![News Limited]

Submission to Joint Select Committee on Broadcasting Legislation

Inquiry into potential areas for further reform of Australia's broadcasting legislation

5 April 2013

News Limited welcomes the opportunity to make a submission to the Joint Select Committee on Broadcasting Legislation (the Committee) inquiry into potential areas for further reform of Australia's broadcasting legislation (the Inquiry).

News Limited's submission will focus on term of reference (b), being whether the Australian Communications and Media Authority (ACMA) should be required to examine program supply agreements for news and current affairs when determining whether a person is in control of a commercial television broadcasting service.

News Limited understands that the reason that this term of reference has been included is because some members of the Parliament were concerned about 'media diversity'.

Term of reference (b)

News Limited is opposed to requiring the ACMA – or any other body – to examine individual program supply agreements for news and current affairs when determining compliance with cross media ownership restrictions.

There is no policy justification for such provisions, as there is more media diversity in Australia than at any time in history.

Importantly, the question of control through programming is already adequately covered in the *Broadcasting Services Act 1992* (the Act).

Further, such an approach would be unworkable and unnecessarily burdensome. It is unwarranted for the following reasons.

Massive increase in media diversity

There is more media diversity today than in all of human history. We have seen an explosion of diversity through the internet with information available 24/7 from around the globe, and from entities and individuals including blogs and social media sites. This are additional to traditional media channels that are also participating in the opportunities offered by digital technologies, including offering enhanced content to consumers anywhere on the globe. The power is indeed in the hands of consumers to decide their media consumption, including that of news and current affairs.

i. *Television news voices*

There are now 16 free-to-air (FTA) channels including the ABC's dedicated news channel, News 24. There are over 200 channels on Foxtel including 16 independent news channels.

Specifically, the diversity of news and current affairs voices on television (including multi-channels) are:

- The FTA networks: Seven; Nine; Ten; ABC including ABS News24, local television in each state and territory, and the international television service Australia Network; SBS; Southern Cross; Prime; WIN and NITV News; and

- The 16 independent news voices on Foxtel are Sky (National) News; Sky Business; APAC; Sky Local Adelaide; Sky Local Brisbane; Sky Local Melbourne; Sky Local Perth; Sky Local Sydney; Sky UK; Fox News ; CNN; BBC World News; Bloomberg; Al Jazeera; CNBC and CCTV. Foxtel exercises no editorial control over any of these services.

ii. *Radio news voices*

Public broadcasting radio

- ABC Radio:
    o Four national radio networks: ABC Radio National, ABC NewsRadio, ABC Classic FM and triple j;
    o ABC Local Radio which comprises nine metropolitan radio stations and 51 regional radio stations throughout Australia;
    o 11 digital radio channels in each mainland capital city including simulcasts of the four national networks and metropolitan Local Radio services plus digital only services ABC Dog Music, ABC Jazz, ABC Country, ABC Grandstand, triple j Unearthed and ABC Extra;
    o Radio Australia, and international radio and online service broadcasting in eight languages is available in Asia and the Pacific; and
    o Additionally, all digital radio services are streamed online; the four national networks and some Local Radio services are also available via digital satellite subscription services. [1]

- SBS Radio:
    o Broadcasts on both the AM and FM frequencies in Melbourne and Sydney, and on either an AM or FM frequencies in other major centres nationwide;
    o SBS also offers 24/7 live streaming of all language programs on SBS Radio 1 and 2 and trial digital music stations;
    o There is also a SBS mobile app that allows people to listen to SBS radio programs in a range of languages whenever and wherever they want. SBS programs are also made available as podcasts or as audio highlights available on-demand.[2]

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[1] http://about.abc.net.au/wp-content/uploads/2012/10/ABC-Annual-Report-2011-12-Part-1.pdf
[2] http://www.sbs.com.au/radio/

Commercial radio

According to Commercial Radio Australia[3] 147 commercial radio stations were transmitting across Australia as at December 2012:

- 11 in Sydney and 33 in regional NSW;
- 10 in Melbourne and 13 in regional Victoria;
- 8 in Brisbane and 22 in regional Queensland;
- 6 in Perth and 16 in regional WA;
- 6 in Adelaide and 6 on regional SA;
- 4 in Canberra;
- 3 in Hobart and 5 in Tasmania; and
- 2 in Darwin/Katherine and 2 in NT.

There is also enormous diversity available via digital radio and services available online and to mobile devices via apps which has not previously been available.

iii.   *Online news voices*

Online also offers a rich diversity of news options. According to Nielsen's news and information category data for February 2013:

- There were 30 websites with an average monthly audience of over 300,000 (unique audience) – see Figure 1 below;
- 40%, or 12 of that 30, are international sites;
- The 12 international sites include *The Guardian*, *New York Times*, *Huffington Post* and the BBC (the BBC is in the top 10);
- The top 30 also includes news aggregators such as Google News and HPMG News Websites (formerly AOL News); and ninemsn and BigPond News Websites.
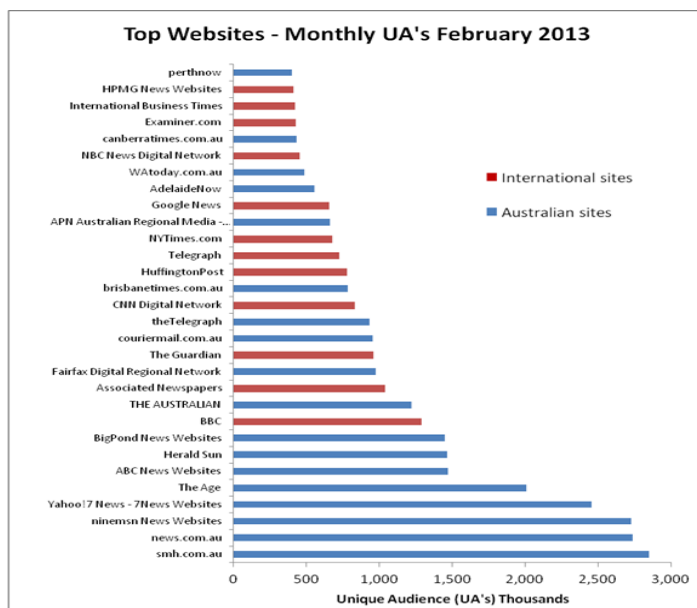

Figure 1 Source: Nielsen Online Ratings, Netview Hybrid Monthly UA's

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[3] http://www.commercialradio.com.au/files/uploaded/file/2013%20calendar/2013%20station%20map.pdf

It is important to include here that the digital economy is ever evolving. New voices that have set up shop in Australia include *The Conversation*, *The Global Mail*, and the soon to launch Australian editions of *The Guardian* and *Huffington Post.*

In addition, there has been an explosion of choice and access brought about by the internet and the rise of companies like Google, Facebook and Twitter – to name but three of the multitude of sites that have proliferated over the last decade that consumers are interacting with – sharing, commenting and generating media.

Along with publishers, bloggers and traditional media entities, activist groups such as GetUp! are embracing digital communication channels to communicate and influence the agenda. A recent visit to the GetUp! website is illustrative of the activities being undertaken, including the recently launch campaign to support the Government's reported changes to superannuation, and including an online petition, a call to share the campaign via Facebook, Twitter and email, and a video stored on YouTube. The GetUp! Facebook page includes the campaign post, which offers the usual Facebook features to share, comment and like the campaign within the Facebook social network.

Political parties are also embracing digital communication channels and delivering ever more choice of material. The Australian Labor Party (ALP) recently posted a graph to Facebook regarding government net debt. According to a report in the *Australian Financial Review*[4], that graphic has been seen by more than 844,500 Facebook users in less than one week, and continues to grow. The report says:

> '*To put that figure into perspective, it is more than the capital city audience that watched the ABC evening news on Friday, according to OzTam estimates.*'

Further evidence that political parties are maximising the opportunities offered by the explosion of choice and diversity brought about by the internet and social media was reported by Laurie Oakes[5] on 30 March 2013:

> *A year ago one person handled Labor's digital campaign. Now it has five paid staff plus interns. An ALP source says: "Our goal was to have the capability to reach more people than some of the larger media outlets—for example, Alan Jones' radio show—and we can now do that."*
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> *Describing Facebook as "our fastest-growing platform", he adds: "We've been producing more compelling and relevant content that our supporters want to share with their non-political friends."*
>
> *The Liberal Party's social media staff is slightly smaller than Labor's but just as active. It uses YouTube, central to its digital strategy, very effectively.*
> *The Liberals give Facebook high priority, too, but put less emphasis on numbers than on "engagement rates". A party official says: "The engagement rates measure what action people take on your Facebook page—whether it's 'liking' a post, sharing with their friends or making a comment."*

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[4] http://www.afr.com/p/national/politics/labor_debt_graphic_goes_viral_tqiQx612DXcFOkHXPhoc8I
[5] http://www.dailytelegraph.com.au/news/opinion/labor-seeking-new-friends-on-facebook/story-e6frezz0-1226609131146

Twitter is also used as a communication channel by people involved in making and reporting news and commentary across the world, and Australia is no exception. A sample of Australian Federal politicians and the numbers of followers[6] are listed in following table:

Kevin Rudd	1,211,320
Julia Gillard	362,873
Malcolm Turnbull	156,503
Tony Abbott	111,945
Joe Hockey	65,064
Wayne Swan	36,121
Bob Carr	30,518
Julie Bishop	25,988
Christine Milne	17,374
Rob Oakeshott	16,099
Barnaby Joyce	15,296
Scott Ludlam	9,718

There are also vast numbers of blogs and news sites – including specialist and niche blogs such as political blogs – that contain large amounts of diverse user generated content: all of which Australians have the ability to – and do – access and interact with: when, where and how they choose.

The power is truly in the hands of the people in the digital age.

There are already extensive regulatory provisions to protect diversity

The term of reference (b) – and any policy proposals that may flow from it – is also unnecessary to protect diversity as there are already extensive legislative provisions that are aimed at, or have the effect of, protecting diversity.

The Australian Competition and Consumer Commission (ACCC), the Australian Communications and Media Authority (ACMA) and the Foreign Investment Review Board (FIRB) have extensive powers – individually and in aggregate – to enforce media diversity and ensure competition today. Specifically:

– The ACCC has extensive powers to preserve media diversity in its administration of pro-competition laws, namely section 50 of the *Competition and Consumer Act 2010*. In administering these pro-competition laws the ACCC effectively has strong powers that preserve media diversity.

The application – and outcome – of such provisions was evidenced by the ACCC's decision in October 2012 to oppose Seven West Media's application to acquire CMH shareholdings in Foxtel and Fox Sports. Regarding that decision, ACCC Chair, Mr Rod Sims, told the *Australian Financial Review*[7]:

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[6] as at 2 April 2013
[7] http://www.afr.com/p/national/accc_warns_news_hands_off_free_to_G2vnJy2ISLBtvcMP5PnRaJ

> *'Following our decision today to oppose Seven Group getting hold of 50 per cent of Fox Sports, that same logic would apply even more strongly to News seeking to acquire a free-to-air station.'*

– The ACMA has existing and well established powers to ensure diversity through the *Broadcasting Services Act 1992*. These include enforcing the media diversity rules including the minimum number of voices and '2 out of 3 rule' for commercial television, radio and newspapers; 'one to a market' rule for commercial television; 'two-to-a-market' rule for commercial radio; and the '75 per cent audience reach' for commercial television – the latter of which is under inquiry by the Committee.

The question of control through programming is already incorporated in the *Broadcasting Services Act*

The Act already contains detailed criteria against which the ACMA makes assessments as to whether, or not, a person is in a position to exercise control.

As the ACMA website outlines[8]:

> *'The wide-ranging definition of 'control' in the Act is fundamental to the operation of its ownership and control provisions.'*

It goes on to say:

> *'Control is intended to cover various formal and informal arrangements, including trusts, agreements, understandings and practices under which a person comes to be in a position to exercise control over a broadcasting service licence, a newspaper or a company.'*

The relevant provisions of the Act which consider control through progamming are at Schedule 1, Part 2 (1)(b).

It states that a person is in a position to exercise control of a television licence if:

(ii)   The person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of the selection or provision of a significant portion of the programs broadcast by the licensee; or

(iii)   The person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant portion of the operations of the licensee in providing broadcasting services under the licence.

Content sharing arrangements are not new and must be able to continue

The Australian Greens also said News Limited influenced Channel Ten because the companies cooperated on the *Meet The Press* television program. It is the case that News Limited has a program supply agreement with Network Ten regarding *Meet the Press*. It is also the case that such

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[8] http://www.acma.gov.au/WEB/STANDARD.PC/pc=PC_91749

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an arrangement is neither untoward nor unusual or a new development as various entities have, and continue to, work together to deliver content.

Examples from the early 1970s to today:

– In the early 1970s, *A Current Affair* on the Nine Network was produced by Mr Michael Willesee's Transmedia company for the network;

– During the mid 1980s, Transmedia also produced the *Willesee* program for the Nine Network before selling it the rights in 1988;

– In 2002 News Limited and Nine Network developed the *Body and Soul* television program based on the Sunday newspaper lifestyle section;

– In 2007 News Limited and Foxtel developed a *Confidential* television program for Fox8 based on the newspaper gossip section;

– ABC's *4 Corners* program has involved ABC and Fairfax joint investigations;

– In 2013 Network Ten and News Limited enter program supply arrangements for *The Bolt Report* and *Meet The Press*; and

– Most recently it has been reported that Fairfax Media is developing a television version of *The Australian Financial Review* to be aired on Sunday mornings on the Nine Network. We note that this reported arrangement has not been the subject of allegations that Fairfax may be influencing Channel 9.

Furthermore, there is a raft of examples across FTA, subscription television, public broadcasting and other media channels where news and current affairs content is developed and shared – this is the very nature of convergence – and it has been occurring for some time. A non-exhaustive list of examples includes:

– ABC programs *Insiders*, *Inside Business* and *Offsiders* feature representatives of multiple media outlets including Fairfax, News Limited, SBS, and contributors to media organisations;

– *Capital Hill* on Sky News National is hosted by Lyndal Curtis from the ABC;

– ABC's *Inside Business* is hosted by Alan Kohler, who is also the ABC Finance Editor, he is also founder of the Eureka Report and Business Spectator, the later which is now owned by News Limited;

– Paul Murray hosts Paul Murray Live on Sky News National and also presents *A Sydney Morning* on 2UE;

– Janine Perrett hosts Sky News Business' *The Perrett Report* and contributes to newspapers including Fairfax publications;

– Various media organisation columnists and political reporters appear on Sky News, including News Limited's Chris Kenny and Peter Van Onselen who have programs;

- News Limited's Joe Hildebrand has been commissioned by the ABC for current affairs programs; he also appears on the Seven Network's *Sunrise* program and appears on various programs on Sky News including *Paul Murray Live*;

- Peter Switzer appears on Sky News Business as *Switzer*, and he is also the small business editor for *The Australian*, a columnist with the *Daily Telegraph*, host of the 2GB small business show, author, host of Talking Business for the Qantas in-flight service Radio Q, the Money Coach on Sydney's ABC's 702 radio station with James Valentine, commentator on Vega FM and a finance commentator for Yahoo! 7; and

- Sports journalists and commentators also appear across platforms, examples include Gerard Whateley who appears on ABC's *Offsiders*, blogs on ABC's *The Drum,* and hosts of Fox Footy's *AFL 360* program; News Limited's Mark Robinson is the chief football writer for the *Herald Sun* also hosts Fox Footy's *AFL 360* program.

Interestingly, it is the diversity delivered by the internet and convergence which is in fact promoting and advancing content sharing across platforms to potentially billions of people. People and organisations are sharing content across platforms in various manners:

- Ad hoc sharing amongst social groups, customers and followers; and

- Deliberate and structured ways: as outlined above in the example of the ALP's government net debt graph; and also through commercial arrangements for content development such as the examples of Network Ten/News Limited regarding *Meet The Press* and Channel 9/AFR.

An example which has developed from within the digital environment is *The Conversation.* It offers the ability to republish articles online or in print, email links or share via Twitter or Facebook – some articles have been republished at *Business Spectator* (owned by News Limited). This is the world in which we currently live, work and play. To contemplate further restricting some participants via outdated definitions and regulatory responses – to unidentified problems – is inequitable and should not be pursued.

We also note that term of reference (b) only covers commercial broadcasters, which would mean that arrangements between the ABC and other media entities, including Fairfax – such as has occurred with journalists working for the ABC's Four Corners program – would not be scrutinised by the ACMA.

To be clear, we are not suggesting that arrangements which include public broadcasters should be scrutinised by the ACMA. We are saying that it there is no role here for the ACMA – or any other regulatory entity – to examine program supply agreements at all.

Convergence means that content sharing is an irrevocable reality

The focus of term of reference (b) of the Inquiry appears out of synch with the reality of the digital economy. It has been outlined in this submission that it is the case that ever more communication channels are developing and diversity is blossoming, and content sharing across this myriad of options is very much part of the landscape. However, against this reality the Committee has been tasked with inquiring into whether or not a regulatory authority should be required to examine

content arrangements, deliberately limited to traditional media channels, and further selectively limited to only some participants of those channels.

As the examples throughout this submission highlight, attempts to define – and limit – content by platform is an out-dated concept.   It is, and continues to be the case that platforms, producers, presenters, facilitators and delivery mechanisms are melding, meshing and morphing with the ever evolving digital economy, delivering choice and empowerment to consumers. It would be bad public policy making to ignore the reality of this matter.

Term of reference (a)

This submission makes no comment regarding term of reference (a) – the 75% reach rule to FTAs, other than to say that any such change should be looked at in context of holistic reform.