Australian content restrictions

Sue Brooks argues that with the pressures faced by the TV industry today local content restrictions are still needed

In response to a flood of foreign programming in the Sixties, and to maintain Australia's cultural identity, the Government created and maintained program standards powers for the regulator. The Government also facilitated the financing of local film production through the Australian Film Development Corporation, the Australian Film Commission (AFC) and the Australian Film Finance Corporation (AFFC).

In the 1990's, the industry is feeling the impact of global media enterprises and moves towards freer trade directly through international trade negotiations and indirectly through the creation of new market opportunities (such as the potential presented by pay television) and the forging of new commercial links (such as AFC's role in establishing co-production treaties).

The challenge remains today for Australia as it was in the sixties, the need to reinforce our sense of national identity.

The Australian debate

The Australian Broadcasting Tribunal's 1977 report on *Self Regulation for Broadcasters* noted that an Australian look involves an inherent conflict between the extremely sensitive and highly complex issues of station profitability, employment opportunities for creative Australians and the program preferences of viewers.

Because the livelihood of the participants in the film and television sector is directly and indirectly affected by content regulation, heated debates will continue to occur.

In particular, confusion often arises over whether encouragement of Australian artists or the maintenance of our national identity is the primary consideration in determining the level of Australian programming content on television. In other words, are we more concerned with the industrial argument, that is, inputs to programming, rather than with output issues, such as culture or as I prefer to use, the 'national identity' argument.

The Tribunal's position on this issue is clear. It has seen the issue in cultural terms defining the public interest:

"... as being that viewers should receive an assured level of identifiably Australian programs which recognise the diversity *represented in the Australian community and which are developed under Australian creative control.*"

In its recent review of the standard, the Tribunal's original position was strongly output oriented. Its preliminary view was based on the broad concept that if it looks and sounds Australian then it is Australian. At that stage the television licensees, production and industrial union representatives requested greater certainty through detailed definitions as to the level and type of Australian creative personnel were required to comply with the standard. Greater certainty in interpretation was achieved, while at the same time providing licensees with enhanced flexibility in program decision making.

DRAMA HOURS PRODUCED

	Old std 1989	New std 1990
Network 7 (ATN)		
Drama	287.16	302.52
C Drama	8.00	16.30
Network 9 (TCN)		
Drama	110.45	120.06
C Drama	8.00	13.30
Network 10 (Ten)		
Drama	233.47	236.00
C Drama	9.00	12.30

The present standard does not impose exacting requirements, since it was based on actual levels of programming achieved in 1988/9. In the first year of the standard, 1990, despite difficult economic conditions, all licensees met the standard with Seven Network far exceeding the requirements.

When we compare the number of drama hours produced under the old standard versus the more flexible approach enshrined in the current standard the results are as indicated.

The rationale for regulation

If Australian programming is so successful then why do we need regulation? The networks' investment in Australian programming is substantial while their budgets lack substantial revenue gained from export distribution which is available to the United States production houses and networks. In 1989/90, Nine expended $216 million, Seven $161 million and Ten $153 million. This represents an average of 38 per cent of their budgets compared with 17.3 per cent expended on foreign programming.

Australia's creative resources require some cushioning against recessional times and in particular, any negative fall-out as a result of the necessary financial restructuring of the industry.

While restructuring must occur, the Tribunal considers that this should not occur at the cost of loss of program quality. We should continue to bear in mind that past acquisitions, with their substantial reliance on debt financing, place additional burdens on network management today.

The Tribunal believes that its 'safety net' approach which sets the level of production at those which were achieved during economic hard times is both commercially realistic and responsible. The viewer should not have to pay for the mistakes of some media owners through diminished levels of Australian content.

Faced with a difficult management period for the networks, the Tribunal considered it appropriate to look after what Australian content we had, while enhancing flexibility in compliance with the standard.

Under the present standard, if a licensee decided to discontinue its commitment to expensive drama programs by increasing production of less expensive serial series, then a commensurate increase must occur in the overall number of hours or the nature of the creative talent being utilised. In other words, the new standard allows trade offs between hours produced, Australian creative resources and program types.

Foreign content in ads

As well as greater flexibility to management, the Tribunal has also moved to reduce the level of regulation. This brings me to the issue of advertisements which have a cultural dimension and in turn contribute to our sense of national identity.

In its preliminary view on foreign content in television advertisements, the Tribunal has moved significantly from the

blanket provisions of the current standard.

The creative and production quality of local advertising has really never been doubted. On an international scale, Australia is a consistent winner at award festivals, often finishing within the top three. This was highlighted recently at the International Advertising Film Festival in Cannes, where Australia finished third behind the US and UK.

From the viewer's perspective, advertisements used for foreign and, in particular, global products and services are at least as entertaining and relevant as local advertisements.

In this context it is entirely appropriate to allow such advertisements to be broadcast while at the same time ensuring the creative resources which local advertisements use and which help to support program production through training and continuity of employment are not unnecessarily disadvantaged.

The Tribunal believes that gradual integration into the global market is desirable and proposes to review the success of the new standard in 1992.

Co-production and GATT

The issue of global integration was also raised in the Tribunal's report to the Minister on Co-productions.

Much has been said about obligations under international treaties. The Tribunal agrees but has noted as a matter of general principle that a treaty is binding only to the extent that it has been incorporated into domestic law, i.e. when Parliament enacts or makes regulations under existing legislation.

With respect to General Agreement on Tariffs and Trade (GATT), the Tribunal notes that distribution rights on program material are program services and a cultural matter. The current standard is therefore consistent with Australia's GATT obligations.

In its report the Tribunal demonstrated that official co-productions have the same potential to be included as Australian content under its regulatory requirements as programs developed without such assistance. We concluded that arguments regarding regulatory constraints were generalised and anecdotal. No submitter was able to produce evidence demonstrating how the current standard constrains co-productions; no examples were give of co-production negotiations faltering as a consequence of the standard were given. In fact, the Tribunal found the contrary. Based on information currently available, three of the official co-productions between 1987 and 1990 would have been eligible. To the best of our knowledge, none of these co-productions have been pre-sold to a commercial television network.

Co-Production Treaties and Memoranda of Understanding signed by the AFC all provide mechanisms to facilitate the production and marketing of films between co-signatories.

Amongst other things, they establish the criteria under which films are given access to financing from organisations such as the AFC and the AFFC and through tax incentives.

The Tribunal does not directly regulate the funding of production; in contrast to these statutory bodies it regulates content. These content requirements supplement the licensee's statutory undertaking to provide an adequate and comprehensive service and to use, and encourage the use of, Australian creative resources in the provision of programs.

The current Australian content standard is neutral in its impact, since it neither provides for nor prevents concessions for official co-productions.

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If ministers should decide that the Tribunal should more actively support official co-productions, then legislative change incorporating the obligations of treaties and other like arrangements into the Broadcasting Act would be appropriate.

That's not to say that all of the comments made by submitters are invalid. Accordingly, the Tribunal will convey a number of options for facilitating such an approach to the Minister for his consideration.

Having covered these issues, what this means for the future is that:

- Australian program content regulation is here to stay so long as legislation and audience ratings support its retention. Fragmentation of the audience base will continue to apply pressure for cost reductions by the networks, hence 'safety net' regulations remain desirable.
- Changes will occur in the way advertisers use television — limits on the amount of non program time, and increased opportunities for foreign advertisements are likely to counteract one another. It will be increasingly difficult to justify a high level of encouragement to locally produced advertisements, in the event that viewers react positively and no substantial negative affect on the training and employment stability can be demonstrated after the new standard is in place.
- With the expansion of broadcasting like services, demand for English language programs will rise and the Australian, not just US, production sector will benefit. Hence the networks should share in export income.
- Any shortfall in supply to the Australian sector could well see program supply being increasingly met from American public broadcasters and cable operators.
- Even with restructuring of networks debt levels, cost pressures will continue, since free-to-air television services' audience share is likely to come under pressure in the longer term. In this context program diversity to stabilise or enhance audiences will be critical.
- The flow-on effect of more sophisticated and improved audience measurement should assist broadcasters to create more finely tuned program schedules that recognises the profile and habits of their audiences.
- Other issues that may effect Australian and foreign programming will be the Tribunal's review of program classification standards, which will consider community attitudes to current program classification criteria and relevant time bands, and the proposed inquiry into local programming, which has particular relevance to the regional areas.

Australia's film and television industry will continue to need careful monitoring. So too will our production industry as they establish off shore markets based squarely on their ability to meet market demand.

Sue Brooks is a member of the Australian Broadcasting Tribunal. This is the edited text of a paper presented to the AIC's 1991 Television Industry Conference, in Sydney.