatively cheaply only where it largely uses off-the-shelf programs, and minimises infrastructure costs by concentrating on geographically-limited lucrative markets.

Long-standing Australian broadcasting policy has explicitly required commercial free-to-air television broadcasters to give high priority to the provision of local service and Australian programming. A local licensing system has required commercial free-to-air broadcasters to provide a local service. Stations are required to provide a service to all parts of their markets, even though this often involves considerable cost for little or no commercial return. They have been required by regulation to provide growing levels of Australian content since the early 1960's.

Commercial broadcasters have been able to meet these public interest requirements only because the statutory limitation on the number of commercial free-to-air licensees in each licence area ensures that revenue is not split between so many services that none can afford anything beyond the most basic service. Where major changes to the market structure have occurred - notably with regional commercial "aggregation" in the early 1990's - the level of local service has suffered. Viewers have gained access to more program diversity, but at the cost of some loss of localism. Because these substantial structural changes have not affected the markets that fund and produce most Australian programs - the five major metropolitan markets - they have not jeopardised the overall level of Australian programming available across the country.

(d) **Regulatory limits on the number of commercial services are critical to the provision of high quality competitive commercial free-to-air services that provide local service, Australian content and other public interest benefits**. These regulatory limits are a necessary precondition for the provision of community benefits of this kind in a small market. They do not in themselves guarantee these benefits: energetic competition in the major markets, and resulting high levels of operating efficiency, have produced these desired outcomes. Specific regulation has also played a role in stimulating industry development - for example, the drama quotas in the early 1970's probably encouraged broadcasters to devote more resources to this expensive program strand which was then of uncertain appeal to viewers, and hence of limited commercial benefit to stations. This regulatory stimulus helped to create a market for local television drama. However, we suggest later that regulatory "micro-management" of programming should be avoided in well-developed programming and production environments, as it usually results in wasted resources, duplication, and loss of programming opportunities.

13 See Chart 3 in Appendix 5
14 See Chart 2 in Appendix 5

The combination of competition and regulatory stimulus in the industry's early decades has created a solid audience demand for Australian programs of most kinds. How far free-to-air broadcasters can satisfy these established audience tastes will depend on the revenue available to them, and how efficient they are in producing programs and operating their services.

(e) **The challenge of providing a high cost free-to-air commercial television service**. Even with current limitations on licence numbers, commercial free-to-air broadcasters must operate at high levels of efficiency to maintain the standards of service they have long provided (and which the audience expects) and meet their statutory obligations, while still returning profits to their shareholders (which they must do to stay in business).

Operating as they do in a mature viewing and revenue market, there is little scope to increase overall viewing, or attract significant amounts of revenue from other media. Viewing levels have been steady at about 3¼ hours per day since the early 1990's, so audience growth is (at best) pegged to population increase[15]. Television has been more successful than other media - newspapers, magazines, radio - in retaining its audience, but the impact of Pay TV, Internet usage and new services like datacasting will have an increasingly negative impact on viewing levels in coming years.

Advertising revenue growth has been modest in recent years. Annual revenue increases of ten percent or more (after inflation) between the mid seventies and the mid eighties fuelled the massive expansion of Australian programming and local service over that decade. Over the last five years, television advertising revenue has increased by 4.5% annually, after inflation, which has barely exceeded advertising growth for all media (4.1%)[16]. The minutes of advertising per hour of broadcast time are limited by regulation to protect viewers' interests, so the aggregate supply of advertising audience minutes is also stable; unlike newspapers or magazines, television cannot increase its advertising capacity at will. There is thus little room for growth in television advertising revenue overall.

The industry had a difficult time adjusting from high growth to the much lower growth typical of a mature industry. In 1989 the Australian commercial television industry failed to make a profit for the first time since 1957. During the following year, two of the three network operating companies went into receivership. Beginning in 1992, and under mostly new network management, a slow recovery began for Australian commercial television. But into the second half of the decade, profitability began to flatten out, because of modest revenue growth and rising program costs[17].

The industry is currently reasonably profitable. In 1998, it posted a profit increase of 6.9%.[18] Historically, television industry profitability tracks (and exaggerates) the economic cycle. Recent months have seen a sharp downturn in revenue, which may foreshadow sharply reduced economic activity. Over the next 5-6 years, the industry's

15 See Chart 1 in Appendix 4
16 See Chart 8 in Appendix 5
17 See Charts 9 and 12 in Appendix 5
18 ABA broadcasting industry financial figures 1997/98

commitment to the introduction of digital television will also have a heavy impact on costs and profitability. Deloitte Touche Tohmatsu's current *Media Index* comments that television companies have the highest gearing in the traditional media sector, and low returns on assets and equity[19].

(f) **The high cost of Australian programs**. The financial constraints under which the industry has operated since the late 1980's have underlined the fragile economics of Australian programming generally, and "high end" programs in particular.

Australian programming is expensive because most or all of its cost must be recovered in the local market (which is the whole country for most entertainment programming and much sport, but may be only a single licence area for news and other highly local programs). Broadcasters have always subsidised expensive Australian programming by extensive use of overseas programs, which are much cheaper because their cost has usually been recovered in their country of origin. The cost disparity is particularly large for "high end" drama and documentary programs.

As the following table indicates, the cost of producing inherently labour-intensive and expensive programs for the Australian market results in broadcast licence fees (acquisition costs) that are much higher than those for equivalent imported programs:

	Australian Production Cost $'000 per hour	**Broadcast Licence Fee $'000 per hour**	**Broadcast Licence Fee for Foreign Program $'000 per hour**
Serial Drama	100 - 140	40 - 80	5 - 10
Series Drama	250 - 500	150 - 200	15 - 40
Telemovies	1.3 - 2.5m	± 500	20 - 80
Miniseries	650 - 1.5m	± 250	30 - 100
C Drama	200 - 540	35 - 55	--
Documentaries			
-in house	90 - 130	90 - 130	--
- external	90 - 500	20 - 100	10 - 50

Broadcasters can afford to acquire programs of this kind only if part of the production cost is met by sales to overseas markets (as is currently the case with serial and series drama), or by a combination of overseas sales, Government subsidy and occasional "deficit-financing" by production companies (in the expectation of further overseas sales), as is usually the case with the other categories[20].

There is a much larger group of Australian programs which must be wholly financed by broadcasters. These kinds of programs, and the cost-range into which they fall, are:

[19] The Deloitte Media Index: A Review of Key Media Stocks Listed on the Australian Stock Exchange (April 1999)

[20] Other than in-house documentaries, which are normally fully-funded by the broadcaster

Program Type	Cost per hour ($'000)
Game/Quiz Shows	20 - 80
Infotainment	100
Light entertainment	40
C programs (non-drama)	20
Sporting (magazine)	30 - 100
Sporting coverage	35 - 500[21]
Evening news (main bulletin)	
- metropolitan	25 - 50[22]
- regional	10 - 15
Evening news (late bulletin)	10 - 20
Weekly current affairs	50 - 350
Daily current affairs	60 - 80

Relatively modest variations in the financial environment can make a major difference to the affordability of expensive local programming of this kind. This can mean that even though a particular program category is popular with viewers (e.g. Australian telemovies or a weekly current affairs program), it is simply not economic to produce for commercial free-to-air television (or to produce in the quantities the audience would like).

The revenue return for programs in the risk category - high end Australian drama, sport, news, current affairs - is not good in proportion to costs. News ratings are being affected by Pay TV, and this erosion may accelerate once new services such as datacasters arrive. As the ratings for news deteriorates, so will the ability to generate revenue from those programs.

The creation of the Commercial Television Production Fund in 1995 recognised this funding dilemma. The $55 million of Government funding provided over three years was intended to close the funding gap for high-end drama - the difference between the broadcast licence fees commercial networks could justify paying and the cost of production. It also recognises that commercial television was the main cultural medium for most Australians. By mid-1998 the initiative had resulted in more than seventy hours of high quality drama, children's drama and documentaries, most of which attracted large Australian audiences.[23]

The Commercial Television Production Fund was a three-year project. It was not continued after June 1998. As a result, the number of telemovies, miniseries and expensive documentaries commissioned over the past 12 months is believed to have fallen sharply. The demonstrated audience appeal of most of the Fund-supported

21 Excluding rights fees
22 Excludes overseas news and Canberra bureau costs
23 Australian Film Commission Media Release, 8 May 1998. Because programs supported by the Commercial Television Production Fund did not qualify for drama, children's or documentary quotas, they did not "displace" licensee-funded production.

productions was not enough in itself to change the harsh economics of production for a commercial free-to-air television market.

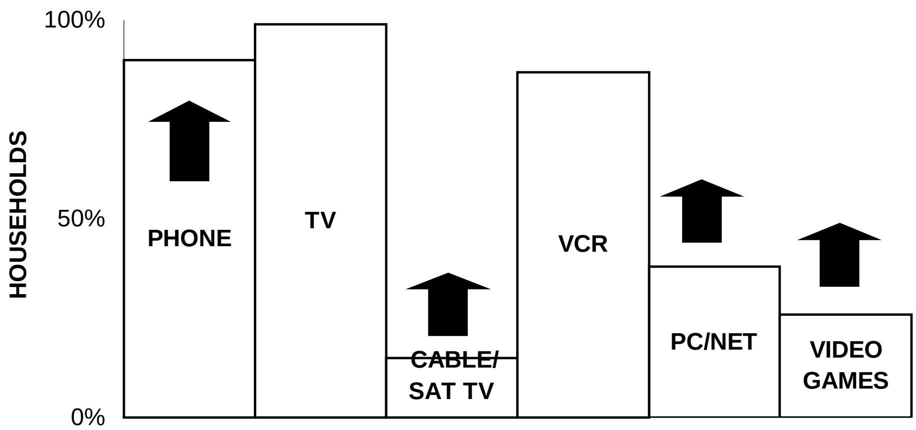
By any measure, the commercial industry's ability to continue to deliver the range of local programming that both the Government and the community expect remains finely balanced in current financial and industry conditions.

Foreign programs and solid revenue growth can no longer fund a steady expansion of Australian programming and underpin localism. The challenge now is to retain what has already been achieved, in a much harsher competitive operating environment, and at a time of major industry expenditure on the transition to digital television. Any major structural change - such as the introduction of new commercial free-to-air licences - would tip the economic balance of the industry decisively against high cost local service and extensive local and national program production.

(g) **New competition for viewers and revenue**. In recent years free-to-air commercial television has also come under significant pressure from the 'communications revolution' and the fragmentation of the audience base for audiovisual and related services.

Already, before television itself enters the digital era, there is proliferating competition from other media and communications developments.

TELEVISION IS UNDER ATTACK FROM A RANGE OF NEW MEDIA



SBS now "splits" its Sydney, Melbourne and Brisbane signals to allow it to take State-focussed advertising. As a result, it increased advertising revenue by 50% to approximately $20 million in 1997/98.

Pay TV delivered by cable and satellite is now growing strongly in Australia with some 900,000 subscribers. It is already competing strongly for audiences with free-to-air services and is beginning to compete for advertising revenue.

Home video is a billion dollar business, which has competed for audience attention since the early 1980's. Almost 90% of Australian homes now have a VCR.

The Internet also competes for audience attention, and may well compete significantly for advertising in coming years. As audiovisual services delivered via the Internet approach broadcast quality - which is likely to happen over the next 3-5 years - the Internet will begin to compete direct with over-the-air television.

Datacasting over broadcast-band channels will also compete for viewing time and possibly for advertising revenue (depending on how it is regulated).

Video games are one of the fastest growing forms of entertainment in Australia and are set to develop quickly in terms of functionality and appeal.

The explosion of communications media outlined above has placed a premium on content. Program licence fees have gradually risen accordingly. Australian commercial free-to-air television stations are having to face cost increases for program of all kinds but especially for sport. Other operating costs are also on the rise[24].

[24] See Chart 9 in Appendix 5

4. RESTRICTIONS ON THE NUMBER OF LICENCES ARE ESSENTIAL TO UNDERPIN LOCAL SERVICE AND THE RANGE AND QUALITY OF AUSTRALIAN PROGRAMS

In the previous section, we explained why costly local service and extensive and high quality local and national production could not be funded by commercial television without regulatory support. The key feature of this regulatory support is a degree of protection of the industry's revenue base, in the form of limits on the number of commercial television services in each market.

This recognises that, for a commercial television service, the most direct, across the board competition for all categories of local and national advertising is from another commercial television service. While other media - from newspapers to Pay television and the Internet - compete for particular categories of advertising, or for a portion of an advertiser's budget, the fiercest competition for advertising is within the commercial television sector (just as competition for classified advertising is largely within the newspaper sector).

Over the past decade, the number of solus commercial markets (i.e. services which are protected by regulation from direct competition from other commercial television services) has been reduced from approximately two-thirds of stations (covering 34% of the population) to four stations, covering less than 1% of the population. All other commercial television services now operate in two- or three-service markets. They are afforded no protection from directly competing commercial services in their market, from commercial services in other markets competing for the same pool of national revenue, or from other media.

The restriction on licence numbers does no more than ensure that an efficient, competitive commercial service should be able to secure enough revenue to provide a significant local element in its service and to contribute materially to the production, commissioning or acquisition by national networks[25] of a good range of high quality local and national programs.

This key regulatory measure has been the basis of Australian commercial television policy since the 1950's. It was reviewed in the mid-1980's, and renewed in the form which permitted regional commercial television "aggregation". It was reviewed again in 1992, and renewed in a form which allowed the introduction of competing services in some smaller markets, but retained the overall limit of three commercial licences in any market. This limit was reviewed again in 1997, and was renewed on the Government's concluding that there would be no net community benefit in introducing fourth licences[26]. In 1998, Parliament extended the specific prohibition on a fourth commercial licence to a general prohibition on new commercial television free-to-air licences in any market until 2007.

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[25] Because the US market is so much larger, individual stations need to make only a minimal contribution to network production of national programs (what might be termed "American content")

[26] The conclusion was based on advice to that effect from the ABA and the Bureau of Transport and Communications Economics

Community benefits

This structural regulation is supported by other regulatory measures which ensure that the greater resources to which individual licensees have access are used for the benefit of the community.

(a) **Local area licensing**. In many other countries, it is common for broadcasters to have licences or franchises, which are nationwide, or which cover very large populations. By contrast, Australia has a licence area approach which has resulted in 23 defined licence areas (served by 46 commercial television licensees). These vary tremendously in size and population, from Sydney to Mt Isa. (**Licence areas are set out in Table 1 of Appendix 2**.) Under the Act, each commercial free-to-air television service is required to provide "a service that, when considered together with other broadcasting services available in the licence area of the licence…contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area" (Clause 7(2), Part 3, Schedule 2 of the Act).

Prior to 1992, this legislative requirement was actively exercised through the public licence renewal process. The new Act made public licence renewals an exceptional rather than routine review mechanism, as they were assessed to be resource-intensive and not particularly well-focussed to achieve public interest objectives. Licence renewals are now conducted administratively by the ABA under s.47. A public hearing into the renewal of a licence would now only be held where a license appeared to have committed an offence against the Act or regulations, or to be in breach of the conditions of the licence (s.47)[27].

Under the 1992 Act, the ABA has continued to require licensees to provide their service throughout the service area (e.g. as conditions of licence on new licences, and as a proposed condition of licence in one recent instance where transmitter changes resulted in reduced signal coverage in part of a licence area).

The ABA retains a so far unexercised power under the 1992 Act to require licensees to provide local programming (e.g. news). However, the "adequate and comprehensive" requirement in Clause 7(2) of Part 3 of Schedule 2 of the Act is expressed in terms that suggest the legislative expectation is that competition (rather than regulatory intervention) will produce the local services desired by viewers.

This is a reasonable assumption where structural regulation allows stations to command sufficient resources to provide local service while still operating profitably. In most markets, most services are able to do this at present.

(b) **Local service**. City-based commentators often overlook the central role played by the commercial television industry in supporting local communities.

The accompanying table sets out the number of transmitters and discrete program and advertising services provided by Australian commercial television services. It affords a

[27] No public licence renewal hearing has in fact been held since 1992

glimpse of their widespread coverage and the extent of localisation of services, particularly in extensive regional markets where commercial stations serve a number of geographically distinct sub-markets.

	Transmitters	Program Services (Local news, etc.)	Commercial Advertising Services
Metropolitan	101	17	17
Regional	703	62	88
Remote Area	257	5	5
Total:	1,061	84	110

Localism in advertising on commercial television is also a key element in the support and development of regional economies. There are currently 48 distinct television advertising markets across Australia, some of them with less than 30,000 people[28]. These markets, most of which contain two or three competing commercial services, provide between then a total of 110 advertising services[29]. This ensures that commercial television is an accessible and affordable advertising medium.

(c) **News and information**. News is predominantly a local service on commercial free-to-air television.

The State-based pattern of major news bulletins is an important characteristic of commercial television, reflecting the strong local identification of Australians. Regional networks provide a further tier of news in addition to national and capital city programs. Regional stations typically carry a capital city bulletin from their affiliated network, and a regional bulletin.

This regional tier is itself further localised in many areas. In Queensland, for example, WIN TV generates six separate local news services: in Cairns, Townsville, Mackay, Rockhampton, Bundaberg and Toowoomba, in addition to networked services. This pattern is repeated in every major regional market. In many regional communities, commercial television provides the only daily regional news[30].

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28 Commercial television advertising markets are listed in Appendix 2

29 By contrast, the United Kingdom has 13 commercial franchises (licence areas). Some of these contain additional regional "break-outs", for a total of 23 distinct television advertising markets

30 ABC news services largely originate from State capitals. Many country newspapers are not dailies, but twice or three times weekly publications

Free-to-air television news programs are the main source of news and information for 78.9% of the entire population. Audiences score television news well above all other media for accuracy and reliability.[31]

Commercial free-to-air television stations spend over $160 million each year on the production of a wide range of news and current affairs programs[32] - the biggest single category of program expenditure. Each station typically provides early evening news, as well as a range of other news programs, news updates and news flashes throughout the day and night. These programs are seen as a key component of each network's competitive branding strategy. The news and current affairs program output of FACTS members is a major contributor to the maintenance of an informed Australian public.

(d) **Community Service**. This local focus of commercial television is also reflected in other ways. Local community service announcements are a very familiar part of commercial free-to-air television stations' long tradition of local involvement. FACTS estimates that its members contributed air-time worth $40 million for community service announcements in 1998.

In addition to broadcasting community service announcements, commercial stations play a very important role in supporting a wide variety of community causes, ranging from festival sponsorship to televised initiatives, such as the regular telethons conducted by many stations, and other fund-raising initiatives (such as "Farm Hand", initiated by the Nine Network's *A Current Affair*, which raised $10 million for country people during the recent drought).

(e) **Funding a distinctively Australian service**. As well as the local service discussed above, the limited revenue security provided by the restriction on licence numbers also allows competition within the industry to satisfy a number of other broadcasting policy objectives. These mainly relate to Australian programming - the provision of a wide range of local, regional and national programs that will meet the audience's desire for entertainment, information and education in a way which foreign programming (however high in quality) cannot do.

These policy objectives go well beyond the requirements of specific program quotas. Quota requirements are difficult to cost accurately, since broadcasters would still produce and screen many programs required by quota even if they were not required to. The industry estimates that the various quotas probably cost stations from 5-15% of their local program expenditure. We suggest in Section 9 that these resources would be used more productively if specific program quotas were abolished or greatly simplified.

(f) **Production and transmission of Australian programs**. The prime cultural objective of the *Act* is to 'promote the roles of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity' (section 3(e) of the Act).

31 Roy Morgan Research Centre, *Survey on Attitude to the Media*, February 1998

32 ABA broadcasting industry financial figures 1997/98

This is achieved through the production and transmission of Australian-made television programs. Australian television has a remarkably high level of local content, given the relatively small size of the economy, and the ready availability of cheap, high quality imported English-language programs. The local content level is strikingly higher than either the film or video industries. Australian films typically represent around 8% of Australian cinema box office; in 1997 only one Australian title ranked in the top 50 cinema films exhibited in Australia.[33] Australian programs are an even smaller proportion of home video rentals and sales.

As this submission has pointed out, Australian television viewers have broad and outward looking program tastes. They expect a mix of programming from both imported and Australian sources. However, they strongly support the local product. Audience surveys routinely depict Australian-produced shows as the majority of the top twenty most viewed programs in the country.[34] These are not restricted to news, current affairs, sport and game shows, which might be regarded as having a degree of natural protection.

Commercial television spends more than $850 million per annum on Australian programs. In doing so it satisfies both the Australian content quota determined by the ABA under the *Act* - 55% of all programming between 6.00am and midnight, along with sub quotas for drama, documentary and children's programs - *and* responds to strong audience program preferences.

(g) **Drama programs**. In particular, commercial television has supported since the 1960's the production of Australian drama, a key transmitter of Australian values and identity. Landmark commercial television productions in the 1980s like *Bodyline*, *The Dismissal*, *Vietnam* and *Bangkok Hilton* helped define a modern Australian self-image. All of these were expensive miniseries, made possible only by an unusual broadcaster commitment, tax-based funding arrangements, and substantial direct Government funding. In more recent times, despite the levelling-out of station revenue, commercial television free-to-air networks have continued to support Australian drama series, which consistently feature in the top television programs. These have included long-running drama serials like *Neighbours* and major series like *Blue Heelers*, *Water Rats* and *Murder Call*.[35]

The quality of Australian television drama allows it to compete successfully in the international television marketplace. For example, *Water Rats* has sold in 169 countries, and *Murder Call* in 100 countries. The mini-series *Good Guys, Bad Guys* sold in France in late 1998 for one of the highest prices ever paid for an Australian series. *Moby Dick*, a co-production between the UK and Australia, was the highest rating mini-series ever shown on US cable. The children's programs *Skippy*, *Crocadoo* and *Spellbinder* have sold all over the world. *Neighbours* and *Home and Away* are two of the highest-rating programs in the UK. *Blue Heelers* has been sold to 76 countries.

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33 Get the Picture 5th Edition, (Australian Film Commission) pages 150 and 218

34 ACNielsen figures show that in 1998, 14 of the top 20 programs in Sydney were Australian. Excluding sport, ten of the top 20 programs were Australian (including six drama programs)

35 Ibid

As a result, the unique styles of Australian culture have become recognised and better understood around the world.

(h) **Sport**. Live sporting coverage occupies an unusually large amount of time on Australian free-to-air television, in comparison to other countries. Broadcasters are responding to strong viewer interest in sport, which is both a major form of recreation and entertainment, and an important strand of community activity throughout the country.

Although Australia has such a small population, it has an unusual diversity of sport. Cricket is the only unmistakably national sporting code. In winter sport there are two dominant - and still substantially regionally-based - football codes, Australian Rules and Rugby League. Rugby Union and Soccer are also significant, and the Australian audience expects to see all of these codes covered by free-to-air television.

Australians are also keen viewers of a wide range of international sport, from Olympic and Commonwealth Games to golf, tennis, swimming and athletics to motor and motorcycle racing.

Commercial television invests considerable resources in national and local sports coverage. It is the second highest category of program expenditure after news and current affairs. It is also a program category experiencing a steep and rapid increase in costs.

(i) **Television production underpins Australian production industry**. Commercial television is not simply the most pervasive and powerful cultural medium in Australia. It is also the foundation of the increasingly internationally recognised Australian film and television production industry. Television production has been the mainstay of the Australian production industry since the 1960's. In 1997, television program production accounted for almost 70% of the total value of the Australian audiovisual production industry[36]. If the production of television advertisements is included, production for television represents well over 80% of the value of the entire production industry.

Three quarters of this expenditure on television programs represents production by or for commercial television. New media - such as Pay TV - are unlikely to contribute in any significant way to the Australian production industry in the foreseeable future[37]. The commercial free-to-air television industry must continue to play a central role if the cultural impact of the independent Australian film and television production industry is to be sustained into the future.

Outsourcing of program production has substantially benefited the independent production industry. From 1994 - 1997 that industry's output grew from $462 million to $977 million, and employment grew from 6,000 to almost 9,500[38]. One economic

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36 See Chart 8 in Appendix 5

37 Pay TV is estimated to spend less than $20 million a year on Australian programs, compared to the commercial free-to-air industry's $850 million.

38 Film and Video Production and Distribution 1996/97 (ABS, November 1998)

dividend of this expansion has been an increasing ability to attract foreign productions, which have boosted the production industry's activity in recent years. Foreign program production in Australia comprises less than one quarter of the independent production industry's revenue, and only about 10% of overall local production by value. It is a supplementary source of revenue and employment in an industry which still relies overwhelmingly on Australian television.

The Australian production industry's heavy dependence on television is uncommon. In the US, for example, the television networks are only one component of a very broad program financing and production community. The industry is not particularly dependent on the prospects of the networks, or free-to-air television in general, which represented less than 18% of its revenue in 1995. The film industry there has a wide range of markets beyond network and syndicated television[39].

This is not the case in Australia. Government subsidy of film and television production via the FFC and AFC is static (and in any case is much lower than in a broadly comparable market such as Canada). With budget restrictions affecting production expenditure in the ABC and SBS, the importance of the commercial networks to the production industry and to the evolution of Australian cultural identity is immense.

(j) **The economic and social value of free services**. The central economic benefit enshrined in the scheme for commercial broadcasting in the *Act* is that of a free-to-air service, which can be received by commonly available equipment, providing programs intended to appeal to the general public (section 14 of the Act).

The free availability of a broadly-based, quality service is a characteristic of commercial television often overlooked by commentators. Indeed, given the overall consumer benefit focus of the Commission, it is surprising how little attention is paid to this characteristic of commercial television in the *Broadcasting Issues Paper*. It needs to be recalled that 85% of Australians do not have Pay TV, and 60% do not have a computer. Many of these people simply cannot afford the entry price of Pay TV or the Internet.

In reality, this free availability, and the perceived public policy need to maintain adequate free-to-air services into the digital future, are central to an understanding of the delicate balance that is struck between the broadcasting market and intervention in the Act. Maintaining this balance into the digital era is discussed further later in this submission.

(k) **Efficient advertising medium**. The enormous public benefit of quality, free-to-air commercial television is made possible by advertising. Australia has an extremely competitive media advertising marketplace in world terms. Australian broadcasters have had to be efficient marketers to extract enough revenue from a small market to fund multiple high-quality services.

The advertising spend attracted in Australia by commercial television broadcasters is high by world standards at 34% of total media spend. The comparable figure in the US

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[39] See Chart 14 in Appendix 5

is 36.9% (though this figure includes Pay TV advertising) and in the UK 32.5%.[40] Commercial television consistently attracts over 50% of national advertising - i.e. advertising other than classified or purely local advertising. One reason for this is the cost efficiency of advertising on Australian television in the marketplace as compared with other media. For a great many major advertisers, television is the simplest and cheapest way of reaching a national audience. The streamlining of television sales structures over the past decade has further simplified advertising placement across the country, by allowing national placement through a handful of transactions.

(k) **High level of competitive efficiency**. The competitive marketplace for audiences and advertising revenue has produced a highly efficient commercial television industry. Although the number of commercial stations in each market is restricted by regulation to three, there is vigorous competition for advertising and programming between existing players in the system. This results in benefits for advertisers and produces quality outcomes for consumers. The evidence of the past 30 years suggest strongly that the existence of three competitors in a market effectively rules out anti-competitive “orderly marketing” arrangements. The discipline of rigorous public company shareholder control in the industry has also promoted operating efficiency in recent years.

The competitive pressures on the industry have increased over the past decade. Slower revenue growth has forced stations to review all areas of expenditure, and seek cost savings across the board. As programming (particularly Australian programming) is by far the largest expenditure item, the industry as a whole has introduced major changes in the way it acquires and produces local programs. As noted earlier, this has led to much greater outsourcing of production in many areas, though news, current affairs and much sporting coverage are largely produced by stations themselves.

Regional aggregation has also forced regional commercial stations - all formerly “solus” commercial operators - to reinvent their station operations. The introduction of three-way competition into the major regional commercial markets has forced most stations to restrict local production to news, some modest studio productions, and periodic outside broadcasts of major sporting or community events. This represents considerably less local programming than many “solus” stations provided a decade ago.

The result of this intensive review of operations has been a steadily growing industry that has operated with fewer staff to produce programs and operate the service. Between 1994 and 1997, commercial television industry revenue increased from $2.15 billion to $2.75 billion while employment declined from 8,422 to 6,758[41].

(l) **Television licence fees**. The high level of television licence fees might be seen as providing a social dividend of some kind to the community, though closer examination suggests that licence fees are regressive in terms of overall community benefit.

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[40] See Chart 2 in Appendix 5

[41] Figures from ABA’s broadcasting industry financial figures, and from Australian Bureau of Statistics: Radio and Television Services 1996/97 (1998)

Commercial free-to-air television services certainly provide considerable direct economic benefit to the Commonwealth Government through the fees they pay under the *Television Licence Fees Act*. Commercial television has paid $1.15 billion in licence fees to the Commonwealth since 1988. On current rates it is estimated the industry will have paid $2.34 billion by 2008.

In 1997-98 the ABA collected $194.5 million from commercial free-to-air television stations in licence fees. Television licence fees exceed all spectrum licence fees collected by the Australian Communications Authority - a total of $182.3 million in 1997/8.[42] Australian television licence fees are far higher than those in comparable countries, such as the US and Canada. Detailed international comparisons are set out in Section 8, where we argue that the severity of television licence fees drains resources from Australian production and local service.

The adverse effects of major regulatory change

(a) **New metropolitan licences would result in poorer overall service**. If more commercial television licensees were to be introduced, expert assessments suggest that the available revenue pool would remain unchanged or at best increase by 1-2%.[43] There would be an immediate loss of revenue by all existing networks and stations. The competitive impact would undoubtedly be greatest in the two biggest markets, Sydney and Melbourne. Because all other Australian markets depend almost entirely on the programming produced by the Sydney and Melbourne network stations, changes in those two markets would affect every Australian viewer.

At present, the "ceiling" for broadcaster-funded Australian production is represented by such labour-intensive, high-cost programs as:

- **Major weekly series** - *Blue Heelers*
- **Major weekly current affairs** - *60 Minutes* and *Sunday*
- **Daily current affairs** - *Today Tonight* and *A Current Affair*
- **Major sporting coverage** - cricket, AFL, Rugby League and the Melbourne Cup
- **Multiple daily news bulletins** in metropolitan markets
- **Local news** in regional markets and sub-markets.

Australian programs which are even more expensive - telemovies, miniseries, major documentaries - are financially feasible for commercial broadcasters only where there is substantial additional funding from foreign sources or Government funding bodies.

A significant revenue contraction for existing commercial networks would radically change the economics of local program funding and scheduling. Stations would have less revenue available for program production, and reduced revenue expectations for high-cost programming. The "ceiling" for broadcaster-funded Australian production would undoubtedly be lowered substantially.

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42 *Australian Communications Authority Annual Report*, p.12. In calculating this total, spectrum access rights payments have been amortised over the ten-year period they represent.

43 **Australian Commercial Television 1986-1995** (Bureau of Transport & Communications Economics Report No. 93), page 116

Stations would have to rely on programming of much lower cost, and reduce the many hours of non-quota local programming they currently schedule. Even if new metropolitan licensees were to attract no more than 10-15% of market revenue (a conservative estimate) this would oblige networks and stations to provide:

- less quality
- less Australian content
- less drama (the most expensive genre)
- less local content such as local news.

Australian program costs are the single largest cost item for every station (the 55% or more of broadcast hours devoted to Australian programs accounts for round 80% of program costs). As noted above, licence fees for any kind of Australian drama cost up to ten times as much as comparable overseas product with similar ratings.

(b) **Lessons from earlier revenue contractions**. The response to reduced revenue can also be gauged from what happened in the early 1990's (although the revenue fall at that time was much less than could be expected from a new competitor, and lasted less than two years). Reacting to huge losses and the 1991 recession, commercial networks virtually ceased to commission the most expensive kinds of local drama and variety. They could no longer justify commissioning programs which would be unable to recoup their Australian broadcast licence fees in the small Australian market, no matter how well they rated. Cost reductions were not restricted to these highest-cost program categories, but were felt in entertainment programming generally, as well as news, current affairs and sporting coverage.

News is the main program expense for most smaller stations, and, again, experiences of regional commercial stations during the aggregation process in the early 1990s underlines how vulnerable local news is to reduced revenue. A number of stations simply stopped providing local news.

As we have pointed out, the commercial networks are the foundation of the Australian production industry. The flow-on effects of revenue thinning would be seriously detrimental to the industry as a whole, unless Government funding of television program production was increased many fold.

The other public interest contributions by commercial free-to-air television stations would also come under pressure. Any new licensees would themselves be unable to contribute significantly to the range of public interest contributions made by the existing commercial free-to-air television industry. Market conditions and industry cost patterns analysed in this submission demonstrate that new operators, in current conditions, would need to run a very different kind of free-to-air television service, akin to the profitable "shop-front" stations common in the United States. These stations produce little or nothing, and schedule programming acquired at secondary market prices. As in New Zealand in recent years, that new broadcasting model would quickly become the pattern for all.

(c) **Is total deregulation of commercial free-to-air television practicable?**

In a deregulated environment, where the limitations on the number of licensees were lifted, where the public interest obligations on all broadcasters were greatly reduced (as they would need to be for business profitability), a new kind of free-to-air service pattern would quickly develop - first with new players and then, for competitive reasons, throughout the industry. television services would then most likely reflect the following, economically rational but socially impoverished, business strategy:

- television stations' output would reflect the shrinking margins resulting from the proliferation of players. Australian production, news and sport would be severely cut. Programming of cheaper foreign programs would need to increase sharply throughout the industry. Operators would rely on the fact that such programming will appeal, at least at some level, to the captive free-to-air audience

- television viewing is so central to the daily lives of most Australians that free-to-air viewers, most of whom cannot afford pay services, would indeed continue to view even though they would become increasingly dissatisfied with the new 'lean' programming schedules - they would have no other alternative for general entertainment television

- Rather than serving the entire market, operators would 'cherry pick' the most lucrative markets and abandon increasingly marginal operations

- Localised programming and the current approach of servicing of the whole television licence area would erode as industry cost structures changed, and would probably disappear

- The role of television and its value in the lives of both individual viewers and Australian communities - the depth and breadth of their information, the quality and relevance of their entertainment, the extent of their connectedness as Australians - would be changed forever.

There are very few countries in the world that have been prepared to de-regulate television and risk the kind of scenario outlined above.

(d) **The New Zealand experience**. Commentators sometimes point to New Zealand as an example of a nation that has successfully abolished the 'quid pro quo' that is reflected in regulatory systems which limit the number of free-to-air television licences, on the one hand, and place major public interest obligations on broadcasters, on the other.

However, as we pointed out in section two of this submission, the New Zealand experience is very particular. The rapid industry transition from monopoly to de-regulation in the late 1980s left the state-owned broadcaster, TVNZ, as the overwhelmingly dominant player in terms both of resources and average audience share (up to 70% over its two national channels).

TVNZ is required to operate commercially, but its government shareholder also asks the Board that it provide television programs which 'reflect and foster New Zealand identity"[44].

Instead of local content quotas on stations (there are now three operators in the free-to-air marketplace), funding support for various categories of New Zealand programming is available, through New Zealand On Air, to any operator for agreed program projects: New Zealand On Air (which is funded from viewer licences, and is thus immune to a considerable degree from normal Government funding vagaries) must agree to fund the programs but the television operator must also agree to broadcast them.

In 1997 around 80% of the total number of program projects funded by New Zealand On Air were broadcast by TVNZ. In that year, 21% of programs broadcast on New Zealand television overall were New Zealand programs. First run New Zealand programs comprised 16% of broadcast hours.[45] These are the lowest levels of local programming in any developed country, but - thanks to New Zealand On Air - are considerably higher than an unregulated and unsupported program market could provide in a market of that size.

The New Zealand public interest regulatory arrangements for broadcasting are a matter of ongoing debate both within government and in the broader community.

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44 *Broadcasting in New Zealand*, NZ Government Internet site & TVNZ Statement of Corporate Intent

45 New Zealand on Air Internet Site, Annual Report on programs 1997

5. THE DIGITAL CONVERSION LEGISLATION UNDERPINS FUTURE BROADCASTING QUALITY LEVELS

Broadcasting, like all the information, entertainment and communications industries, may undergo radical changes as a result of convergence and the evolution of the digital marketplace.

These changes will not only be driven by new information networks and digital technologies. They will also be responding to changes in the wants, needs and tastes of consumers. FACTS recognises that the broadcasting landscape will be vastly different a decade from now. The Australian commercial television industry is keen to play its part in contributing to the evolution of the information society, where consumers will have vastly more communications choices, enhanced global reach, an ability to interact with service providers in novel ways and access to vast new networks of knowledge and entertainment.

However, new media forms will not obliterate the need for free-to-air services or easily supplant the community role of traditional broadcasting. Change is more likely to see incremental growth of a greater range of service options. This will involve the striking of some new balances between new media and more traditional services, and the profound influencing of each by the other. But free-to-air broadcasting will not disappear, any more than print was eliminated by radio, or radio by television, because each added to the range of choices available to the audience.

Indeed, governments around the world, precisely because they continue to recognise the social, cultural and economic benefits of free-to-air broadcasting, have been developing plans to ensure that those benefits will be able to transition successfully into the digital era.

This was clearly the most important motivation of the Government in its approach to digital transitional arrangements for free-to-air television broadcasting in Schedule 4 of the *Act.*

Key elements of the Act's digital scheme (most of which have a strong consumer-interest focus) are:

- The loan of spectrum to existing broadcasters to convert to digital operations
- Mandated start-up dates for all broadcasters, metropolitan and regional.
- The nomination of a defined period of transition to 2008
- A recognition of the importance of high-definition television as well as enhanced programming and datacasting in digital television
- The review of the ban on commercial multi-channelling before 31 December, 2005
- The provision that no new commercial television licences can be issued until 31 December, 2006.

Loan of spectrum

The loan of an additional channel to each broadcaster for its digital service was recognised by both the Government and the major Opposition parties as the only way in which free-to-air services could make the transition to digital transmission intact, and without detriment to the service available to viewers. Both the US and UK governments have made temporary "conversion" spectrum available free-of-charge to existing broadcasters for these same reasons. They, too, have recognised that the strongly-promoted alternative of auctioning spectrum for digital services would produce outcomes which were not in the public interest:

- Broadcasters which could not purchase spectrum to simulcast analogue and digital services for an extended period would be marooned on analogue services
- Viewers would have much less incentive to purchase digital receivers
- Broadcasters which paid large sums for digital spectrum would still have to invest large sums in digital production and transmission infrastructure, and the cost of doing so would be at the expense of their public interest broadcasting activities.

Parliament made it clear that free-to-air broadcasters would be expected not just to maintain their existing public interest obligations, but to accept new obligations specifically related to digital television. These include provision, as soon as practicable, of digital signal coverage equivalent to existing analogue coverage, and mandated levels of high definition television and closed captioning.

The loan of spectrum will ensure that Australia's unique mix of free-to-air broadcasting, delivering its wide range of social benefits through the productive balance of regulation and protection, is able to *transition as a system* into the digital environment. This will enable broadcasters to continue to deliver a high-quality free-to-air service to all Australians irrespective of their income or geographical location. This free service will include program enhancements (e.g. additional camera angles in sporting coverage), datacasting, and (eventually) multi-channel broadcasting.

Communities everywhere are also beginning to recognise what is now being called *the digital divide*. By this term is meant the widening gap between people who can afford to pay for the wide range of subscription-based digital services - whether delivered by PC, television or mobile phone - and benefit accordingly, and those who cannot afford to pay for these additional services. Pay TV monthly subscriptions are currently in the $40-60 range, while Internet access fees for medium-level use average $25-40 monthly. Free-to-air digital television will open the world of digital to people who will not be able to enter it by any other route.

Mandatory starting date for digital broadcasting

The digital conversion legislation requires all metropolitan television broadcasters to begin full-time digital broadcasting on 1 January 2001. That means that two-thirds of Australian viewers will have access to all five national networks in digital transmission mode from that date. At least six regional broadcasters also plan to begin digital broadcasting on or shortly after that date, in Newcastle, Wollongong and other significant markets adjacent to metropolitan markets.

This could mean that well over 80% of the population has access to all commercial television services (and probably also the ABC and SBS) by mid-2001. That will mean that a higher percentage of Australian than American viewers have access to multiple digital signals by that date, even though the US implementation process is already underway[46].

The mandated start-up dates will help drive the rapid development of digital services by commercial broadcasters. They will be competing to take advantage of the new digital opportunities to enhance their businesses by better serving audiences Early experience in the United States suggests strongly that a co-ordinated start-up will be essential to ensure that television set retailers have the incentive to provide and promote sets, and viewers have an incentive to buy them.

Mandated simulcast period

The nominated eight year transition period will encourage consumers to acquire digital receivers (either in the form of full receivers or set-top decoders that can provide a signal to existing analogue receivers). The period approximates the replacement cycle for analogue television sets, which means that digital conversion should slot relatively painlessly into the normal purchase pattern.

The simulcast period may be extended by legislation if Parliament concludes that the uptake of digital receivers is not yet sufficient for broadcasters to turn off analogue transmitters and return one of their channels to the Government. Broadcasters will be keen to reach that point as soon as possible, as the cost of maintaining both digital and analogue transmission infrastructure will be very substantial.

High definition television (HDTV)

High definition pictures will be a key dividend for viewers in switching to digital. Surveys show that viewers have a strong expectation of better screen quality[47]. Although in the early years relatively high cost may mean that high definition screens are a minority option in the purchase of digital reception equipment, indications are that within 4-5 years, high-definition reception will be affordable and popular[48].

Broadcasters are committed to providing extensive HDTV transmission from the start, as they believe that it will be of major value in marketing digital television. We assess that the lure of

46 Network affiliates in the top 10 markets were to begin service by 1 May this year. By November this year, US network affiliates in the top 50 markets will be required to provide a digital service. Other stations have until 2002 to begin service.

47 National search commissioned by FACTS in February 1998 showed that 54% of people would prefer cinema quality picture and CD-quality sound in digital television, while 37% would prefer more channels.

48 Over 50% of Australian viewers purchased television sets, and later colour television sets, within four years of their introduction, at prices equivalent to $3,000-4,000 (black and white) and $2,500-3,000 (colour) in current values. HDTV receivers should be available in the $2,000-3,000 price range by 2004-5.

HDTV will draw consumers to television retailers, though many may well leave with a digital decoder as a cheaper interim “step-up”.
Any arguments about the value or otherwise of HDTV that are based on likely consumer preferences in the first few years of digital television miss the point of the digital transition. The free-to-air television industry is replacing a 45-year old transmission system with one that should be in use for at least 30 years. Any quality specifications which broadcasters may wish to use - or viewers may demand - over that period need to be built into the transmission system from the start. If it is not, then it can only be done later in ways which will condemn viewers with lower-specified sets to gaps in their service, or no service at all, or else require broadcasters to commence another extended simulcast period - broadcasting a standard definition service for lower-specified sets and an HDTV service for full-specification sets.

Claims by some that broadcasting in HDTV will require non-standard receivers are untrue. Australian receivers will be fully compliant with the international DVB standard, and will be able to receive DVB terrestrial services transmitted at any quality level.

The receiver electronics required to receive HDTV signals will be dearer than those for standard definition signals, but the difference will be dollars initially and probably cents after a few years. The main cost difference (apart from the display, where much higher quality screens are needed for HDTV) will be due to the memory required - some 60Mb as against 10-12Mb required for standard definition. This will not represent significant additional cost by, say, 2004.

Multichannelling

Multi-channelling is another important capability of digital television. The digital conversion legislation bans commercial television multi-channelling, at least until a review to be conducted by 2005. The proliferation of audiovisual services of all kinds over the next few years may require commercial broadcasters to embrace some form of multi-channelling of services in due course if they are to continue to deliver the full benefits of their free-to-air programming. To support these free-to-air services in the decades ahead, broadcasters will need to broaden their revenue sources; one potential revenue source may well be subscription multichannel services.

Embargo on new commercial licences

The Government has explained the embargo on new commercial free-to-air licences before 1 January 2007 as recognition that broadcasters face major capital and operational expenditure in making the transition to digital television. Parliament recognised that the introduction of new licences would have very significant consequences for licensees’ ability to meet community expectations of their service, and accepted that the worst possible time to introduce new licenses would be during a period of major financial strain on the industry.

Datacasting

Datacasting was envisaged by the digital conversion legislation as a new service which would clearly fall short of broadcasting. Where the dividing line should fall is the subject of a review by the Department of Communications, Information Technology and the Arts. The Government’s decision is unlikely to be known before August or September this year. That being the case, this review may well find by its reporting date that the issues have been decided.

FACTS believes that datacasting must be defined in such a way that it is clearly not broadcasting, as the term is commonly understood. There is no technical distinction between broadcasting and datacasting - which in other countries is a general descriptive term for a wide range of activities, but in Australia will be a legally-defined regulatory category.

That means that clear-cut distinctions will be required. FACTS has proposed technical restrictions (amount of full-motion video and audio in any half hour period, and possibly frame-rate restrictions) and format restrictions (e.g. no drama programs, current affairs programs or documentaries). We have suggested that datacasting should be a subscription-only service, as this would be the most effective means of ensuring that it did not become "back-door" broadcasting, contrary to the intentions of the Act.

Costs of Digital Transition

In section three of this submission we analysed the testing economic conditions facing commercial broadcasters. As we move further into the digital era, the effective competition for audience attention and advertising will increase considerably, placing even further pressure on commercial free-to-air television margins. In addition, the commercial free-to-air television industry faces the capital and operational costs of converting to digital, and doing so against a tight timeline. These costs are considerable. Current estimates of capital expenditure over the first five years are approximately $700 million, as set out in the following table:

Capital and Operational Costs	
Capital expenditure *	
Capital city stations	$332 mil (48%)
Aggregated stations	$333 mil (48%)
Independent stations	$25 mil (4%)
	Total $690 mil
Operating costs *	
Capital city stations	$118 mil (51%)
Aggregated stations	$110 mil (46%)
Independent stations	$6 mil (3%)
	Total $234 mil
* 1999 estimates	

The very high capital expenditure costs for regional commercial services in "aggregated" markets reflect the large number of transmitters which must be duplicated, and the high cost of delivering the service to those transmitters (typically by private microwave links).

All stations will also have to bear significantly increased operating costs by reason of maintaining digital and analogue transmission systems over the simulcast period. This will amount to at least $30 million each year. This means that the all-up cost for digital transition will be at least $900 million for the commercial television industry.

In the light of the above, FACTS believes the overall scheme for digital conversion for broadcasters set out in Schedule 4 of the *Act*, including the embargo on additional commercial television licences, is appropriate and reasonable.

6. THE BENEFITS OF THE ANTI-SIPHONING POLICY OUTWEIGH THE COSTS OF RESTRICTION

The general community expectation of extensive free-to-air television coverage of sporting events is reflected in the "**Anti-siphoning" Rules,** determined by the Minister for Communications, Information Technology and the Arts, under powers conferred by s.115 of the *Act*. These restrict the ability of Pay services to acquire rights to a wide range of major sporting events prior to their acquisition by free-to-air broadcasters. These are events that have been available for many years on free-to-air television - they are mainly Australian but include a number of popular international events (though not the Olympic and Commonwealth Games). Their introduction was prompted by the "siphoning" of the premium football competition in the UK to a Pay service, and the recognition that sport plays a very important role in Australian society. The public importance of the anti-siphoning regime is reflected in the fact that it has strong bi-partisan support[49].

The anti-siphoning provisions give free-to-air stations first right of refusal to listed events. If a free-to-air broadcaster chooses not to broadcast an event, it is available for exclusive Pay TV broadcast. Where a free-to-air does choose to broadcast a listed event - as is usually the case - the commercial exclusivity it may obtain is in practice vital to achieving the objective of the provisions. This is because the economics of sports broadcasting are fragile. A relatively small decline in the sporting audience (which would occur if the audience were split between a free-to-air and a Pay service) would make many sporting events less attractive to advertisers and thus to stations. The result would be a sharp reduction in sporting coverage on free-to-air television.

Almost all listed events have been acquired since the provisions were introduced, and experience has shown that the whole, or key portions, of events have been utilised by free-to-air television. The great majority of them have been broadcast live. A number of ABA reports on the provisions have found that the system has worked well.

While the listing provisions means that Pay TV cannot obtain exclusive rights to events on the List if free-to-air services wish to broadcast them, it does not mean that commercial broadcasters obtain both free-to-air rights and Pay TV rights. Usually they do not. Even where they do, the commercial reality is that events that are not televised by the free-to-air operator are offered to Pay TV.

These dynamics have the important effect of ensuring that Pay TV coverage of List events complements and expands commercial television coverage, resulting in more overall coverage.

For example, in relation to a long and multi-match event like Wimbledon, the result is that the most significant parts of List events are broadcast for the benefit of all Australians, with Pay TV adding to and complementing that coverage for those with keener and specialised interests.

[49] A recent illustration of this was the debate in the Senate last month on free-to-air coverage of cricket, reported by Alan Ramsey in the *Sydney Morning Herald* on 3 April 1999

Without the anti-siphoning rules, there is no doubt that many major sporting events would migrate to Pay television: major live sport is regarded as an important subscription driver, so Pay television operators are prepared to pay extremely high prices for it as a “loss leader”.

When measured against the Government’s public policy and legislative objectives, FACTS believes that the anti-siphoning provisions appropriately secure the public interest in the maintenance of important sporting events on free-to-air television.

7. THE CO-REGULATION APPROACH PROVIDES SUBSTANTIAL CONSUMER BENEFITS, AND IMPOSES NO SIGNIFICANT COMPETITIVE DETRIMENT

Since 1993, most of the areas of program and advertising content previously subject to regulation on commercial free-to-air services have become the province of industry codes of practice. The exceptions are the regulations (“standards”) covering the screening of Australian programs and advertising, and of certain kinds of children’s programs. These standards are discussed separately in Section 8.

Section 123 of the Act sets out the scope (and limitations) of the self-regulatory process involved in the development and implementation of codes of practice. Codes must be developed in consultation with the ABA (s.123(1)), which must be satisfied that the codes satisfy statutory criteria before registering them (s.123(4)). The codes must take account of a range of specified factors (s.123(3)) and must comply with strict requirements in relation to the classification of films (s.123(3A)). Codes are amendable by the Parliament (s.128).

The legislative scheme clearly provides for a co-regulatory system, in which most of the costs are borne by the industry (rather than, in the past, by the Government regulator), with substantial reserve powers retained by the ABA (e.g. the powers to impose a code of practice as a condition of licence (s.44(2)(a)) and to determine a program standard where a code of practice has failed (s.125(1)) and by Parliament itself.

Section 130 of the Act also states that nothing in Part 9 (Program Standards) is to be taken as specifically authorising any act or thing for the purposes of subsection 51(1) of the *Trade Practices Act 1974*. It follows that any code of practice is subject to that subsection.

The commercial television industry has developed a code of practice pursuant to s.123. The Commercial Television Industry Code of Practice covers important program content areas such as:

- **Program classification**, based on an established system of viewing zones which is mainly intended to protect children from unsuitable material, and to provide consumer information, in the form of on-screen classification symbols and advice. The classification criteria are stricter than cinema, video and Pay TV classification criteria, reflecting commercial television’s universal availability. In practice, commercial television classifications are also stricter than those of the ABC and SBS. Commercial television free-to-air networks administer these requirements at their own cost, and independently of third-party classification bodies. Through public consultation, the industry aims to reflect community standards in what it broadcasts.

- **Advertising levels**. The restrictions on hourly advertising levels are intended to balance station commercial interests with viewer preference for a relatively uncluttered program presentation

- **Accuracy, fairness and respect for privacy in news and current affairs**. A range of provisions ensures high standards in news and current affairs. These go beyond any general legal restrictions applying to other media (e.g. newspapers), and hence restrict commercial television's ability to compete to a limited extent. The industry accepts, however, that they are in the public interest.

- **Placement restrictions on certain kinds of advertising** (e.g. alcohol, gambling, feminine protection, sex-related products). These restrictions are more extensive than those applying to competing media (newspapers, radio, Pay television), but the industry accepts that they are in the public interest.

- **Advertising to children** These restrictions are more extensive than those applying to competing media (newspapers, radio, Pay television), but the industry accepts that they are in the public interest.

- **Complaint handling by stations**. This establishes a transparent and accountable complaints process, which primarily involves individual stations, but in which the ABA is the final arbiter.

The Code of Practice process places considerable responsibility on individual stations, and is relatively resource-intensive and costly to operate. (FACTS estimates that the cost to the industry is approximately $3 million annually.) However, the industry supports the process because it is more efficient, simple and direct than any regulatory alternative. We believe that it operates in the interests of the public and the industry.

The restrictions which the Code of Practice places on competition within the industry are more extensive than those contained in other industry codes (e.g. commercial radio, Pay TV) or the "house rules" to which unregulated media such as newspapers operate. However, the commercial free-to-air television industry considers that the Code of Practice approach is more effective and efficient than direct regulation in achieving public interest objectives, in terms of flexibility, responsiveness to community views, transparency and ease of use by stations and viewers alike.

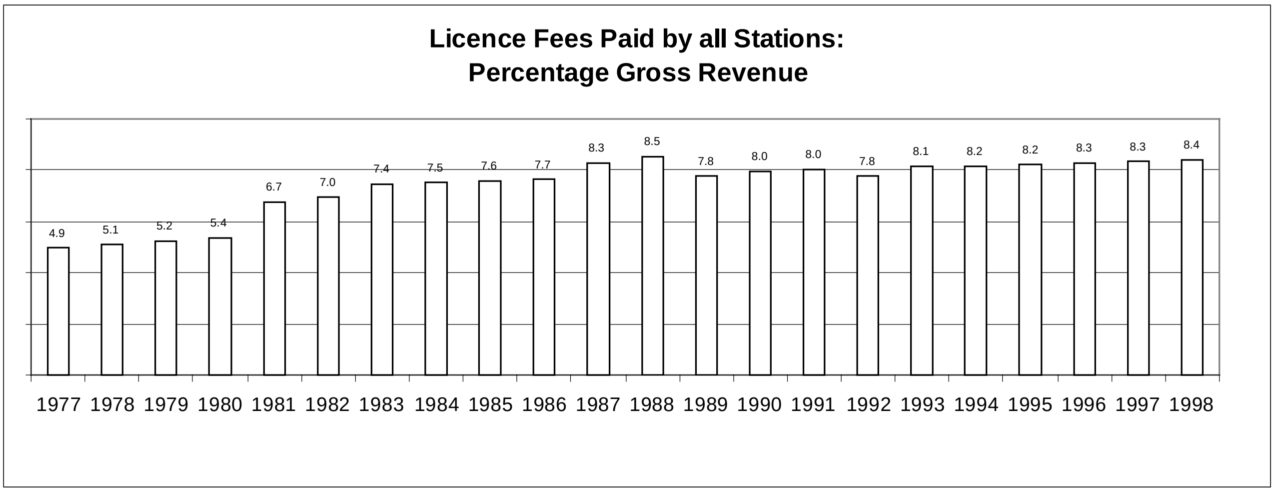
8. TELEVISION LICENCE FEES ARE A COST TO THE INDUSTRY THAT IS NOT JUSTIFIED BY PUBLIC BENEFIT

Each year the free-to-air commercial television industry pays licence fees to the Commonwealth Government under the *Television Licence Fees Act*, the other television-related legislation that has been referred to the Commission. Licence fees are paid in addition to ordinary taxes.

In 1997/8 the industry paid $194.5 million in licence fees, which represented over 30% of industry operating profit.

Licence fees evolved as an explicit ‘super tax’ on what was perceived as a particularly profitable industry in an era of spectrum scarcity. The television industry was taxed as a quid pro quo for the limited regulatory protection it received. Such a tax makes little sense in an environment where multiple channel choices are available to a growing number of viewers from Pay TV and online services which compete directly with commercial free-to-air services but pay no levies of any kind.

The fees are a scaled tax which peaks at 9% of gross revenue for major metropolitan stations. But inflation and ‘bracket creep’ has inflated the tax over the years, as there is no mechanism for indexed adjustment. The licence fee “take” has increased at a much greater rate than Commonwealth direct and indirect taxes generally.



The Government sponsored amalgamation of stations through aggregation in regional areas forced many regional stations permanently into much costlier licence fee brackets, for example, even though there were temporary relief measures. The fees are becoming a progressively bigger burden on the industry.

Television licence fees are a major constraint on program spending by the industry. Their effect clearly runs counter to the Government’s (and the Act’s) support for Australian film and television production. Commercial radio pays much lower licence fees, but other electronic media pay none (even though Pay television now receives explicit regulatory protection, in the form of the ban on the provision of multichannelling or subscription services by future commercial free-to-air digital services). Cable television pays a nominal one-off fee for each channel it uses, but is subject to no revenue-based licence fees. FACTS calculates that Foxtel and Optus have, between them, paid less than $60,000 in one-off licence charges since they began operation in 1995.

As the following table shows, Australian television licence fees are a much greater burden than those on free-to-air broadcasters in comparable countries where, as in Australia, the free-to-air system is relied upon to widely deliver a range of social benefits.

ANNUAL LICENCE FEES : INTERNATIONAL COMPARISONS*

Station Revenue		Australia	Canada**	United States***
1.	$3,000,000 (Small solus)	$69,000 (2.3%)	$41,000 (1.4%)	$1,200 (0.04%)
2.	$10,000,000 (Large solus)	$530,000 (5.3%)	$216,000 (2.2%)	$6,800 (0.007%)
3.	$25,000,000 (Aggregated)	$1,607,500 (6.4%)	$580,000 (2.3%)	$22,700 (0.09%)
4.	$50,000,000 (Small metropolitan)	$3,960,000 (7.9%)	$1,202,000 (2.4%)	$42,400 (0.09%)
5.	$90,000,000 (Medium metropolitan)	$8,028,000 (8.9%)	$2,190,000 (2.4%)	$62,100 (0.07%)
6.	$150,000,000 (Large metropolitan)	$13,500,000 (9%)	$3,675,000 (2.5%)	$62,100 (0.04%)

* All figures in Australian dollars

** Canadian figures are only approximate, as part of the licence fee relates to the total annual revenue of the industry and the total annual costs of the Government regulatory body. The calculations involve estimates of those figures

*** UHF stations pay approximately half these annual fees.

FACTS believes the licence fees arrangements should be reviewed with a view to substantially reducing the burden on the industry. Additionally, some or all of the funds raised from licence fees should be directed into a consolidated Australian production fund to provide direct support for further local production. This is discussed further in Sections 9 and 11.

9. THE "STANDARD" SYSTEM IS PRESCRIPTIVE AND IMPAIRS DEVELOPMENT OF AN EFFICIENT INDUSTRY

Most Australian programs on commercial free-to-air television are broadcast for competitive commercial reasons, not because they are required by regulation. However, the ABA does specify requirements for Australian programming on free-to-air commercial television - but not on the ABC or SBS - exercising powers conferred by the Act. The current requirements are contained in the ABA's *Broadcasting Services (Australian Content) Standard*[50].

This standard requires that Australian programs must be at least 55% of all programming broadcast in a year by the licensee between 6.00am and midnight must be Australian. It also sets minimum levels of first-release Australian drama, documentary and children's programs which must be broadcast.

The drama quota obliges commercial broadcasters to broadcast Australian drama in prime time and seeks to encourage the broadcast of higher-cost short-form drama. There are prescribed drama score targets for 'first release' Australian drama programs broadcast between 5.00pm and 11.00pm over both a single year and three-year period. The quota for drama programs is in the nature of a drama score which is determined by the formula: drama = format factor x duration. The format factor differentiates between different drama types and attributes the highest format factor to feature films, telemovies, mini-series and self-contained drama of less than 90 minutes duration.

In relation to children's drama, a minimum number of 32 hours of first release Australian children's drama is prescribed for each year. In addition, a minimum of 8 hours of previously released children's drama must be broadcast, and transmission quotas for general Australian children's (including pre-school children's) programming must be met.

The requirement for documentary programs is that at least 15 hours of first release Australian programs that are documentary programs, each of which is at least 30 minutes in duration, must be broadcast in 1999 and 20 hours in subsequent years.

Mandatory subquotas

Mandatory sub-quotas are not the optimal way of ensuring that Australian programming is innovative, relevant, responds to the actual interests and needs of the Australian audience, and makes best use of the skills and resources available.

A standard which requires all licensees to devote similar production inputs to drama and other categories is not consistent with the regulatory environment under the Act - it produces a sameness of commercial broadcasting services, rather than encouraging diversity of services and a wider range of services. It is clear that Parliament intended that some flexibility be accorded to licensees, that it did not require all licensees to have the same type of programming and that it intended the regulatory regime to ensure a wide range of diverse services in each licence area.

The rigidity of the sub-quotas can result in an inability to make local programming decisions in

50 These requirements were most recently amended in March 1999

accordance with audience, commercial and competitive needs, and can lead to a waste of resources and loss of other local programming opportunities.

Different commercial stations have particular production strengths. Their creative and experimental philosophies will diverge even further in the new digital, multimedia environment. Specific program quotas imposing a ‘one size fits all’ approach to local production discourage diversity in drama and documentary-style creative development, and impede commercial television’s competitiveness against Pay TV and much more free-form and experimental emerging media.

An overall “transmission” requirement for Australian programs, which left to broadcasters the choice of program types, program hours and scheduling, would allow greater flexibility, competition and innovation in the industry. Where particular program types regarded as desirable on non-commercial grounds might fall away under such an approach, the Government should consider direct subsidy.

Certain forms of locally produced programs required under the Standard are uneconomic and of limited audience appeal. High-cost children's drama, in particular, attracts only a small number of viewers and offers little opportunity for recouping licensing costs.

The problem arises from the mechanics of regulation: the ABA imposes conditions on the industry, including creative elements tests, which are prescriptive and do not move with changes in audience preferences and the requirements of program funding. Much greater flexibility is needed to allow stations to use their limited resources most effectively.

As we suggest in Section 11, adequate program funding across all broadcast media may also require examination of industry funds supported by licence fees and equivalent levies on other broadcasters.

Documentary quota

The documentary quota is hard to justify, as documentaries are particularly well represented on the ABC and SBS, and nowadays are available on dedicated Pay TV channels. Documentaries generally have limited appeal to commercial audiences (in contrast to factual programming presented in more innovative and appealing formats). They are typically confined to periods outside evening prime time. In short, documentary quotas entrench a television form which is undergoing very radical change as television becomes a much more informal, live and interactive medium.

Drama quotas

Drama quotas have outlived their 1970’s role of stimulating the development of an expensive program genre of (then) uncertain appeal to Australian viewers. They are far too blunt an instrument for the challenging business of developing a strong local drama production industry which can develop significant program exports in order to increase funding for programs.

In particular, high drama quotas do not help stations evolve the drama formats that are likely to work in an environment of growing competition from Pay TV. Except in periods of rapid revenue growth and/or high profitability - neither of which now exist, or are likely to recur -

spending more on one kind of program must draw resources from other programs. This is what happened in the early to mid 1970's - a period of low revenue growth and profitability - when the annual drama quota doubled to 104 hours a year. Most stations were forced to cancel many other Australian programs to pay for their drama quota; this caused the amount of Australian programming in prime time to fall considerably for several years. At the time, this was thought to be an acceptable price to pay for establishing a local drama production industry.

Far from encouraging innovation, program quotas force stations to be conservative - in particular, to look first to high-volume "quota efficient" program forms. Over the years, stations have produced some popular and long-running serials, but also a large number of failures. Some of these failures are a direct result of quota pressure. In simple terms, it is very risky for a station to rely on short-form drama to satisfy a quota pitched at the present level, unless it is prepared to live with occasional failed programs in its schedule. This is clearly a disincentive to low volume program forms, and hence to drama diversity.

The result of the quota can be a waste of resources, and a loss of other programming opportunities. That means reduced quality and foregone program diversity. The decline in serial drama series ratings in recent years suggests that all networks encounter difficulties in maintaining high volume drama which produces satisfactory viewing levels. We submit that regulation should not force them to choose second-best formats for their programming strategies, or to impose poorly-rating programs on their viewers.

Children's programming

Under powers conferred by the Act, the ABA has developed standards for children's programming. The *Children's Television Standard* requires free-to-air commercial free-to-air television stations to broadcast a minimum annual quota of 390 hours of children's programs. This comprises 130 hours of preschool programs and 260 hours of children's programs. The 260 hours of children's programs includes the 32 hours of Australian children's drama programs discussed above.

The preschool and children's programs are broadcast in special time bands set out in the standard. To qualify for broadcast in these times, programs are classified by the ABA in association with specialist consultants.

Children's programming is an area where the community expects to see a clear public interest approach in broadcasting, especially in relation to children's drama. However, children themselves show remarkably little interest in most of the expensive and well produced programs produced for them under this standard. The ABC already provides many programs of this kind. The current rigid and structured requirements are not working well, since they require commercial broadcasters to provide, in effect, ABC-style programs.

Viewing analysis suggests that the current approach is beginning to drive many children who have access to Pay TV to the virtually unregulated fare that is available on those channels.[51] This reduces the audience base for free-to-air children's programs, making the economics of such programming ever more difficult to sustain.

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[51] See for example, 'Youth turn off free-to-air TV', *The Australian Financial Review*, 9 June 1998

The growing chasm between what the community says it wants commercial free-to-air services to provide for children, and what children actually choose to watch, suggests to FACTS that the current rules need to be completely rethought.

To the extent that there is a persuasive case for such programs being shown on commercial television, the preferable options would seem to be direct subsidy or establishment of an all-industry funding mechanism, which would see a clearer divide between prescriptive and market-based children's programming.

Any such review will also need to take into account digital program enhancements, datacasting and the multichannelling opportunities that may exist for free-to-air children's programming in the years ahead.

10. THE POLICY DISPARITIES BETWEEN FREE-TO-AIR AND PAY SERVICES ARE ANTI-COMPETITIVE AND HAVE NO PUBLIC BENEFIT

In the United States, Canada and the United Kingdom, Pay TV services - in different ways and to different degrees - are consistently regulated, not only on taste and decency issues but also in order to promote consumer choice or local programming access. In North America, cable services are subject either to "franchise fees" of up to 5% of subscriber revenue, or to mandatory contributions to an industry production fund (which in Canada is also set at 5% of subscriber revenue).

In comparison, Pay TV regulation in Australia is very "light touch" indeed.

The Act is based on the philosophy that different kinds of services in the powerful medium of broadcasting should be regulated according to their degree of influence in shaping community views (section 4.(1) of the Act). This has turned out to be a largely meaningless measuring-stick in relation to Pay TV.

The Act licenses individual channels or program streams of Pay TV content. In practice, these channels are usually packaged by a foreign production company and delivered as a stream of content to a Pay TV operator, which "staples together" a large number of channels as a single Pay TV offering and controls the distribution infrastructure over which this offering is provided to consumers. The way in which individual channels are packaged will be the decision of this Pay TV operator, not the individual channel provider. It is the Pay TV operator, and not the channel provider, which has effective control of the service as a whole. In this context the relevant service is the offering made by that Pay TV operator to the consumer, rather than an individual channel (which cannot be obtained separately from the offering as a whole).

At the time that the Act was drafted, Pay TV was an unknown service in Australia. Accordingly, there was a very limited understanding as to how it would develop. Consequently, the Pay TV regulatory regime licenses individual program streams or channels, and not the offering made to the consumer by the Pay TV operator. This is clearly undesirable for several reasons.

Firstly, to the extent that Pay TV services are regulated, the appropriate point of regulation is the entity which offers the service to the consumer, and not an individual channel provider, which is no more than a program stream acquired by the Pay TV operator as part of a larger undertaking.

Secondly, by making the Pay TV channel the point of regulation, it has been possible for Pay TV operators to evade or minimise regulation on the Pay TV sector, contrary to the intention of the Act. A number of simple examples can be given on this.

Firstly, as the anti-siphoning regime was imposed on a Pay TV licensee as a single channel provider, it was possible to circumvent the anti-siphoning regime by acquiring rights through related companies which then entered into artificial arrangements in relation to them. In an extreme case, found by the Federal Court to be contrary to the anti-siphoning rules, a related company of a shareholder in Foxtel acquired the rights to a series of Australia-South Africa cricket tests, which it then onsold to the Seven Network subject to a 3-month delay. Under this arrangement, the Pay TV operator broadcast the tests live, whilst claiming that it complied with the anti-siphoning regime by giving 3-month delayed rights to a free-to-air broadcaster, when those rights were in effect of no value.

A second example occurs in the retransmission of free-to-air broadcast signals, where in order to recognise and attribute a value to the copyright in a free-to-air broadcast signal, proposed amendments to the *Copyright Act* will impose an obligation on a Pay TV operator (not the individual channel provider) to pay copyright fees for the retransmission of a free-to-air signal.

Thirdly, the licence condition that a Pay TV licensee which broadcasts drama programming must contribute 10% of expenditure to local programming has been found to be virtually useless, because in practice that licensee will be a shelf company which has almost no expenditure on drama. The ABA found last year that only one of 11 predominantly drama Pay channels had met this expenditure requirement; overall they spent only $3.24 million on Australian drama, or 5.02% of all drama expenditure[52]. The recommendations for change made by the ABA in 1997, and accepted by the Government, will add an element of compulsion, but will still leave a complex and probably unworkable scheme. Because it covers only narrowly-defined drama channels, it would only make a marginal contribution to the production of Australian programs, even if it were enforceable.

Each of these problems has been sought to be addressed by different regulatory means: by litigation to enforce the anti-siphoning regime, by proposed amendments to the Copyright Act to recognise Pay TV operators and by proposed amendment to the Act to enforce regulation of drama expenditure requirements by Pay TV operators.

However, none of these mechanisms addresses the primary issue, which is that Pay TV operators, as the effective providers of Pay TV services are not regulated by the Act. It would be more efficient to recognise the reality in which Pay TV has been introduced into Australia, by now amending the Act to make a Pay TV operator the point of regulatory focus. This would avoid the need for ad hoc solutions for the three problems identified above. In the absence of any recognition of a Pay TV operator as the real service provider for Pay TV, new regulatory issues will need to be addressed by a continuing patchwork of regulatory mechanisms.

This will be particularly important as Pay TV's influence within the Australian community increases. Pay TV is already provided to approximately 15% of Australian households and over the next five years this is likely to rise to at least 40% of households. A Pay TV service offers a far greater array of channels than could ever be provided by a free-to-air service, even after the advent of digital television. Further, this array of channels is increasing all the time, and will be increasingly important in shaping views and cultural perspectives within the Australian community.

As this occurs, it is appropriate that Pay TV assume greater responsibility for achieving the social and cultural objectives of the Act, which to date has been the exclusive responsibility of free-to-air broadcasters. This gradual shift towards Pay TV operators is consistent with the

52 ABA News Release NR36/1998, 8 April 1998

underlying assumption of the Act, that services with high degrees of influence should be more closely regulated than those with a lower degree of service.

Influence is, however, of doubtful relevance to many key regulatory issues - the promotion of a sense of Australian character, culture and identity, development of the film and television production industry, and classification criteria for programs.

FACTS believes that there is a strong case for Pay TV to contribute to the positive public interest objectives of the Act, particularly in the areas of licence fees and direct support for Australian content. As the moment, these responsibilities fall disproportionately on commercial free-to-air services.

On licence fees, Pay TV licensees pay a nominal one-off fee for each licence they receive from the ABA, but are liable to no further charges. FACTS has argued in the past that operators should be subject to a consistent, structured scheme to achieve credible Australian content outcomes.[53]

It should be apparent from FACTS' comments earlier in this submission that we are not advocates of program quotas. FACTS has proposed that Pay TV broadcasters should be subject to an annual monetary contribution. It would be calculated as a percentage of their gross revenue to a maximum of 5% and would be phased in, say, over five years, contributing to a broadly based production fund to support further local production in the television industry. Such a measure might eventually replace any other local content requirement, but until it is securely in place there should be a transmission quota system to ensure the delivery of a minimum level of Australian content on Pay TV.

The only significant regulatory constraints on cable television (the dominant form of Pay TV) are in relation to sporting rights (the "anti-siphoning" rules) and - prospectively - the retransmission of free-to-air signals. A Bill to be introduced to parliament later this session will regulate carriage of these signals, which to date has been solely at the election of cable operators.

Pay TV has, however, been able to claim regulatory protection, despite its largely unregulated operations. The digital conversion legislation justifies the ban on multichannelling and the provision of subscription services by commercial broadcasters' digital services as necessary to protect "fledgling" multichannel broadcasters.

More generally, Pay TV offers no localism (in the sense of anything below national news programming or local information). It also programs to much more relaxed standards of community acceptability as regards decency and violence, which gives it a competitive advantage over free-to-air broadcasters in areas where they compete directly e.g. in broadcasting high-appeal movies and other mainstream programs. Pay TV is not subject to any closed captioning requirements.

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53 *Australian Content on Pay TV,* FACTS submission to the ABA, December 1996

11. OTHER ISSUES REQUIRING ATTENTION

There are several broader issues concerning the general operation of the Act and the regulatory scheme it establishes which FACTS believes also deserve attention.

Better coordination of support for Australian programs

The **first** issue concerns the need for rationalisation of Federal and State funding of Australian television program production.

This has developed in a relatively ad hoc way over many years. The Federal Government disburses many hundreds of millions of dollars each year to fund the ABC, SBS, the Film Finance Corporation, the Australian Film Commission, and training organisations such as the National Institute of the Dramatic Art (NIDA) and the Australian Film, Television and Radio School. It also funds the ABA which, by determining a range of statutory requirements, has a profound impact on television program production.

Despite periodic inquiries, there is little sense of a coherent overall policy in relation to support for Australian programming and the production industry (including the television industry) which makes it possible. In particular, there seems to be only limited recognition that free-to-air television is now overwhelmingly the most important exhibition medium for Australian culture. For the reasons explained in the course of this submission, it will be difficult for the industry to sustain this level of support in the years ahead, even in the absence of major changes in competitive circumstances. It will be particularly important for Government support to be as well conceived and coordinated as possible, In particular, it is crucial that there be maximum coordination in this area between agencies which impose Australian content requirements and agencies providing production funding support.

We proposed in Section 8 that a proportion of the licence fees paid by the commercial television industry might go into a local production fund to support the production of Australian programs. We also argued that Pay TV broadcasters should also be required to contribute to a fund. These funds could be consolidated, desirably with current Government funding. These proposals might provide a framework for further thinking about how funding sources might be rationalised to enhance the industry's ability to gain maximum benefit from the nation's support for Australian productions. This is an approach that has produced striking results in Canada in recent years.

Regulatory responsibility for broadcasting

The **second** issue relates to the various forums - the ABA, the Australian Communications Authority and the Australian Competition and Consumer Commission - which each have some say in the regulation of the Australian broadcasting system and related activities.

Throughout the world, governments are reviewing accessing options for the 'right' structure to govern broadcasting and communications in the age of convergence. In the United States, the unitary Federal Communications Commission is again under scrutiny.

In the United Kingdom, the possibility of creating a new super-regulator out of the Independent Television Commission, OFTEL and other bodies has been regularly discussed in recent years.

There is a natural distinction between the industry-specific regulation of communications carriage, on the one hand, and of content, on the other. Then there is the issue of the application of general economic regulation to both these areas. Certainly content and carriage are in many ways beginning to merge in the new communications environment, and this is occurring at a global as well as a local level, which adds a further dimension to the challenge of regulatory structures.

As the debate continues, FACTS believes it is important to make the following point: as the core argument in this submission to the Commission has attempted to show, the regulation of media content is a complex and subtle task. The nuances that are required to manage the regulation of broadcasting in the social, cultural as well as economic interests of the community are often finely drawn, usually more so than in the more robust worlds of general communications or competition policy.

The ACCC has become the preferred method of structural and competition regulation of most industries, due to the development of a substantial body of expertise arising from its administration of the *Trade Practices Act,* as Australia's major piece of economic and structural regulation. The direction of telecommunications regulation is itself an example of this trend.

While this submission does not address ownership and control issues, the broadcasting industry has always been subject to the general trade practices regime. There are now several well publicised examples of regulatory intervention by the ACCC in both the free-to-air and Pay television sectors as part of the ACCC's role of competition watch dog. However, the social and cultural objectives which broadcasting legislation seeks to achieve requires consideration of various competing issues which cannot be addressed, in a regulatory sense, by the application of economic principles alone. For this reason, it is not appropriate that broadcasting regulation in relation to content, licensing and similar issues be subsumed within a general economic regulatory model, such as the Trade Practices Act. As a simple example, there remains a high degree of public support for the current system of program classification and scheduling by free-to-air television, to minimise the risk that children are exposed to inappropriate programming or that viewers are unable to make informed program choices. This system currently operates through an industry code, the establishment and operation of which has been monitored by the ABA. This monitoring role could not be undertaken by a body which lacked specialist broadcasting industry expertise.

FACTS therefore strongly supports the retention of the current regulatory model, under which the ABA has a specialist role in administering the Act. It would be inappropriate for the ABA and the Australian Communications Authority to be fused as a single "communication" regulator, such as exists with the FCC in the United states, because the direction of telecommunications regulation will be toward a general trade practices model, described above. In addition, there are no obvious synergies in relation to broadcasting regulation, which is content-focused, and telecommunications regulation, which is primarily economic and technical in its focus.

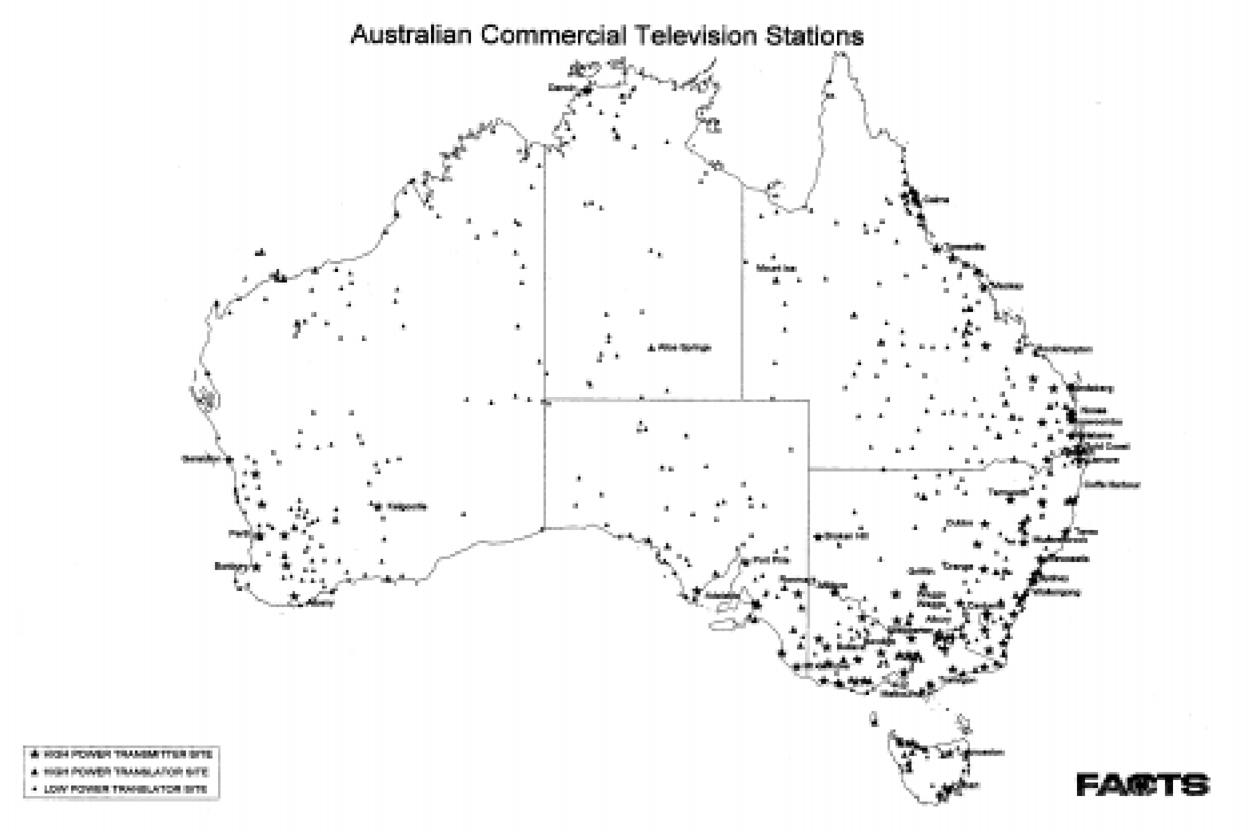
Planning Processes

A final point relates to the planning process.

Despite the prohibition on more commercial television licences, it will be necessary for the ABA to continue to have a planning function in relation to broadcasting spectrum. Even with an auction-based model for allocation for commercial broadcasting licences, it is necessary for the ABA to decide the priority to be given to various competing demands for broadcasting spectrum, particularly in a hybrid broadcasting model which includes commercial, national and community broadcasters. How the ABA performs this role can be crucial to the future shape and direction of the broadcasting sector. Given the vital nature of the role, it is also important that the ABA be accountable for the way in which it conducts this process.

When the Act was first enacted, it was generally thought that the ABA's planning role would be subject to review under the *Administrative Decisions (Judicial Review) Act*, which is the main mechanism for review of decisions by any Commonwealth agency. The ABA itself acted on this assumption for some years after 1992. However, in 1996 the Federal Court held that, when making planning decisions, the ABA was not reviewable because it was undertaking a legislative function. This review is not the place to debate whether the Federal Court's reasoning is correct. More importantly, the critical issue is whether or not the ABA should continue to be subject to judicial review for planning outcomes which help shape Australian society and the broadcasting sector as an expression of that society. As review under the *ADJR Act* is limited to judicial review on legal grounds, there is no serious detriment in relation to the efficiency of operation of the Act. The Federal Court's role under this legislation is merely to ensure that Commonwealth agencies such as the ABA act within the limits of their enabling legislation. FACTS therefore considers that the *Broadcasting Services Act* should be amended to expressly provide for judicial review under the *ADJR Act* for the ABA's planning decisions.

APPENDIX 1 :
COMMERCIAL TELEVISION STATIONS



APPENDIX 2:
COMMERCIAL TELEVISION LICENCE AREAS
AND ADVERTISING MARKETS

1. Commercial Television Licence Areas

	Licence Area	Population*
1.	Sydney	3,740,397
2.	Melbourne	3,460,663
3.	Brisbane	1,987,051
4.	Adelaide	1,201,124
5.	Perth	1,332,157
6.	Regional Queensland	1,362,892
7.	Regional Northern NSW	1,307,573
8.	Regional Southern NSW	1,225,351
9.	Regional Victoria	988,800
10.	Tasmania	458,088
11.	Darwin	105,158
12.	Remote Western Australia	94,280
13.	Remote Eastern/Central	286,720
14.	Mildura	56,267
15.	Griffith	54,850
16.	Port Pirie	108,635
17.	Mount Gambier	62,909
18.	Riverland	37,125
19.	Mt Isa	21,143
20.	Bunbury	203,279
21.	Kalgoorlie	54,961
22.	Geraldton	42,449
23.	Broken Hill	21,453

* Based on figures calculated by the ABA from the 1996 census. Adjusted for licence area overlap, and for estimated population growth to 1998.

2. Commercial Television Advertising Markets

1. Sydney
2. Melbourne
3. Brisbane
4. Adelaide
5. Perth
6. Regional Queensland
   (a) Cairns
   (b) Townsville
   (c) Mackay
   (d) Rockhampton
   (e) Maryborough
   (f) Toowoomba
7. Regional Northern NSW
   (a) Gold Coast
   (b) Far North Coast
   (c) Mid North Coast
   (d) North West
   (e) Newcastle/Hunter Valley
   (f) Central Coast
8. Regional Southern NSW
   (a) Newcastle
   (b) Canberra
   (c) Orange
   (d) Wagga
9. Regional Victoria
   (a) Albury
   (b) Shepparton
   (c) Bendigo
   (d) Ballarat
   (e) Gippsland
10. Tasmania
    (a) Hobart
    (b) Launceston
11. Darwin
12. Griffith
13. Mildura
14. Mt Isa
15. Broken Hill
16. Riverland
17. Mt Gambier
18. Port Pirie
19. Bunbury
20. Kalgoorlie
21. Geraldton
22. Remote Western Australia
23. Remote Central/Eastern Australia
    (a) Alice Springs

Total: 47 Markets or sub-markets

APPENDIX 3 :
COMMERCIAL TELEVISION INDUSTRY OWNERSHIP STRUCTURE

The main ownership groups are as follows (in each case an abbreviation is provided for ready identification in the tables which follow):

1. **Seven Network Ltd** (ATN-7, Sydney; HSV-7, Melbourne; BTQ-7, Brisbane; SAS-7, Adelaide; TVW-7, Perth and Seven Queensland, regional Queensland) [**SEVEN**]

2. **The Ten Group Limited** (TEN-10, Sydney; ATV-10, Melbourne; TVQ-10, Brisbane; ADS-10, Adelaide; NEW-10, Perth) [**TEN**]

3. **Publishing & Broadcasting Ltd** (TCN-9, Sydney; GTV-9, Melbourne; QTQ-9, Brisbane and NTD-8, Darwin) [**PBL**]

4. **Telecasters Australia Limited** (Ten Queensland, regional Queensland; Ten Northern NSW, regional Northern NSW; ITQ, Mt Isa, QQQ, North Eastern remote satellite service; Seven Darwin [**TAL**]

5. **Southern Cross Broadcasting Australia Limited** (Ten Capital, regional Southern NSW, Ten Victoria, regional Victoria; Southern Cross Television, Tasmania, NWS-9, Adelaide) [**SCB**]

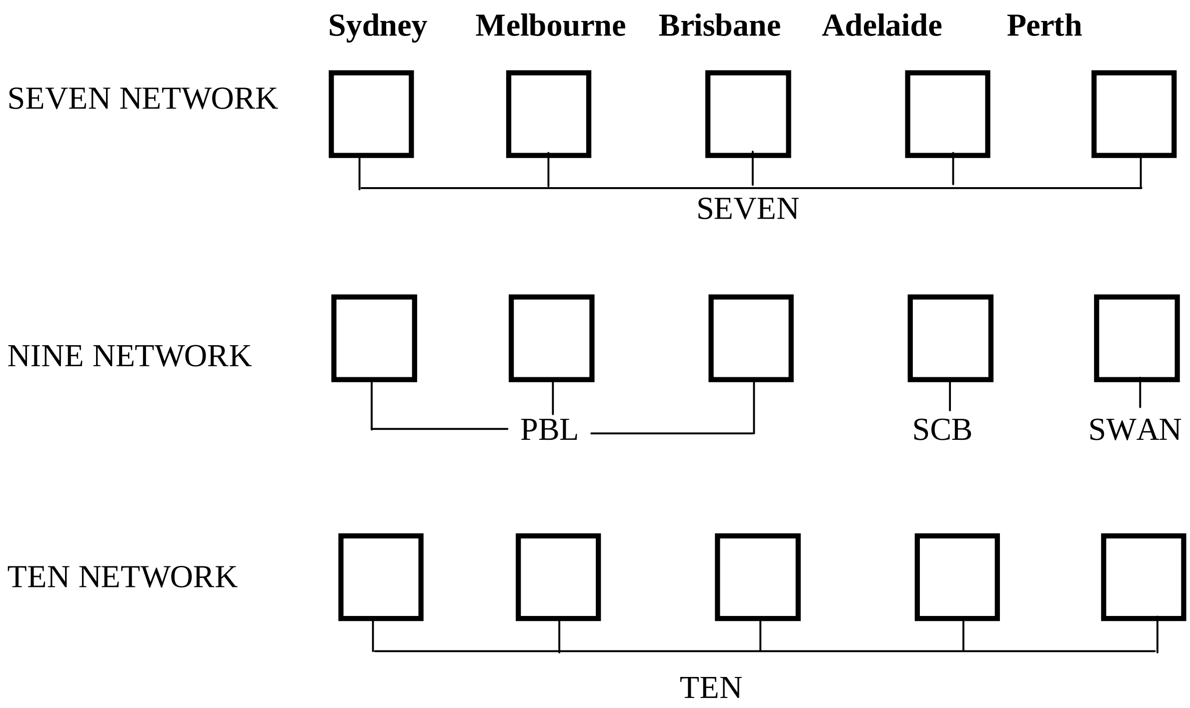
6. **Prime Television Limited** (Prime Northern, regional Northern NSW; Prime Southern, regional Southern NSW; Prime Victoria, regional Victoria; Prime Mildura; Golden West Network, regional Western Australia; WAW, Western remote satellite service. All except the Golden West Network are Seven Network affiliates) [**PRIME**]

7. **WIN Television Limited** (WIN Queensland, regional Queensland; WIN Southern, regional Southern NSW; WIN Victoria, regional Victoria; WIN Mildura, WIN Tasmania, MTN Griffith, WIN WA. All except MTN Griffith are Nine Network affiliates [**WIN**]

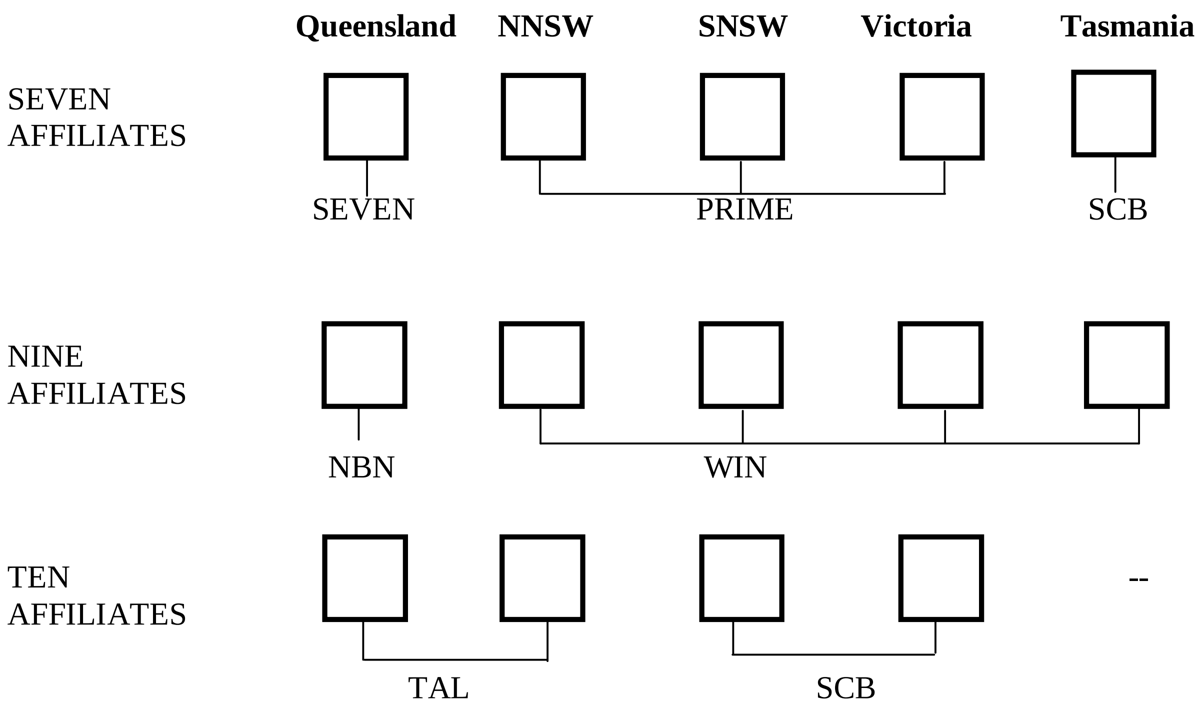
8. **NBN Limited** (NBN, regional Northern NSW) [**NBN**]

9. **Swan Television and Radio Broadcasters Limited** (STW-9, Perth) [**SWAN**]

CAPITAL CITY STATIONS



REGIONAL AFFILIATE STATIONS



SMALLER MARKETS

NTD Darwin - PBL

Seven Darwin - TAL

Golden West Network, regional Western Australia (3 stations) - PRIME

WIN WA, regional Western Australia

ITQ, Mt Isa - TAL

MTN, Griffith - WIN [Licensed to provide two services]

SES, Mt Gambier and RTS Riverland - Scott Agencies, Pty Ltd

BKN, Broken Hill and GTS, Pt Pirie - J N Sturrock Pty Ltd

SATELLITE-DELIVERED REMOTE-AREA SERVICES

Imparja (Eastern-Central Australia) - Imparja Television Pty Ltd

QQQ (Eastern-Central Australia) - TAL

WWW (Western Australia) - PRIME

APPENDIX 4: KEY VIEWING STATISTICS

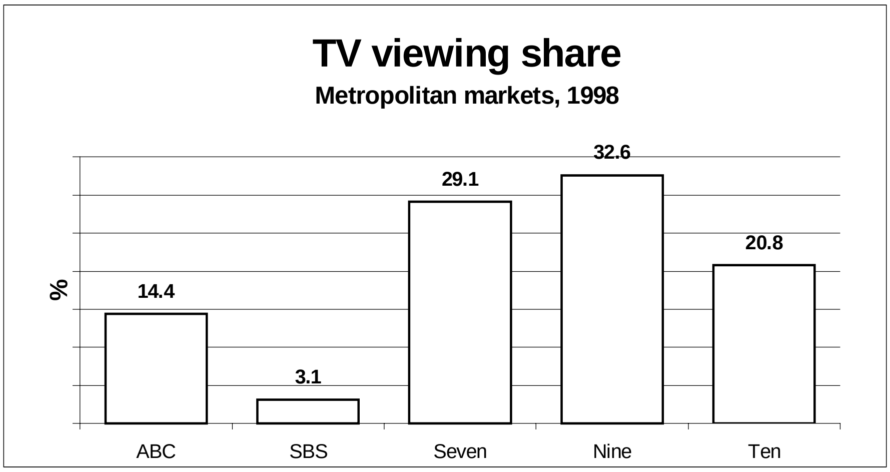


Chart 1: A C Nielsen figures

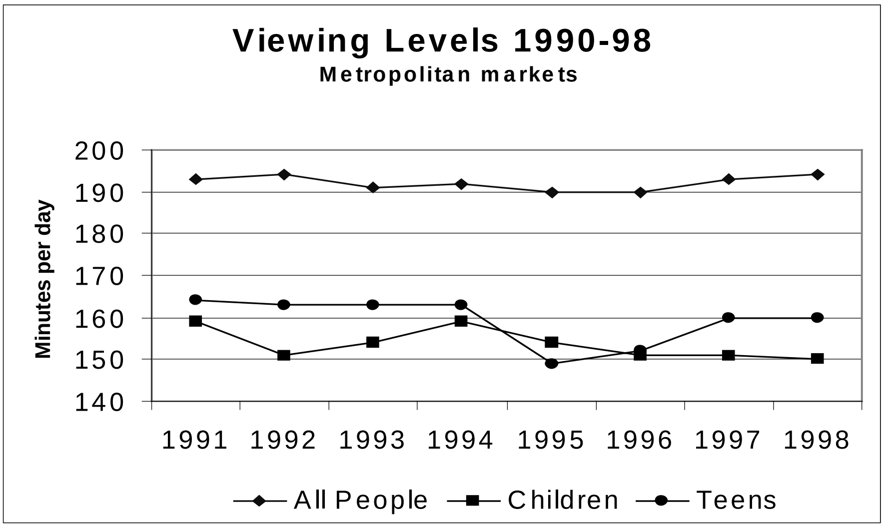


Chart 2: AC Nielsen figures

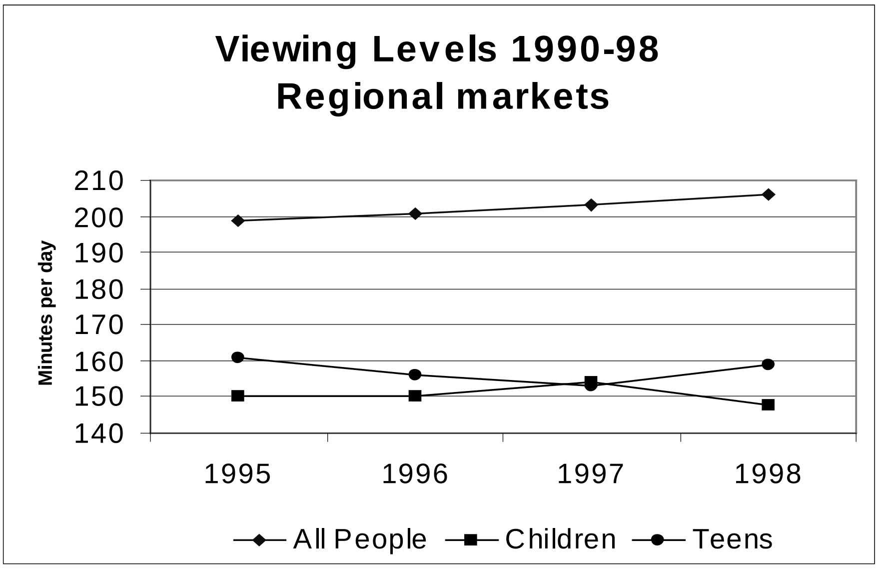


Chart 3: AC Nielsen figures

Appendix 4: Key Viewing Statistics (cont'd)

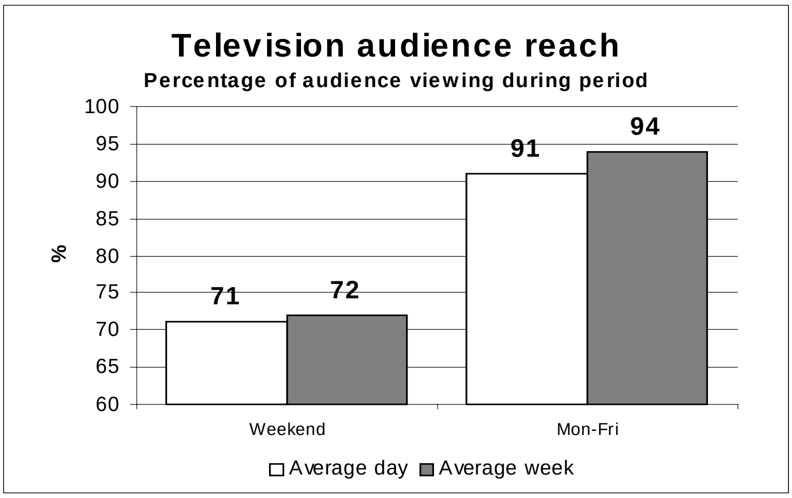


Chart 4: AC Nielsen figures

APPENDIX 5:
KEY INDUSTRY REVENUE AND EXPENDITURE STATISTICS

APPENDIX 6 :
BROADCAST REGULATION IN OTHER LIBERAL DEMOCRACIES

United States

In the United States, since the Communications Act of 1934, the government has licensed television broadcasters, imposed program requirements and regulated industry behaviour. It has imposed mechanisms like the financial interest/syndication program rules and access regimes for free-to-air stations on cable. The cable industry itself is a series of franchised monopolies which until recently was regulated as to rates to consumers.

The US embraced market-restricting mechanisms for television early when it rejected vigorous arguments for a common carrier model - where anyone could buy air time for programming - in favour of a licence model. In this approach, which then became common elsewhere, a smaller number of 'licensees' would have exclusive rights to the broadcasting of television services. However, the *quid pro quo* has been that US broadcasters must operate in the 'public interest, convenience and necessity'[1] which has imposed on licensees a wide range of rules concerning the political process, localism, social development and education. This approach is continuing in the current transition to the digital age with, recently, the President's *Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters* endorsing the continued relevance of the 'public interest standard'.[2]

The United States Federal Communications Commission Chair, William Kennard, has stated 'We must develop a framework to ensure that the public interest remains vibrant and meaningful in the digital age…' [3]

Canada

In Canada, the *Broadcasting Act* states that the objectives of Canadian broadcasting policy 'can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority', the Canadian Radio Television & Telecommunications Commission.

The CRTC has the power to license networks and television stations, may set content quotas, create policy to respond to new social and cultural needs and set conditions of licence. Under its powers, the CRTC can and does intervene in very specific ways in the operation of television services and cable and satellite services: limiting the number of licences and services and even requiring the expenditure of fixed sums of money by operators on specific program categories.

United Kingdom

[1] US *Communications Act* 1934

[2] Report of the US *Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters,* 1998, page 36

[3] William Kennard, 1998, quoted in *The Death of Broadcasting? Media's Digital Future* by Jock Given, UNSW Press, Sydney 1998

In the United Kingdom broadcasting was a state monopoly until 1955 when the commercial television service joined the BBC in television. Since then the non-profit entity Channel 4 and the commercial service Channel 5 have cautiously expanded the number of operators in the free-to-air marketplace.

In digital, multiplex licensees - consortia of existing players - control the delivery of commercial services. From the days of the BBC's first director-general, Lord Reith, British broadcasting has placed strong emphasis on the social and cultural obligations of broadcasters.

All licensed free-to-air broadcasters in the United Kingdom are considered 'public service' broadcasters and the trade-off between public service objectives and limiting entry into the commercial terrestrial broadcasting marketplace remains a central pillar of policy. The relevant regulatory authority, the Independent Television Commission, closely manages commercial television network performance including what are called their 'positive programming requirements'.

Other European countries

In other European countries, competition in free-to-air broadcasting has been even more tightly controlled. It was not until the 1980s that the state monopolies in broadcasting which existed in almost every country began to open up to commercial competition.

Shortage of available bandwidth continues to represent a problem for competition in the expansion of over-the-air services. The continuing European commitment to public broadcasting, on the one hand, and European Union general competition policy, on the other, have made for a complex debate about broadcasting policy. However, the regulation of broadcasting in the public interest remains a central tenet in most countries.

In France there is a strong involvement of commercial channels in the public service mission and, as a recent report on German broadcasting pointed out, 'programs of particular social relevance, known as "public interest programming", are regularly included in the schedules of both public and private broadcasters.[4]

Asia-Pacific region

In the Asia-Pacific region, with a long tradition of government-controlled broadcasting, a period of opening up to commercial players has been underway in the 1990s, often under the stimulus of the arrival of satellite-delivered transnational services. However, the issuing of commercial licences has been carefully limited and operational matters have been uniformly subject to the licensing and censorship controls of the state.

New Zealand

New Zealand is one of the few television marketplaces which seems to have significantly moved away from licensing and limiting the number of commercial free-to-air broadcasting, although other regulations remain.

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[4] *The Reality of Grundversorgung: About the Functional Mission of Public Broadcasters in Germany*, Bertelsmann Foundation, Germany 1998

Within technical limits, there is no restriction on the number of broadcasters who can operate in the marketplace. However, the New Zealand broadcasting environment is very country-specific. Right into the late 1980s, free-to-air television was the exclusive preserve of the government-owned public broadcaster, the Broadcasting Corporation of New Zealand. BCNZ operated two channels and possessed extensive national production and transmission assets.

Since the deregulation of market entry, the state-owned TVNZ has been required to operate along commercial lines but with a general policy of promoting New Zealand identity and culture. Importantly, TVNZ has been able to continue its historically conferred dominance of the marketplace.

Other mechanisms have also been created to promote New Zealand social and cultural objectives in the new NZ marketplace, which now also includes two commercial free-to-air operators. The New Zealand model is discussed in Section 4 of this submission.

Public interest benefits

As this brief survey of the regulation of over-the-air-broadcasting internationally reveals, there is an almost universal recognition that: broadcasting must serve a well-defined set of public interest criteria; that it will do so through achieving social and cultural as well as economic objectives in society; and, that this can best be achieved by legislative/regulatory intervention in the marketplace.

This intervention in the free-to-air commercial television industry market by governments can cover an extremely wide range of issues, as the following suggests:

	Australia	**NZ**	**Canada**	**US**	**UK**
OWNERSHIP/CONTROL	**yes**	**no**	**yes**	**yes**	**yes**
TASTE & DECENCY (Sex, Violence, Profanity)	**yes**	**yes**	**yes**	**yes**	**yes**
ADVERTISING LEVELS					
- General	**yes**	**no**	**yes**	**no**	**yes**
- Children	**yes**	**no**	**yes**	**yes**	**yes**
ADVERTISING CONTENT					
- Elections	**yes**	**yes**	**yes**	**yes**	**yes**
- Gambling	**yes**	**yes**	**yes**	**yes**	**yes**
-Alcohol	**yes**	**yes**	**yes**	**yes**	**yes**
- Other	**yes**	**yes**	**yes**	**yes**	**yes**
CHILDREN'S PROGRAMS	**yes**	**no**	**yes**	**yes**	**yes**
PROGRAM FORMATS	**no**	**no**	**no**	**no**	**yes**
NATIONAL QUOTAS	**yes**	**no**	**yes**	**no**	**yes**
LOCALISM	**yes**	**no**	**yes**	**yes**	**yes**
PERIODIC LICENCE RENEWALS	**yes**	**no**	**yes**	**yes**	**yes**

International television statistics, 1996

	TV h'holds (million)	*TV Advertising (US$ billion)*	*TV ad $ per HH*
Netherlands	6.1	0.7	115
Australia	6.8	1.6	235
Canada	10.0	1.8	180
Italy	20.4	3.2	157
France	21.2	3.5	165
UK	22.2	5.3	239
Germany	32.0	4.9	153
Japan	58.1	19.5	336
US	96.0	42.5	443

Chart 1: Harold L. Vogel, Entertainment and Industry Economics (1998), Page 164

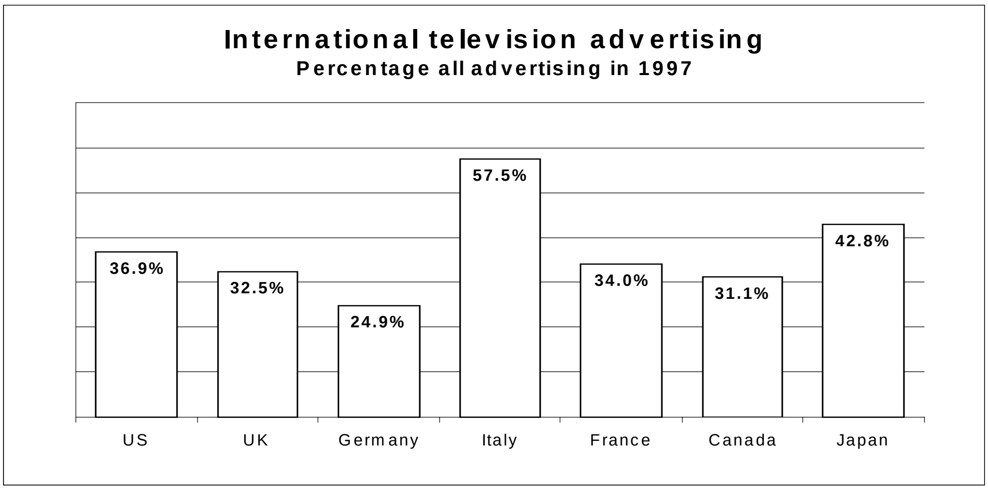

Chart 2: European Advertising and Media Forecast (NTC Publications Ltd)

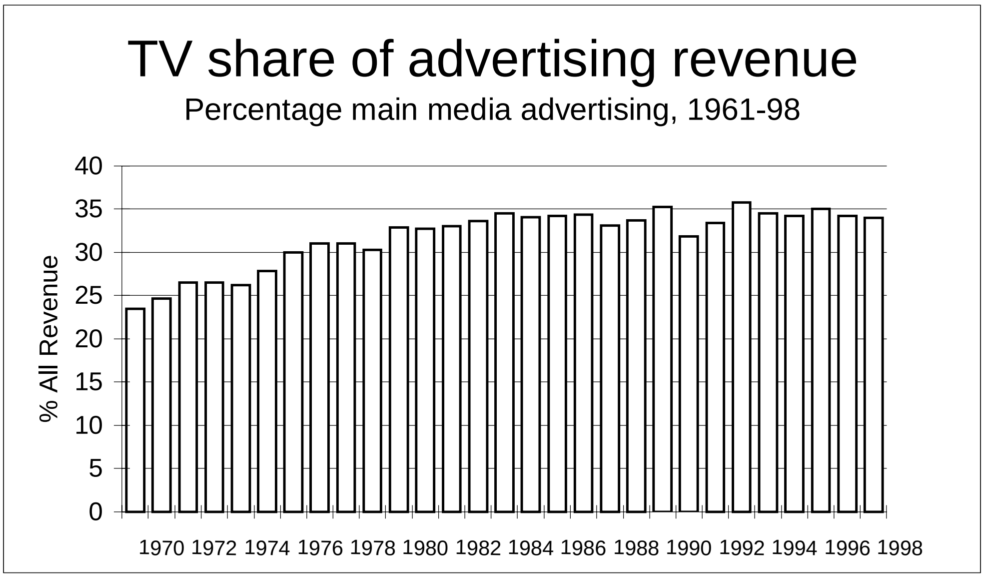

Chart 3: CEASA figures

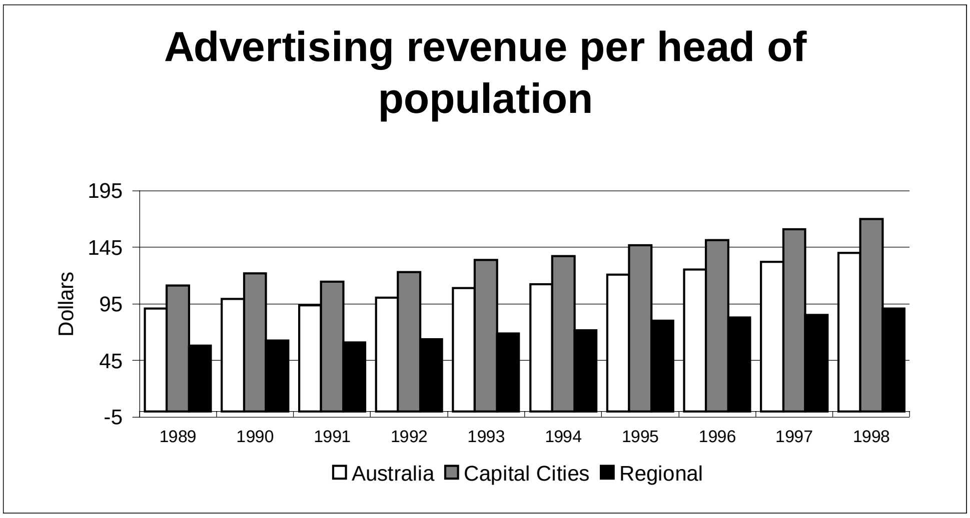

Chart 4: ABA figures.

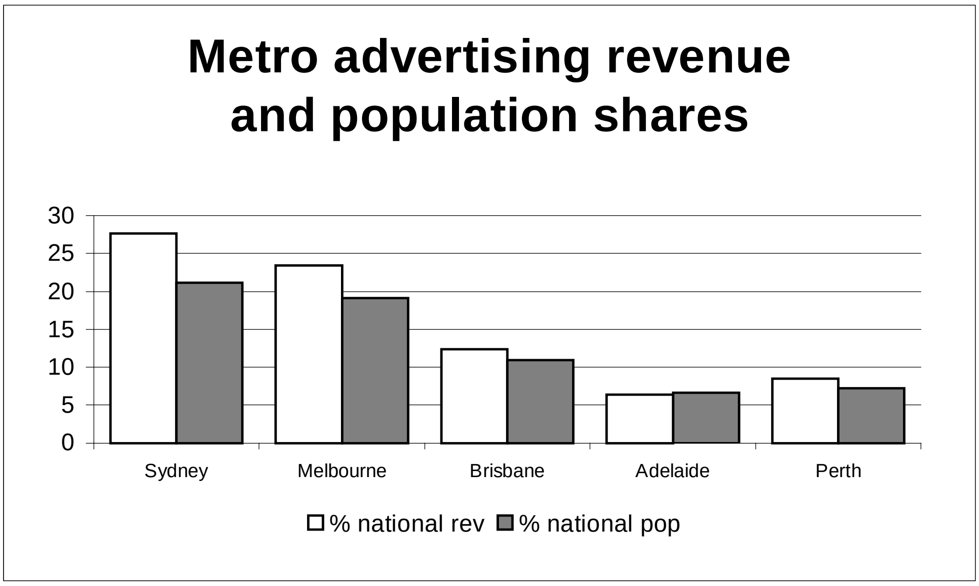

Chart 5: ABA figures.

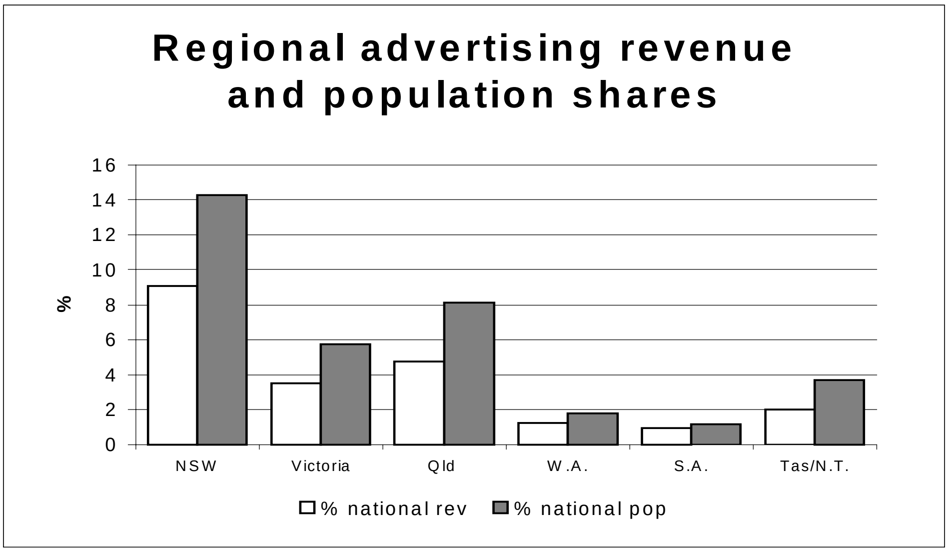

Chart 6: ABA figures.

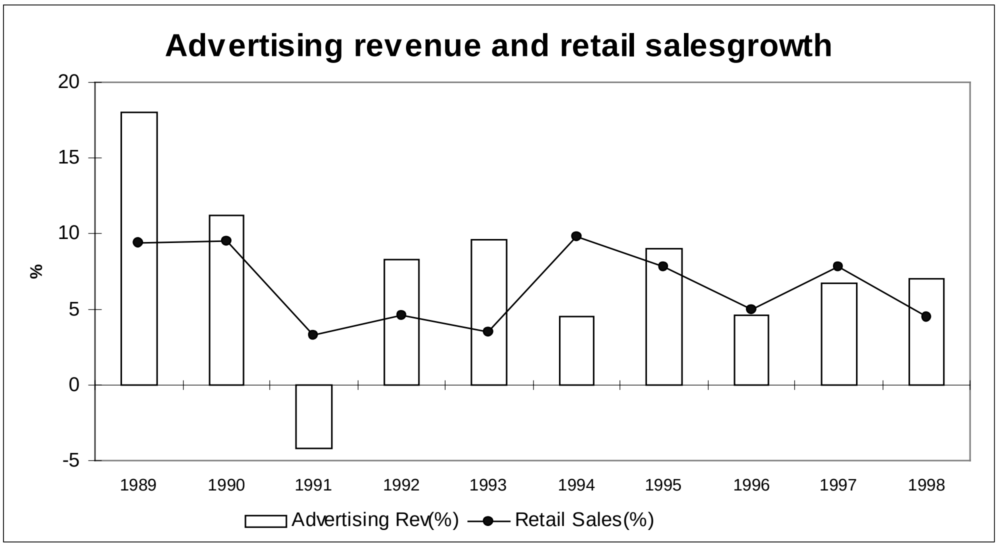

Chart 7: ABA and ABS figure

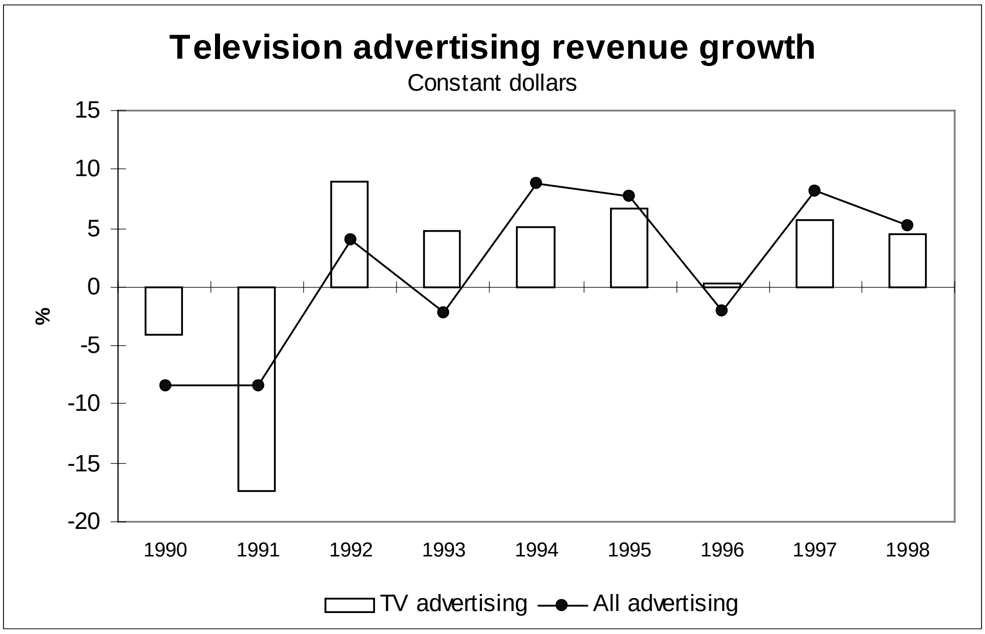

Chart 8: ABA figures

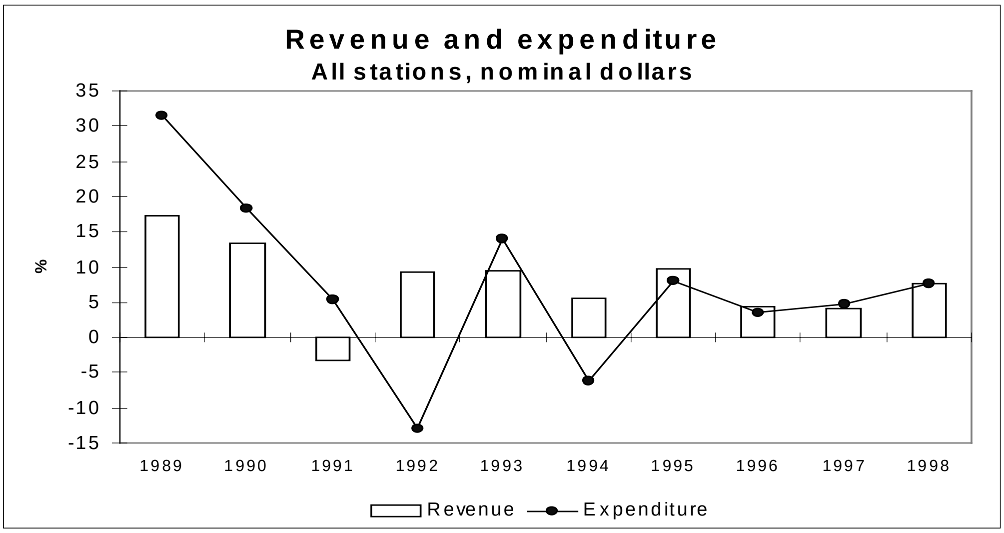

Chart 9: ABA figures

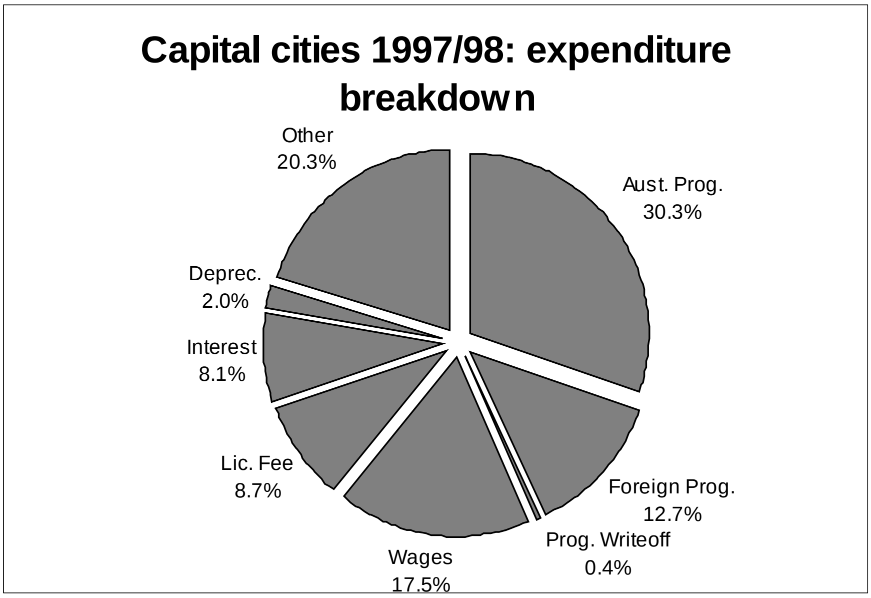

Chart 10 ABA figures

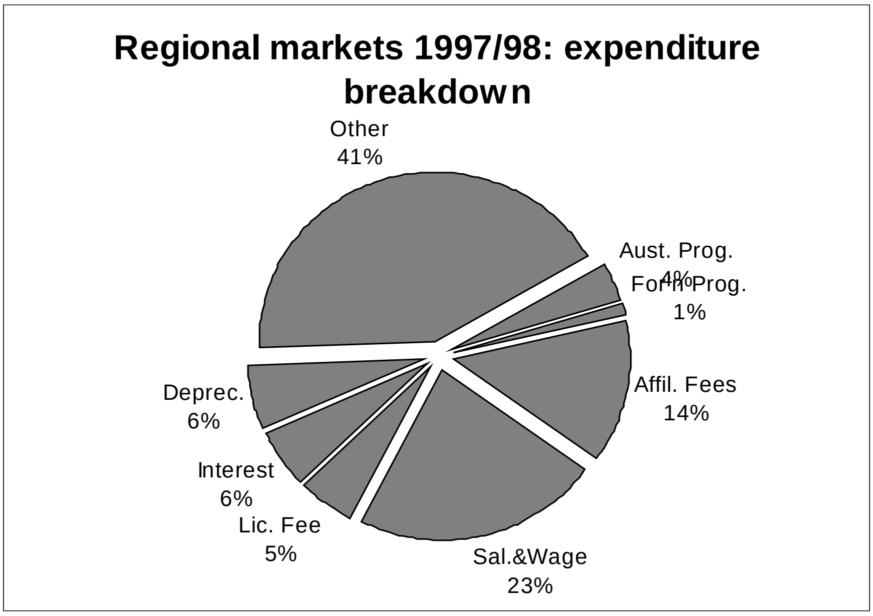

Chart 11: ABA figures

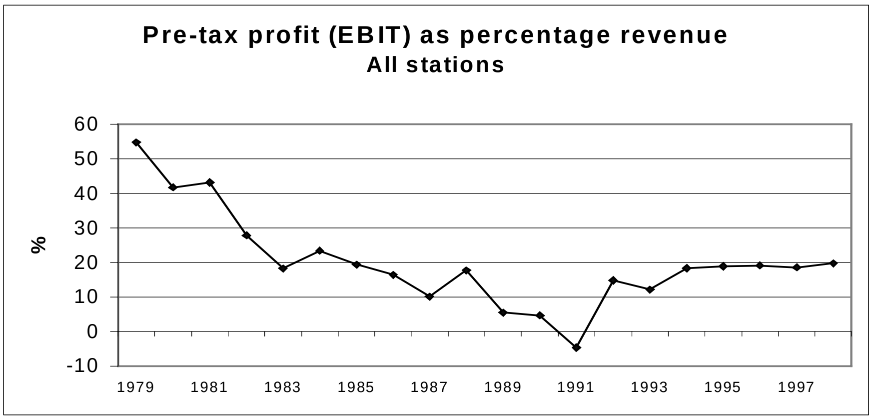

Chart 12: ABA figures.

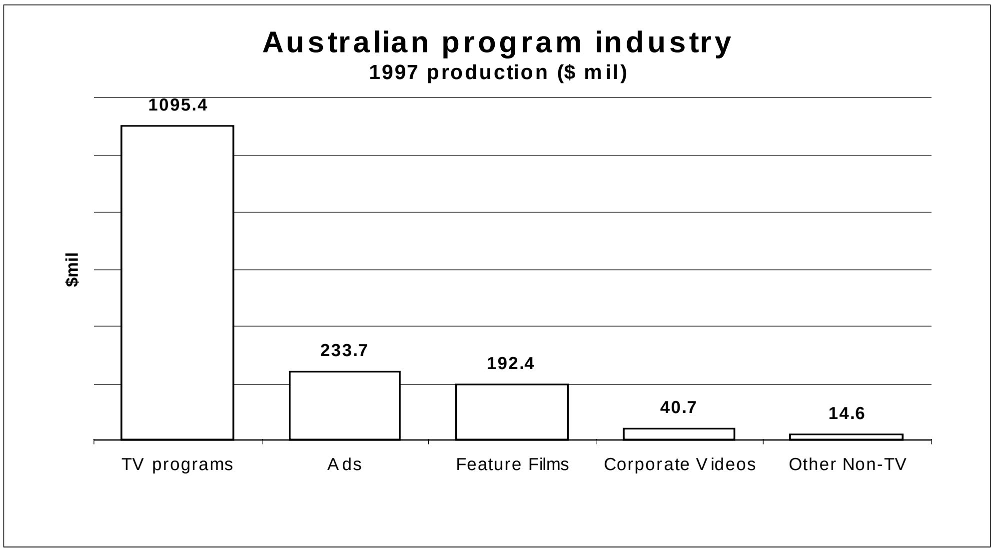

Chart 13: Australian Bureau of Statistics figures.

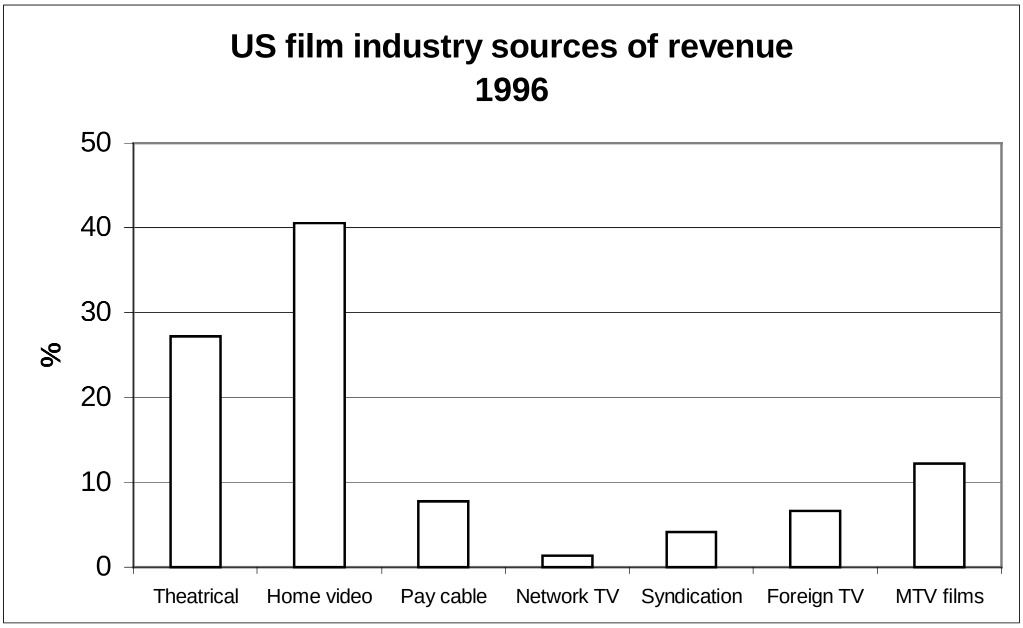

Chart 14: Harold L. Vogel, Entertainment and Industry Economics (1998), Page 55
(Note: MTV = Made for Television)