

# SUSTAINABILITY OF AUSTRALIAN CONTENT QUOTAS

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(Refereed)

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## Introduction

This year marks the 50<sup>th</sup> anniversary of the introduction of quotas for Australian programs on television. The 1961 quotas gave practical effect to a legislated general obligation of stations to employ ‘Australians, as far as is possible, in the production and presentation of programs’ (*Broadcasting and Television Act 1942*, S 114 (1)) which had been in place since 1956. The quotas required all commercial stations to broadcast at least one hour of Australian programs per week during prime time (defined as 7:30 pm–9:30 pm). In addition stations that had been established for more than three years were required to broadcast Australian programs for more than 40 per cent of their total transmission time. The initially modest requirements were increased on several subsequent occasions. In 1967, for example, the prime time quota was increased to 12 hours for each 28 days (rising to 18 hours in 1969) with an added condition that at least two hours were to be drama. In 1972, the prime-time (redefined as 6:00 pm–10:00 pm) drama quota was increased to 6 hours per 28 days; the overall transmission quota was increased to 50 per cent, and a children’s program quota of 4 hours per 28 days was introduced. The system was overhauled in 1973 and again in the early 1990s. After many modifications over the past two decades, the current system has become a highly detailed regulatory standard.

What clearly emerges even from a cursory examination of the evolution of the current *Australian Content Standard* (ACS) is that while the broad objective of the regulation has remained relatively constant for the past 50 years both the quantity and specificity of the requirements have increased considerably. At the same time, both the industry and the competitive environment in which it operates have undergone considerable change. When the regulation was first introduced, the national television service operated by the Australian Broadcasting Corporation was the only rival faced by commercial operators in competing for audiences. Since then, competition for audiences has increased with the establishment of a second national television service (Special Broadcasting Service) and by the introduction of subscription television with a different Australian content regime. In more recent times, an increasing variety of services beyond the reach of Australian regulation has been accessible via the Internet over a multiplicity of fixed and mobile platforms. Free-to-air television itself is in the midst of conversion from analog to digital transmission that has brought about a major expansion of channels that so far have not been subjected to Australian content requirements. In view of all these changes, this paper examines the continuing sustainability of the current Australian content regulation. It does this by examining the effectiveness of the current regulatory approach in achieving its objectives in the currently evolving environment.

## Current regulatory provisions

The current ACS requires all commercial free-to-air television licensees to broadcast Australian programming for at least 55 per cent of the transmission time between 6a.m. and midnight. In addition there are specific minimum annual sub-quotas for Australian (adult) drama, documentary and children’s programs as follows:

- Broadcast first-release drama in prime time to attain at least 860 points<sup>1</sup> over a three-year period with at least 250 points in any year.
- At least 96 hours of first release children’s drama over three years with at least 25 hours in any year and at least 8 hours of non-first release children drama each year.

- At least 260 hours of children’s programming per year of which at least 50 per cent of the must be first-release.
- At least 130 hours per year of Australian pre-school children’s programming which may be broadcast on no more than 3 occasions in a period of 5 years.
- At least 20 hours per year of first-release Australian documentaries of not less than 30 minutes each.

Subscription television is not subject to Australian program quotas. However, predominantly drama channels are required to ‘invest’ at least 10 per cent of their programming expenditure to fund the production of Australian (including New Zealand) drama programs.

In addition to the assistance received from the ACS quotas, the production of Australian feature films, television drama and documentaries also benefits from direct government funding assistance (<http://www.screenaustralia.gov.au/funding/tvdrama/TVDrama.aspx>).

## Objective of the regulation

The principal legislation relating to broadcasting, the *Broadcasting Services Act 1992* (BSA), provides the legal authority for the licensing and regulation of commercial broadcasters. Included among the stated objectives of the legislation is the express intention ‘to promote the role of broadcasting services in developing and reflecting a sense of national identity, character and culture’ (BSA, section 3(e)).

As highlighted in the BSA explanatory memorandum the aim of this objective is to support the broadcast of programming ‘which reflects the multicultural nature of Australia’s population, promotes Australians’ cultural identity and facilitates the development of the local production industry’. The BSA also authorises the broadcasting regulator to determine program standards for commercial television (section 122) including the Australian content of programs (section 122(2)(b)).

The ACS leaves no doubt that a principal element of its purpose is ‘to promote the role of commercial television in developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the community’s continued access to television programs produced under Australian creative control’. Support of local content is deemed necessary to avert the risk of erosion of the national culture and identity likely to be caused by ‘excessive’ consumption of imported programs which reflect the culture and customs of the producing countries. The risk is aggravated by a station’s ability to secure a financial advantage from the replacement of locally produced programs with less costly popular imported programs. Drama programs are the most affected as they can easily be replaced by imported alternatives. Other domestic programs, such as news and sports, are less susceptible to import substitution because consumer preferences for coverage of local events are generally much more intense than for coverage of events in other countries.

Several other non-cultural arguments including employment generation, assistance to the production industry, flow-on benefits to other activities (e.g. film and theatre) and contribution to foreign earnings have also been advanced in support of local content regulation. However, such justifications are much less plausible as reasons for regulation because in essence they are little more than a pleading for special treatment on the basis that production of television programs is somehow more deserving of support than other activities making similar contributions to development and enhancement of national culture and identity.

While a robust case can be made for regulation on national culture and identity grounds, seldom is any attempt made to define and quantify the specific desirable contributions generated by Australian programs. Without quantification of the impact of domestic programs on the development of a national culture it is difficult to establish that quotas are the most effective instrument or method

(for example better than education) available to achieve the desired outcome. Even if quotas were the best mechanism available, the current arbitrarily determined mix might not necessarily be the most effective. For decades, for example, various changes to the regulation have sought without much success to increase the quantity of 'high quality' drama transmitted by broadcasters. When to these serious doubts about the efficiency of the current regime we add the anticipated complications of applicability and enforceability in the digital environment it becomes clear that even if the regulatory objective remains valid, at the very least, the regulatory approach needs a rethink.

## Effectiveness of content quotas

The whole history of the Australian content quotas regime is marked by two underlying features which have had significant implications for its operational effectiveness and efficiency. The first of these has been the highly accommodating disposition of successive regulators to 'adjust' the requirements to the needs of broadcasters. The second has been a less than successful series of attempts to give effect to the consistently expressed desire to encourage the broadcast of 'quality' drama (usually defined in terms of high production values).

Successive regulators have been overly concerned with avoiding the imposition of onerous burdens on broadcasters and the general tendency has been to prescribe requirements that could be complied with easily with little, if any, change to established programming patterns. Also breaches of the standards have attracted little, if any, penalties. The Australian Broadcasting Control Board's (ABCB) approach to compliance, which continued to influence the approach adopted by its successors, was outlined in evidence to the Senate Select Committee on the Encouragement of Australian Production for Television (1963:6):

The Board has not threatened any commercial television licensee with disciplinary action. When breaches of the Programme Standards come under notice of the Board the matter is taken up with the station management, either verbally or in writing according to circumstances. There is continued consultation between the Board's officers and station managements and a high degree of co-operation is received from stations.

That such an approach failed to live up to the high expectations of various interest groups in the community is not surprising. Evaluations of the effectiveness of the regulation were often negative. For example, Harrison (1980:42), in a detailed critique of the 'points system' introduced in 1973 with the aim of raising program quality and increasing the quantity and diversity of local programs concluded that:

the points system was doomed to fail from its very inception, for a number of reasons. There can be no doubt that the levels set made it too easy for the stations to meet their points targets. There can be no incentive to show higher quality and higher points scoring programs if the targets can be met by showing programs selected without any regard to points. A related reason for the failure of the system is absorption of the values of the regulated group by the regulatory agency. On the available evidence one can only conclude that the Board, and later the Tribunal, steered the system towards concessions to the stations rather than towards a strict enforcement of the system.

Like its predecessor, the Australian Broadcasting Tribunal (ABT) was sympathetic to and sought to accommodate the needs of stations when it made significant amendments to the point system in 1991. Although its draft standard developed after an extensive public inquiry had proposed a transmission quota of 50 per cent, increasing to 60 per cent over a period of five years because 'there appears to be a growing consensus that 60 per cent represents the desirable level to preserve a national identity' (ABT 1991:Vol 1:223), adopting the guiding principle 'of setting a 'safety net' at the relevant average program levels reached and sustained in the past' (p. 28), the ABT set a transmission quota of 45 per cent rising to 50 per cent over five years. To reassure the major television networks, which at the time were experiencing financial difficulties, the ABT was also at pains to stress that the 'financial impact of the Standard on licensee's operations has been

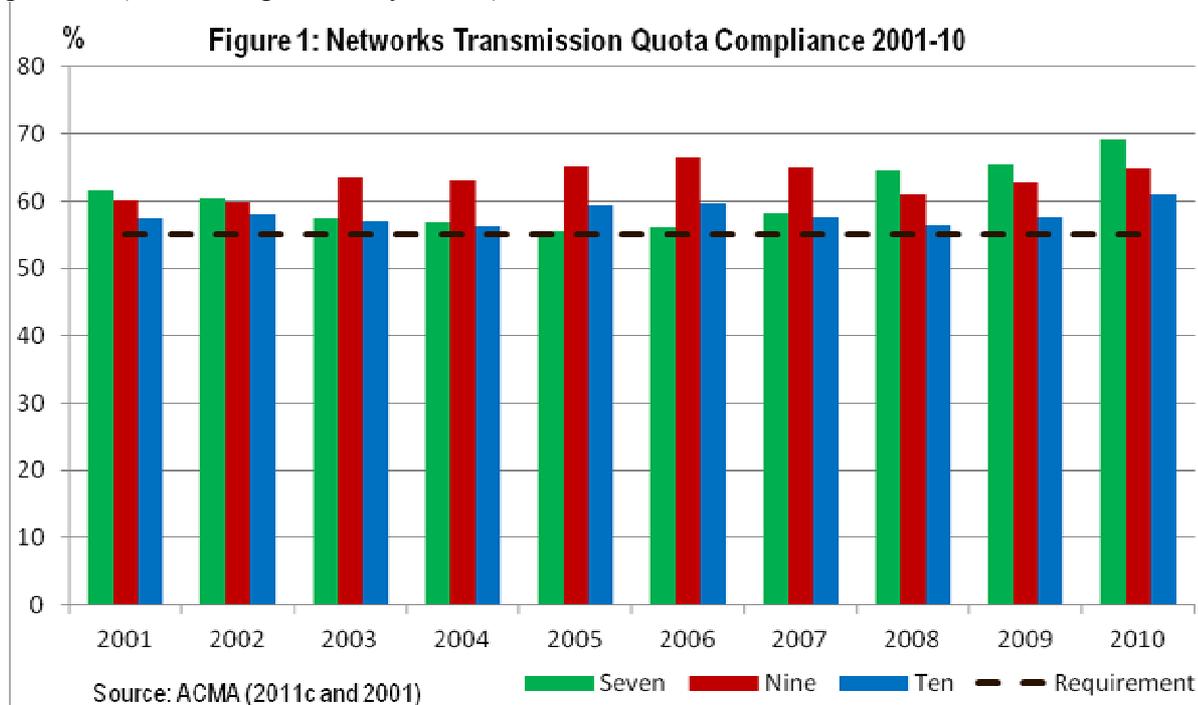
considered throughout the Inquiry' (p. 29). Fulfilment of the prime-time requirements was facilitated by setting both an annual minimum and a higher three-year average a drama/diversity points-score that provided stations extra flexibility to comply with the requirement.

Overall, however, while some elements of the quotas during this period had little effect, others appear to have induced stations to broadcast more Australian content than they otherwise would have. An extensive analysis of compliance with the regulation in the period 1987–1994 (Papandrea, 1997) concluded that the transmission quota had had little impact on the behaviour of broadcasters. In relation to the first release drama requirements, the analysis concluded that the regulation had had some impact on the quantity of adult-drama broadcast by at least one of the major network, and that they had been instrumental to the delivery of Australian children's drama. The recent performance of ACS is broadly in line with the earlier assessments. A brief review of the recent effectiveness of each of the main instruments of the regulation follows.

### Transmission quota

Traditionally broadcasters have had little difficulty in complying with the current 55 per cent Australian transmission quota for programs broadcast between 6:00 am and midnight. The popularity of news, current affairs and sports programs together with their natural protection from imports generally act to ensure the broadcast of a substantial proportion of locally produced programs. Another contributing factor in more recent times has been the popularity of locally produced 'reality' programs. In any event, any shortfall in the local content requirement can be made up easily by screening repeats of previously broadcast programs.

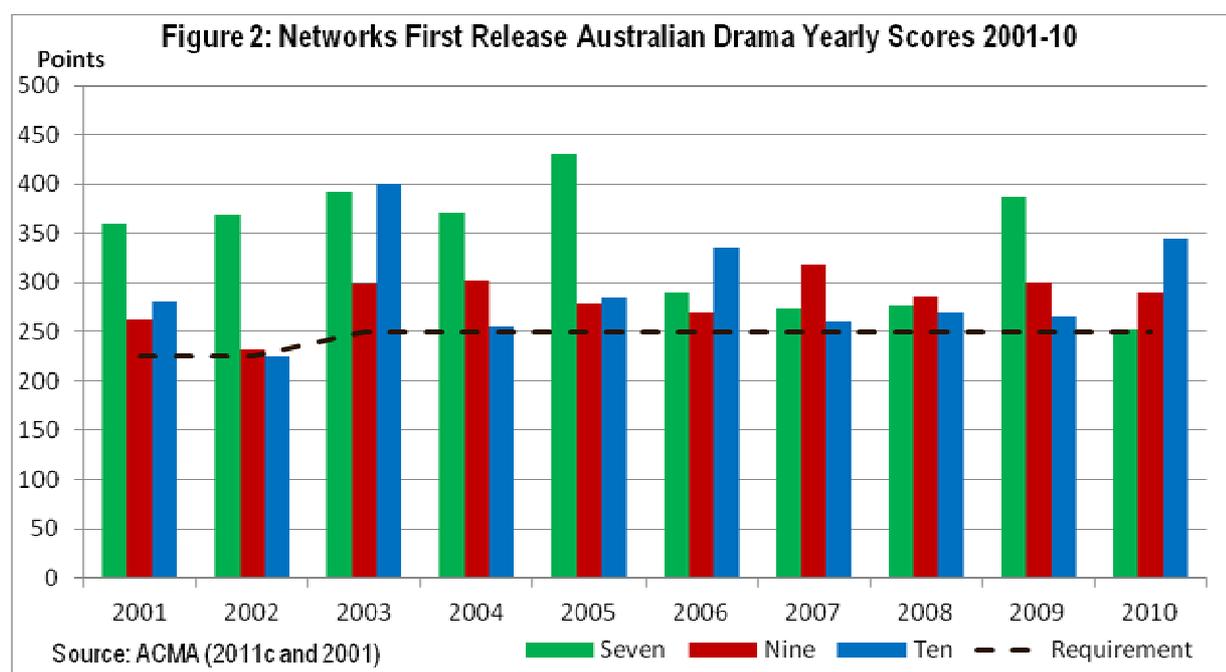
Figure 1, provides details of the Australian transmission quota performance of the three major commercial networks in the period 2001–10. Although occasionally the performance of individual networks has been only slightly above the quota (for example, Ten in 2004 and Seven in 2005), the general tendency of the networks has been to significantly outperform the requirement. In 2010, the proportion of Australian programs broadcast by each of the three networks broadcast exceeded 60 per cent (almost 70 per cent by Seven).



### Drama requirements

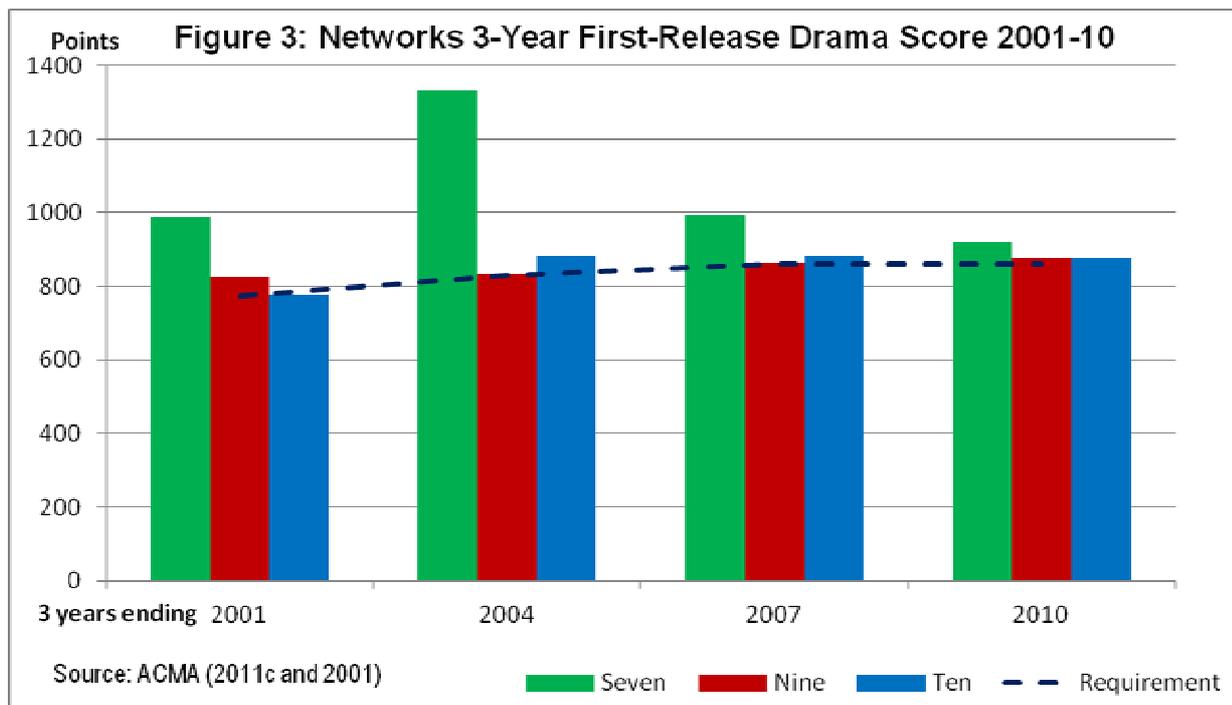
Although drama generally is one of the main program genres broadcast by commercial television stations most of it is imported programming. First release Australian drama makes up a very small

proportion of the more than 3600 hours of Australian programming each commercial broadcaster is required to transmit annually. In 2010, for example, the three commercial networks combined broadcasted a total of 430 hours of first release Australian drama equivalent to approximately 3.4 per cent of their aggregate Australian programming. The first release drama quota is prescribed in terms of ‘points’ which vary according to the duration and format of a program. Stations are required to broadcast programs to achieve a minimum score of 250 points each year (225 in 2002 and earlier years) and 860 points in each consecutive three-year period (830 for three years 2002–04 and 775 earlier). The available data (see figure 2) indicate that the three commercial networks stations have complied with both the annual and three-year requirements, but relied on different sets of programs to do so. In 2010, for example, Seven and Ten relied heavily on relatively low-scoring series and serial drama, whereas Nine relied on a much greater proportion of higher-scoring mini-series, telemovies and feature films.



To comply with the minimum three-year score requirement networks had to achieve an average annual score somewhat greater than the minimum annual score set by the regulation. As the minimum annual score sets the threshold for compliance, analysis of compliance against this requirement provides little information on the impact of the quota on the behaviour of the networks. Performance against the three-year score requirement are more telling in this regard. As shown in Figure 3, only the Seven network has consistently performed above the requirement, with a three-year score significantly higher than the minimum requirement up to 2007. For the three years ending 2010 its performance is only slightly above the required minimum. The performance of the other two networks, on the other hand, is only slightly in excess of requirements throughout the whole period. This is a strong indication that the quota regime is the main driver for the performance of the Nine and Ten networks. Without the quota obligation, the first release Australian drama broadcast by those two networks would be likely to decline.

The fact that Australian programs regularly feature in the top-rating programs on television is often used as evidence that the quotas are consistent with consumer demand and thus justify their continued application. But popular Australian programs, including top-rating drama, would not need quotas to ensure their broadcast. The more popular a program, the greater the advertising earnings it can generate for a station and the greater its capacity to compete with imported programs. While the cost disadvantage of Australian drama would render it uncompetitive with high rating imported substitutes, high-rating domestic drama can generate sufficient advertising revenue to outweigh its cost disadvantage vis à vis average-rating imported substitutes (Papandrea, 1998).



Although popular Australian drama can be competitive with average rating imported substitutes, its appeal to television stations is reduced substantially by the high risk associated with program development. Television stations face a lower risk, and a lower up-front investment, when committing to exhibit an imported program. Continued production of imported programs is primarily determined by good ratings in their country of origin — a useful indicator of potential success in other markets. But even if it fails to appeal sufficiently to prime time audiences, an imported program can be shifted with little penalty to another time slot for the duration of the associated purchase obligations. A replacement imported program for prime time is likely to be available at similar cost. In contrast, a similar shift for a domestic series would incur a substantial penalty. In the latter case, because only first-release drama complies with the regulation, the disincentives to the broadcaster would be compounded since the commissioning of a replacement series would have cost and risk disadvantages similar to those of the one being replaced. Thus, while broadcasters have an incentive to schedule domestic drama after it has proven its audience appeal, the high initial risk of commissioning the drama is a disincentive to production. Consequently, without some form of regulatory support, current levels of Australian drama may not be sustained.

The key effect of the drama quota, therefore, seems to be to compel broadcasters to accept the high risk of investing in Australian production. In response, stations will attempt to minimise the cost of compliance and will produce low-cost programs which, if unsuccessful with audiences, can be scheduled during non-peak viewing time. To reduce broadcasters' bias for low-cost drama (often deemed to be of lower cultural value), the quota incorporates an incentive (the 'format factor') for broadcasters to meet their obligation using fewer, but higher cost, hours of programming by weighting the points earned by the average hourly cost of the program. In essence, the format factor seeks to offset the incentive to broadcast low-cost drama by ensuring that the choice of format has a neutral effect on the overall cost of compliance with the drama requirement. However, as no allowance is made for the higher risk of commissioning higher cost drama (mini-series and telemovies), the format factor weighting has only a limited influence in encouraging higher value productions.

### Children's programs

According to the ABT (1987), 'regulatory action for children's television has essentially been a response to lack of quality, age specific, television programs for children and the need to protect

their interests'. Analyses of broadcasters' performance in this regard consistently conclude that in the absence of regulation, commercial broadcasters would have little interest or incentive to broadcast children's programming.

The issue of children's programming is more complex than for other programs. The need to protect children extends beyond programs to advertising where the regulators impose controls on both the type and quantity of advertising during children's programs. Programs for pre-school children are not permitted to carry advertising at all. These restrictions exacerbate the disincentives facing broadcasters. Even if advertising restrictions were not more stringent than those for other programs, the minority appeal nature of children's programs would bias broadcasters against them. The disincentives are even greater for children's drama. It is almost as expensive to produce as adult drama, but does not have the wide audience appeal of the latter. When coupled with the advertising restrictions, there is virtually no scope for broadcasters to recover the cost of supplying children's drama. Consequently, the broadcasters' natural response to the regulation, is to minimise their cost of compliance and the only way they can achieve this in a fixed quantity quota regime is through reductions in program quality.

### **Documentaries**

Special quotas for Australian documentaries were imposed for the first time in 1996. The Australian Broadcasting Authority's (ABA) decision to set specific quota levels for documentaries provided few details of its motivating factors. As noted by Papandrea (1997), justification for support of documentaries appear to have been based on their cultural importance, their underrepresentation on programming schedules<sup>2</sup> and their cost disadvantage relative to imported substitutes. The documentaries quotas, however, do not appear to be effective in addressing these factors.

When the initial quota of 10 hours per year was introduced, all three major commercial networks were already supplying significantly more than the requirement. The subsequent increase in the quota level to 20 hours per year also occurred in similar circumstances. The settings were consistent with the ABA's 'safety net' guiding principle applied to other content quotas. As no other justifications were provided for the determinations, it can only be presumed that, in the ABA's view, the set quota levels were sufficient to guarantee an adequate supply of Australian documentaries. Consequently, given that the supply of documentaries by the networks has always been, and continues to be, well above the prescribed levels, the quota seems to be largely redundant and serving little purpose other than appeasing special interest groups lobbying for mandatory requirements.

### **Quotas in the current environment**

The development and growth of the online environment has provided significant opportunities for both established operators and new entrants to experiment with and use new platforms for the delivery of both traditional and emerging video services likely to appeal to consumers. According to the Australian Communications and Media Authority (ACMA, 2011a), recent data indicate a rapidly growing interest in online video services. Other information anticipates considerable growth in online media services in the years ahead. Recent forecasts by Cisco (2011) predict that 'in Australia, IP traffic will grow 6-fold from 2010 to 2015, a compound annual growth rate of 41%' and will then 'be equivalent to 2 billion DVDs per year, 128 million DVDs per month, or 175,885 DVDs per hour'.

New delivery systems, which already have altered considerably the supply and sources of television services, are continuing to be developed and promise to profoundly expand the range of choices available to viewers. The once limited viewer's free-to-air choice of up to five analog channels has already been expanded threefold by digital conversion. Some 30 per cent of households have access to a much wider range of channels supplied by subscription television providers. And the range of potential options (free or pay) available to those with access to the internet is already large and

growing. Mobile services are also available. Convergence is also bringing the separate delivery platforms together and television sets enabling consumers to access all the various delivery systems and viewing options on a single piece of equipment in their lounge rooms are already widely available.

The existing regulation of Australian television content developed for a highly controlled licensing system with a restricted small number of players does not fit well in the new environment. On the consumer side, the much larger choice of services available to viewers will fragment audiences and consequently diminish the influence of each individual service. The anticipated structure of television is one where a multitude of specialist channels and other sources providing viewers with a catalogue of choices to be selected at will, rather than the traditional passive selection of one of the few available choices on free-to-air channels at the time of viewing. On the supply side, many of the new sources of programs accessible by viewers are either not conducive to control with the existing regulatory instruments or may even be beyond the jurisdiction of domestic regulatory authorities.

The changing environment will place increasing stress on the effectiveness of regulation. Some strains are already evident. The multichannel nature of subscription television, introduced almost two decades ago, has not been conducive to the Australia content quota regime applied to free-to-air services. In recognition of their different nature, subscription television services generally have not been subjected to Australian content quotas. Only predominantly drama channels have been subjected to a variant form of regulation which requires them to invest 10 per cent of their program expenditure in Australian productions without a related obligation to broadcast them. The more recent introduction of digital multichannelling has added some further strain as only the main channel of a commercial broadcaster is subject to the Australian content regime. Differential treatment is also accorded to IPTV services. Over a decade ago, a ministerial determination ruled that 'Internet services providing television and or radio programs outside of the broadcasting services bands should not be regulated as a broadcasting service' (Department of Broadband, Communications and the Digital Economy, 2000). Some IPTV services, such as those of Foxtel and Transact (licensed subscription TV providers), to the extent to which they are classified as part of their subscription television services, are captured by the Australian production obligations applying to predominantly drama channels. Other IPTV services supplied by ISPs for download over the Internet are not subject to Australian content regulation. Although access to these services is essentially on a single program basis, rather than a 'channel' basis, the application of regulation along lines similar to those applied to subscription television providers could be conceivable. But even such a possibility would be difficult to conceive for web TV and satellite TV services, particularly those from providers located outside Australia's territorial jurisdiction. Further details of current pressures on the regulation are provided in the recent ACMA (2011b) report *Broken concepts: the Australian communications legislative landscape*.

As the number and range of competitors to free-to-air providers expand the sustainability of the current regulatory system will become increasingly difficult to sustain. Yet, the importance of ensuring access to Australian content remains unchanged. Indeed, in the emerging environment with a multitude of viewing options available to consumers, development of appropriate measures capable of promoting and ensuring access to Australian content is likely to become even more critical for the promotion of a national identity and culture.

## What should be preserved?

Consideration of potential measures for future support of Australian content necessarily needs to commence with a determination of what benefits accrue and are being sought by the application of the current regulatory regime. As highlighted above, of the existing instruments, the overall transmission quota and the quotas for Australian documentaries have had little noticeable impact on the behaviour of stations and appear to be redundant.

The fact that stations consistently transmit significantly more Australian content than required by the ACS is a strong indication that consumer preferences rather than the quota are the main determinants of a station's output. Programs such as news, current affairs and sports not only have a large element of natural protection from imports, but also enjoy a high level of popularity among viewers. Because they are profitable to stations the likelihood is that they would continue to be provided even without a quota.

Different considerations apply to the existing program specific quotas. The supply of Australian documentaries has always been well in excess of the quota requirement and strongly suggests that the quota's introduction was based on dubious premises. Its removal would be unlikely to have any significant effect on the supply of Australian documentaries. In contrast, the output of drama and children's programs seems to be driven by the related specific quotas. These program genres are also regarded as being of particular importance to the development and enhancement of national culture and identity. Consequently, action to secure their future presence and availability to Australian audiences requires serious consideration.

Although the adult drama quota imposes a considerable impost on broadcasters, it has not been entirely effective in its operations. Various attempts have been made to encourage broadcasters to favour longer-forms of drama in complying with the quota requirements. While there have been some fine examples of mini-series and features that have proved highly popular with audiences, long running serials and series have consistently been the mainstay of genres used to comply with quota obligations. This inefficiency of the current adult-drama quota regime should be addressed in any future mechanism.

Children's programming represents a difficult problem for regulatory authorities. Commercial broadcasters clearly see it as a cost burden and try to minimise its impact on their profitability. Quality of commercial programming is often poor and so is its value to children. The ABC, on the other hand, has had substantial success with the production of children's programming. With digital television, it is devoting greater attention to children's programming through its ABC2 and ABC3 multichannels which have significantly improved the programming choices available to pre-school and school aged children.

In summary then, regulatory consideration for the maintenance of Australian programming on television in the digital age should focus on options that preserve access to adult drama and to children's programming. On the basis of past performance, regulations of transmission time devoted to Australian programming and documentary quotas have little, if any, influence on broadcasters' behaviour and appear to be serving only the purpose of appeasing pro-quota interest groups.

### Some considerations and prospective policy options

In an environment of rapidly changing technologies and converging markets care needs to be exercised to avoid the risk that essentially the same service might face different regulatory treatment depending on the mode or technology used to deliver it. Guiding principles for efficient regulatory intervention advocate that:

- intervention should be retained or introduced only when strictly necessary to correct market failure or pursue a social goal and then only if the benefits to society clearly outweigh the associated costs;
- the intervention should be directed at outcomes and not on the method used to generate or deliver the desired outcomes; and
- the instrument used must have a clear, well-defined, transparent and predictable framework and should not impede the process of market change induced by technological change and convergence.

Consistent with these principles, some options available to policymakers to ensure a sustainable supply of Australian television content to consumers are outlined below.

The Australian Competition and Consumer Commission (ACCC) stresses the need to exercise extensive care when considering regulatory intervention in a market. While noting the importance of consumers being 'able to access the types of content that they value', its submission to the Convergence Review (ACCC, 2011) cautions that:

vibrant and competitive emerging platforms, which support additional opportunities for new businesses and new services to better meet consumer demand, may result in a communications and media industry that is better placed to meet a range of social policy objectives than has previously been the case. Given this, in considering whether regulation is required to deliver specific outcomes consistent with social policy objectives, it is important to identify the extent to which a competitive industry is likely to fall short in delivering these outcomes.

It further argued that 'where consumers are able to choose freely from a wide range of media sources, there will be a strong discipline on businesses to offer the type of content consumers want' even when 'lower cost programming or content is available' and used examples of top rating Australian programs shown on commercial television in support of its view.

The transition from the traditional television industry structure with a small number of suppliers each operating a single channel to one with a multitude of services on many different platforms is likely to alter considerably the operating business models. The much larger choice of services available to consumers will undoubtedly lead to audience fragmentation and a consequential reduction in the influence of individual channels. The anticipation is that the current general channels supplying a broad range of programming will be replaced by a variety of individual specialised channels concentrating on the delivery of one or a few program genres. Internet television services, whether free or pay, are likely to feature access to a range of program libraries giving consumers a variety of personal consumption choices at a time of their choosing. In such an environment, ensuring the availability of desirable Australian content to those wishing to consume it, is likely to be more dependent on the availability of dedicated channels and specialised program libraries rather than ensuring the broadcast of minimum amounts on generalised channels.

As highlighted by the analysis above, the Australian transmission and documentaries quotas for commercial television have no effect on the behaviour of operators. Indeed, in determining the requirements, regulators saw the quotas as some kind of insurance ('safety net') against the risk of an eventual potential future decline in the level of Australian content being broadcast. Furthermore, the quotas currently apply only to the main channel broadcast by a commercial operator. While the ABC is not subject to specific programming quotas it is required by its Charter obligations to broadcast Australian programming and to take account of programming standards developed by the broadcasting regulator. Multichannel services are not subject to the quota, nor are the SBS and subscription television services which provide close substitute services. Potential substitutes such as Video on Demand services and internet television services provided 'outside of the broadcast services bands' are not subject to broadcasting regulation. Thus, even if they were effective in influencing broadcasters' behaviour, the quotas would fail one of the principal tests of efficient regulation because they are inconsistently applied to close substitute services provided by competitors. Consequently, abandonment of the transmission and documentaries quotas would be likely to have little, if any, impact on the level of Australian content on commercial television, but would increase efficiency by eliminating the related implementation, administration and monitoring costs.

Several mechanisms are used to promote the supply of Australian drama. Although limited in its capacity to promote high quality programs, the Australian drama quota imposed on commercial broadcasters, is influencing the level of supply of Australian produced drama programs on commercial television. Notwithstanding its efficiency weakness, the quota's social benefits have been assessed as being at least commensurate with its costs (Papandrea, 1997). In other words,

regulatory intervention to ensure the supply of Australian drama appears to be justified. While the quota does not apply to subscription television, predominantly drama channels on subscription television are subject to a regulatory financial obligation to invest an annual sum of not less than 10 per cent of their programming expenditure on the production of Australian drama. The ABC is subject to previously mentioned charter obligations. Digital multichannels of commercial broadcasters and other potentially competing services are not subject to specific Australian drama requirements. More generally, Australian drama production is also supported by government subsidies administered by Screen Australia (*television production fund* and assistance and funding arrangements in support of Australian feature film production).

Of these mechanisms, the Australian drama quota is the most difficult to sustain in a converged environment. The quota is applied only to the main channel of each commercial television operator. Its extension to other delivery platforms would be difficult or impossible to implement particularly in relation to internet sources of programming and has already proved inappropriate in the case of subscription television. As audience preferences shift increasingly to consumption of alternative services, the effectiveness of the instrument will progressively decline. To ensure continued delivery of the associated social benefits, therefore, an alternative form of intervention will be required.

One potential solution would be to replace the present quota arrangements with a subsidy for the production of Australian television drama. A well-targeted subsidy would eliminate the distortions inherent in the current disparate treatment of existing and emerging delivery platforms. The replacement of the quota with a production subsidy scheme would enable better targeting of the assistance to programs more likely to deliver the cultural objective of the regulation and more likely to reflect audience preferences. Eligibility could be limited to specific programs, could be adjusted to reflect production values and could be directed specifically to the type of programs with the greatest cultural value. It could also be linked to market signals on viewer preferences. For example, the subsidy could be paid to broadcasters when they purchase the rights to broadcast a program. Alternatively, the subsidy could be paid to producers who can demonstrate commitment from a broadcaster that the program will be put to air. This latter mechanism has been used in program funding schemes in New Zealand and Canada. When combined with the likely higher audience popularity for local drama, the improved cost competitiveness of Australian drama *vis à vis* imports as a result of the production subsidy, would increase a station's incentive to broadcast the programs.

A change from quotas to production subsidies would shift the cost of the regulation from the broadcasters to the Government, unless it is accompanied by offsetting taxation. The current arrangements are essentially an inefficient form of indirect taxation on broadcasters. Thus, their replacement by a more direct tax mechanism could result in improved efficiency. While the current licence fees arrangements continue to apply, for example, it would be relatively easy to increase the rate at which the fees are levied to cover the cost of subsidising drama production via a central fund similar to the current television production fund administered by Screen Australia. The rate increase should be set at a level that did not increase the average cost currently incurred by stations to comply with their drama quota obligations. A variant of this was used recently by the government to implement a substantial rebate of licence fees ostensibly to assist operators with the funding of Australian programming (Conroy, 2010).

Another possibility would be to extend a version of the current subscription television arrangements to the multichannel free-to-air environment. All channels could be subjected to a requirement to invest an appropriate proportion of their programming expenditure on the production of Australian drama. The provision could be applied to both free-to-air and subscription television operators. It could also be applied to Australian based ISPs supplying internet video content services to Australian customers, but would be highly difficult to apply to overseas sources.

A third option would be the replacement of the current obligation of commercial operators to broadcast drama with a commensurate increase in licence fees. The fees thus collected could be

allocated to the ABC specifically for the production and broadcasting of Australian drama. One of its existing digital multichannels could be established as a 'specialised' Australian drama channel for the purpose. If the current digital channels allocated to the ABC are already fully committed for other programming, an additional digital channel could be allocated to the ABC for the purpose.

Another option would be to license a new commercial network to broadcast exclusively Australian programming with a specific minimum output of Australian drama. The necessary spectrum for the creation of the network should be available once digital conversion of television is completed. The licence to operate the network should be allocated by auction to a new entrant unconnected with the incumbent networks. The increased competition for audiences might also have the effect of encouraging the incumbent networks to broadcast Australian drama.

Ensuring an adequate supply of appropriate children's programming has always been a difficult challenge for regulatory authorities. Forced to comply with the requirements commercial broadcasters seek to minimise the impact on their profitability by supplying low cost programs of dubious educational or entertainment value to children. Not driven by commercial imperatives, the ABC, on the other hand, has generally adequately acquitted its responsibilities to supply children's programs and has recorded some notable successes. Currently, one of its digital multichannel services is devoted to children's programming. One possible solution to improve the provision of children's programming by commercial operators might be to require the three main commercial operators and their subsidiaries as a condition of their licences to jointly fund the operations of a national digital channel to supply children's programming. Alternatively, they could be required to contribute to the funding of an independently operated children's channel. Their obligation could be at a level equal to their annual average combined spending on children's program over say the past decade and collected from licence fees.

The above suggestions are only intended as examples of potential mechanisms consistent with principle for efficient regulation and capable of sustainable application in a changing environment. They were not intended to suggest or imply any degree of exclusivity or uniqueness or that other options consistent with efficient regulation principles would not be possible. What they do suggest is that it is possible to develop mechanisms for the protection of access to Australian content in the current environment which are likely to be more efficient and more sustainable than the existing quota regime.

## Conclusion

The already evident strains on the effectiveness of the current Australian content standard will intensify as new services not conducive to traditional regulation increasingly enter the market in competition with traditional services. New approaches or new solutions are, therefore, required to ensure that audiences continue to have sufficient opportunities to access and watch Australian content which historically has been considered vital to national culture and identity. Of the traditional regulatory mechanisms quotas requiring the transmission of minimum levels of Australian content are the most likely to be unsuited to the emerging environment. Other more efficient mechanisms or interventions are more likely to ensure sustainable future delivery of the desired outcome. The current government-established independent Convergence Review of regulatory frameworks for converging media is timely and provides a not to be missed opportunity to examine and recommend efficient instruments appropriate to the emerging market structures.

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<sup>1</sup> Programs are accorded different points depending on duration and format factors (see ACS for details).

<sup>2</sup> In a related contingent valuation survey of Australian television content, Papandrea (1997) found that 62 per cent of people supported additional expenditure on Australian documentaries.