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Yoram Gross-EM.TV

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May 20, 1999

Professor Richard Snape
Broadcasting Inquiry
Productivity Commission
Locked Bag 2
Collins Street East
Melbourne VIC 8003

Dear Professor Snape,

I write in response to the Commission's call for public submission to its Broadcasting Inquiry.

Yoram Gross-EM.TV Pty Ltd is today recognised as Australia's leading producer of quality animated children's drama. Our studio's reputation was originally established by the success of 14 animated feature films produced between 1975 and 1991, including such classics as 'Dot and the Kangaroo' and 'Blinky Bill'.

Since 1991, our studio has concentrated on the production of long-form animated children's drama for television. Our series are broadcast locally on the ABC ('Blinky Bill'), the Nine Network ('Skippy'), the Seven Network ('Tabaluga' and, from August 1999, 'Flipper'), and Foxtel. They are also broadcast around the world. These series are noted for their Australian perspective, their substantial local ratings success, and their high level of acceptance overseas.

Since 1991, we have financed the production of 213 half-hours of high quality animation for TV, with a total production value exceeding $85 million. As such, we have significant first-hand experience of the impact of local quotas for children's television, and of their relevance to the production of Australian children's programming that succeeds both locally and overseas.

Our interest and focus in this submission concerns:

- the regulation of children's programming on free-to-air television under the Australian Broadcasting Authority's "C" classification standard, and
- the rationale, scope and operation of regulatory policy concerning children's programming as it applies in the emerging broadband media.

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The central assertions advanced in this submission are that:

(i) the "C" standard embodies an important public policy objective, namely the provision of high quality programs to Australian children that are relevant to their experience and culture;

(ii) the present 'light' regulatory approach to the pay television industry was essentially a concessional treatment designed to hasten that industry's development, and should be harmonised with the regulation of free-to-air television as soon as it is practical to do so; and

(iii) the "C" standard has been developed through public inquiry and open negotiation between the parties, and is an accepted market protocol.

This analysis is elaborated in our comments below.

Economic impact of the "C" standard

The "C" standard requires *inter alia* that each of the three commercial free-to-air broadcasters program not less than 130 hours of first-release Australian children's programs, including 32 hours of first-release drama programs. The standard does not apply to ABC-TV or SBS-TV.

For producers of children's drama, the economic consequences of the "C" standard are three-fold:

- It creates an assured market for 96 hours of original Australian children's drama programming annually;
- it encourages a responsive, managed focus on children's programming on the part of broadcasters; and
- it underpins a 'premium' price framework for "C" drama programs.

These effects need to be placed in context. The commercial networks each have 'output' deals with major foreign distributors -- the Nine Network with Warner Brothers, the Seven Network with Disney, and the Ten Network with Fox and Saban -- deals which assure those networks of sufficient children's programming to meet their requirements.

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Without the "C" standard, the networks justifiably could maintain no local focus in their management and sourcing of children's programs. They could simply close the door to local proposals, or else respond only in an unfocussed, ad hoc fashion. *There would be no continuing dialogue between local producers and broadcasters.* This would result in greater uncertainty and unpredictability in the market for locally originated children's programming, with adverse consequences for producers seeking to finance the production of Australian children's drama programs.

In the price terms, the "C" standard helps support a price framework of between $45,000 and $55,000 per half-hour for animated works, which is equivalent to between 10 and 20 per cent of typical production costs for quality animation. Prices for non- "C" standard material are about $5,000 per half-hour.

While "C" prices are clearly insufficient of themselves to fund local productions, they make an important contribution to financing and are a crucial bargaining element in negotiations with international broadcasters and distributors, who expect programs to achieve premium pricing in their domestic market, and regard this as a validation of quality and market acceptance.

The thrust of these remarks is to highlight the importance of the "C" standard as a market organising protocol between program producers and broadcasters, with effects that go beyond pricing to market expectations and quality validation.

Impact of new technologies and media

Although Australians have a reputation as early adopters of new technologies, the local pay television industry is still at an early stage of development, relative to its counterparts in Europe and the United States, and has not yet delivered on its potential.

Similarly, while broadband network technologies have the potential to radically expand the media 'universe' in the medium to long term, their present impact on, and demand for, high-end content such as animated series is negligible or non-existent.

Nevertheless, having regard to European and US experiences, and early developments in Australia, it is possible to draw some conclusions about the impact of such new media on the capacity of producers to fund and produce quality children's programs.

One early outcome is the launch of dedicated children's services such as the Nickelodeon and Fox Kidz channels. In principle, such channels would appear to offer a deeper and more committed market for producers of children's material. In practice, their main effect, especially in the early years, is to fragment the market and deflate prices, leading to cost and quality pressures. The reasons may be summarised thus:

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- New channel start-ups rely solely or substantially on suppliers' existing inventory or 'back catalogue' of titles, a reliance reflected in the overwhelming volume of 'repeat' programming on these channels.

- As they approach viability -- or for promotional purposes -- the new channels may begin to purchase original, first-run programming. But these purchases tend to 'cannibalise' the existing free-to-air market, with the result that overall prices for a given territory may remain static or fall.

- The new start-ups do not share the regulatory obligations of free-to-air broadcasters (and in effect gain a 'free ride' at their expense).

In short, there are significant transitional costs, disruptive effects and uncertainties associated with the development of new media, which must be set off against the mooted benefits of media growth and deregulation. These effects can be expected to continue for a period of five to 10 years, until maturity of the new media.

Social policy and consumer preferences

The "C" standard reflects a long-standing public policy commitment to quality children's programming. It is a social policy, reflecting widely held concerns about the influence of television on children, especially at an early age, and the need for positive measures to create high quality programming that is relevant to the experience and culture of Australian children.

Similarly, there are concerns about the dominance of US television suppliers in the domestic market, and the consequent exposure of Australian children to a programming stream which has no local perspective and limited relevance to an Australian audience. The local content provisions of the "C" standard are meant to address this concern.

Australian policy makers are not alone in these concerns. Many countries, notably in Europe, have made extensive provisions, through regulations and outlays, for local production of children's programs.

In the US too, there have been continuing efforts to improve the quality of children's programming, most recently in the Clinton Administration's drive to combat the prevalence of violent, merchandising-driven children's programming. (The sensitivity of the US broadcasters to this issue was a key factor in the successful sale of our 'Blinky Bill' series into the US syndication market).

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This points to an important issue concerning the application of children's program standards to the new media: namely, that the present 'light' regime of content regulation applied to Australian pay television was essentially a concession to the early development phase of the industry and its poor profit outlook during that stage.

This concessional regime was not developed or presented as a fundamental shift in public policy regarding local content, rather as a temporary and expedient measure designed to hasten the new industry's viability.

There must be then, a recognition that as the new media move towards viability, their regulatory obligations should be progressively reviewed, and as far as possible harmonised with the regulations applied to the free-to-air broadcast industry, so as to avoid anomalous or preferential treatment of one over the other.

Our final point under this heading concerns the interconnection of local content regulation with the preferences of consumers. While it is not necessary to demonstrate such a connection to justify social policy actions, we believe there is considerable evidence of public support and consumer preference for local children's programming.

The evidence includes the extraordinary commercial success of producers and characters such as the Wiggles, Bananas in Pyjamas and Blinky Bill. Other indicators are the continuing and often passionate debate about children's programming carried on in the media, and the intense scrutiny these issues receive in Federal and State Parliaments.

Regulatory models for broadband media

The broad focus of the Commission's Broadcasting Inquiry -- not less than the unprecedented explosion of media capacity made possible by digital technologies -- invites a renewed consideration of the regulatory models appropriate in the future.

In this connection, we note that the fundamental tendency of existing media regulation has been to specify desired 'content' outcomes and link these outcomes to the ownership of media, as obligations carried with ownership.

It may be that such a linkage is inappropriate or unworkable in the emerging broadband media environment. In that case, we submit that the nexus between ownership and content regulation is not essential to the case for regulation. Public policy should prevail regardless of the mechanism by which its obligations are affixed.

In particular, the mere effect of technological change, of itself, should have no bearing on the capacity or willingness of governments to pursue public interest considerations. Its only bearing should be on the mechanisms of intervention.

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In conclusion, we note that the 'C' standard:

- has been developed through a process of open inquiry and negotiation between the parties, with appropriate opportunities for public submissions;

- is subject to regular review and amendment by the Australian Broadcasting Authority in light of market developments; and

- has contributed directly to the commercial success and critical esteem achieved by Australian children's television producers.

We would welcome the opportunity to explore these issues in direct discussion with the Commission.

Yours sincerely,

SANDRA GROSS
DIRECTOR

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