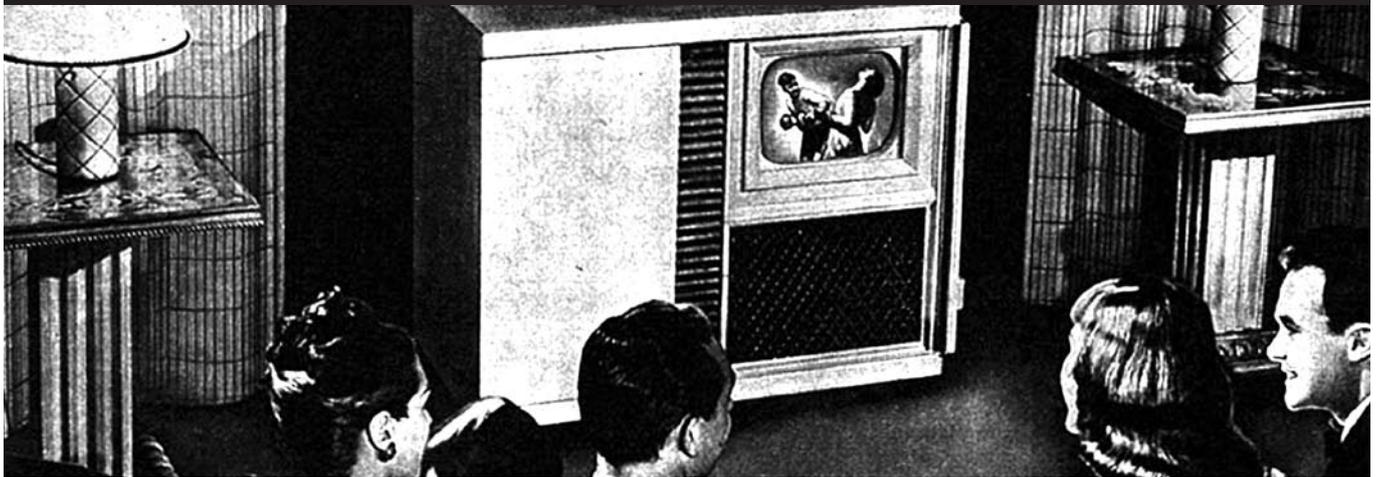# Media regulations need massive, radical reform, not minor tweaking

Chris Berg

The latest proposals for media reform do nothing but reinforce the corporatist approach that the government has taken towards the industry. Designed to entrench incumbents and 'future-proof' them against competition, references to dramatic changes in media brought about by information technology are mere wrapping around minor regulatory tweaks. The discussion paper released in March, *Meeting the Digital Challenge: Reforming Australia's media in the digital age*, has been greeted by much press and industry as a bold reform agenda for the sector, but the reality is that the government's proposals do not even scratch the surface of the reforms which are desperately needed.

The Government's reforms do no justice to the massive, sweeping changes faced by media in Australia and around the world.

In this field, few commentators, regulators and policy-makers shy away from the term 'revolution'. If the word

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was not just as uniformly applicable to so many other industries whose business models are under siege from cheap, ubiquitous, and steadily more powerful computing and communications technologies, then it would no doubt be appropriate. Few, areas of economic activity—if any—are immune.

Digital television is a perfect example of the poverty of the silo model of regulation, indeed, of regulation in the sector as a whole.

The histories of media content, delivery, and technology have been histories where radical change is the norm, not the exception. The twentieth century saw dramatic changes in the format, delivery and content of a huge range of media, from the amateur radio and recorded sound of its first decade to the MP3 of its last. Numerous technological innovations have altered the way we consume, produce and interact with media. The transition of magazine printing from the older rotary press to offset lithography in the 1960s and 1970s dramatically reduced the cost of printing, resulting in the proliferation of hundreds of specialty publications, in contrast with the previously

rather limited selection. The history of popular music was shaped by a potent combination of the use of the FM band by independent broadcasters and the emerging competition from television in the 1950s. Vinyl recordings, tapes, CDs and MP3s—and the devices they are played on—have further altered our relationship with popular music, and the content of the music itself.

To a degree, the regulatory environment which has evolved has reflected the constantly mutating forms of its target. Ever since the ill-conceived 'sealed set' radio scheme—where, after a government-business conference in 1923, licensed stations would sell receivers locked so that they could only tune into the licensee's station—there has been little attempt to allow the market to determine the topography of the Australian media terrain. Originating with a progressive-era pact between government and business for an orderly and restricted radio network, similar frameworks have been adapted for each new technology as it entered the market.

As the 2000 Productivity Commission report into broadcasting services aptly stated, the Australian media 'reflects a history of political, technical, industrial, economic and social compromises. This legacy of quid pro quos

has created a policy framework that is inward looking, anti-competitive and restrictive'.

In praise of stupidity

Traditional media are commonly viewed through the traditional vertical 'silo' model—separate, distinct networks which do not interact. Content delivered over radio is distinct from content delivered at the news-stand, and both are distinct from content delivered over television. And the networks themselves are designed to deliver and interpret the specific content they were designed for. Radio is unsuited to being delivered over the television network. The resolution of a basic television signal is ill-suited for delivering text in bulk.

Australian regulation is built around this silo model. For instance, content requirements and quotas are platform-specific. Anti-siphoning regulations use business models as their determinant. And, most obviously, cross-media laws specifically regulate different networks—artificially restricting ownership and, implicitly, content sharing—in local markets.

'Convergence', the process by which multiple products—for instance, video, person-to-person communication and broadcast audio—are delivered over a single network (the Internet) has made this regulatory approach increasingly unsuitable. Instead, the Internet is governed by an ideal termed 'end to end' (or e2e). Writes Lawrence Lessig:

> e2e says to build the network so the intelligence rests in the ends, and the network itself remains simple. Simple networks, smart applications.
>
> The reason for this design was simple. With e2e, innovation on the Internet didn't depend upon the network. New content or new applications could run regardless of whether the network knew about them. New content or new applications would run because the network simply took packets of data and moved them along. The fundamental feature of this network

design was neutrality among packets. The network was simple, or 'stupid'… and the consequence of stupidity, at least among computers, is the inability to discriminate. Innovators thus knew that if their ideas were wanted, the network would run them.

The neutrality of the Internet Protocol (IP), essentially just an agreement on how computers communicate with each other, has encouraged innovators to develop countless programs unimagined by the Internet's architects. The 'dumb pipe' of the Internet, unlike the highly regulated silos of traditional media, just doesn't know how to distinguish between any of these.

As the content is divorced from the infrastructure that provides it, the Internet is infinitely expandable. There is no theoretical limit upon how many devices can connect to the Internet, subject to realizable minor adjustments such as IPv6 (Internet Protocol version 6.)

Stuck in the silos

But *Meeting the Digital Challenge*, despite its ambitious title, shuns any major realignment of media policy towards this new environment in favour of minor and insubstantial readjustments. Most clearly, the paper indicates a continual focus on what can only be described as a textbook example of government's mis-regulating a new technology, digital television. Digital television is a perfect example of the poverty of the silo model of regulation, indeed, of regulation in the sector as a whole.

A new Digital Action Plan is intended to spur along take-up of digital television, and is likely to provide for a switchover period sometime between

2010–2012, having admitted that the previous deadline of 2008 was unrealistic.

Although the discussion paper is scornful of a 'purely market based' approach, it is the rejection of market processes that has left the transition bogged down in its technological quagmire. While ostensibly trying to encourage take-up of the new technology, content restrictions which force networks to simulcast the same content on both digital and analogue television remove the natural advantage that new forms of media have—the capacity to show something *new*. Instead, for most people, the investment in a set-top box or television capable of receiving the new signals will provide merely an increase in picture quality.

Digital television needs to add value for consumers, value above its 'digital' attribute—which is not inherently good in isolation. But instead of addressing this key issue, proposals for a Digital Action Plan focus on measures to stimulate take-up while most existing restrictions remain in place—including digital television awareness campaigns, compulsory labelling for analogue receivers, and financial assistance for those who cannot afford the new-fangled technology.

It is good that the ABC and SBS have been allowed to provide multi-channelling on their digital spectrum—why could not similar measures be taken for the far more popular commercial networks? It is unlikely that this relaxation will be sufficient to reverse the national apathy to a technology which the government bodies are so enthusiastic about.

The only reform is radical reform

But both government and regulators need to face the fact that, even if they get the switchover perfect from here on

in, and the regulatory environment is at its theoretical most effective, digital television is unlikely ever to be the cornerstone of Australian media. That ship has long sailed.

It is not even appropriate to call media delivered over the Internet 'next generation'—new services such as Google Video and iTunes, delivering television and video content on demand for negligible cost, may be the thin end of the wedge, but they are fully functional and increasingly popular. On the same day that Communications Minister Helen Coonan released the discussion paper, Apple's iTunes—which had already sold 1 billion music files worldwide, and was offering television programmes such as *Lost* and *Desperate Housewives*—offered its first movie for purchase and download. The on-line retailing giant, Amazon, will soon offer movie downloads, and Google Video has been offering classic films since the start of the year. (And this is all before accounting for the massive, virtually unmeasurable peer-to-peer networks trading in current international television programmes and films.)

Unlike digital television, the advantages of these new services are clear—providing content free from quotas, timetables or geographic borders.

Even in its infancy, the Internet commands significant ground in consumers' entertainment choices. The low price of Internet usage obscures its significance as an entertainment competitor, but a recent National Bureau of Economic Research paper, 'Valuing Consumer Products by the Time Spent Using Them: An Application to the Internet', showed that, in the United States, around 10 per cent of all leisure time was spent on the Internet.

This is before on-demand television and film services have begun to take effect—most services have been launched in early 2006. Once it gains even the moderate popularity commanded by music downloading, and across a wider demographic, the real 'digital challenge' will become evident.

Therefore, whether the government recognizes it or not, the only regulatory framework that can fulfil the objectives of the *Broadcasting Services Act*—particularly, diversity of content and ownership, quality, competition and even development and reflection of Australian national character—is one that allows entrepreneurial investors to roll out high speed end-to-end networks free from government interference.

Releasing popular content from restrictions would encourage migration to new services far more than a top-down Digital Action Plan ever could

Rather than promoting services with dubious value, the government would do better to radically deregulate media industries to level the playing field across the sector—reducing distinctions between types of network, and recognizing that, regardless of whether the service traditionally delivers only sound, or only television, they now compete with a technology uniquely suited to delivering entertainment. Any regulations which apply to one form of media should, by rights, apply to any other. Mismatched regulations artificially cripple legacy networks at the very moment that they need maximum flexibility to compete.

Regulations which restrict content need to be quickly reassessed. Australian and local content quotas, whatever their nationalistic intent, are meaningless on an end-to-end network—there is no way to measure 55 per cent of infinity, and even if there were, no mechanism by which Australian regulators could enforce it on a global entertainment service such as iTunes.

Anti-siphoning and anti-hoarding provisions have necessarily disadvantaged new media networks like pay television and digital television by providing incumbents with privileged access to 'premium' content. It is more worrying that, as the Chairman of the ACCC has intimated, premium content on so-called 'third generation' mobile networks and broadband services could be considered competition bottlenecks. Rather than further entrenching this regime by tweaking 'loopholes' as the discussion paper does, a forward-thinking media policy would look carefully at the rationale for anti-siphoning.

Releasing popular content from restrictions such as these would encourage migration to new services far more than a top-down Digital Action Plan ever could.

Meeting the Digital Challenge allows for greater flexibility in foreign and cross-media ownership, but significant restrictions still remain. Even before the Internet became a significant challenge to the market share of traditional media, the regulated diversity of ownership is a strikingly indirect method of ensuring diversity of content—editorial or otherwise. As consumers migrate to an infinitely expandable network which allows for unlimited entrants in a global entertainment market, artificial restrictions on ownership in Australia make less sense. Media companies no longer face competition from a restricted set of similarly protected competitors, but from IT upstarts across the world. The sector, and consumers, could benefit from a radical liberalization of the market.

It is unfortunate that the Government has skipped the chance to push through radical reforms of the media sector, at a time when the need for such reform is evident. Forward-thinking deregulation is not a pipe-dream in this area—every newspaper across the country has emphasized the 'revolutionary' potential of the Internet—but what remains is for the Government to take the same leadership it has shown in other areas such as industrial relations, rather than to kowtow to the largely protectionist media industry.

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