
need for information on service categories

Service providers cannot obtain enough information about service categories. This is unacceptable because an opinion effectively licences the service, if it does not change substantially, for five years. Once the ABA provides an opinion, no Government agency is able to take action against the service provider on the basis that the service falls into a different category. Better information about the categories of narrowcasting is needed not only for the purposes of prospective narrowcasters, but also for the purposes of commercial broadcasters who may be targeting the same region or audience and who have no input into the process of the ABA's determination.

The ABA points out in the *Discussion Paper* that it is not bound to follow its own precedents in relation to opinions and can determine additional criteria or clarify the existing criteria for determining the category of services under s.19 of *the Act* (it has not yet done so). Service providers are warned not to treat opinions as precedents. This diminishes considerably the commercial certainty which the provision of opinions is intended to create. The assistance provided by the opinions is also limited by the lack of detail. Although commercial confidentiality needs to be protected, it seems reasonable to expect more details about the nature of the service, given that the ABA cannot publish the opinion until the service to which it relates has commenced operation.

ownership and control

The *Paper* does not discuss issues of ownership and control of subscription and open narrowcast radio services.

Distinctly New Zealand

Dr Ruth Harley discusses New Zealand's broadcasting regime

Up until the major deregulatory changes to the broadcasting regime in New Zealand in the late '80s, broadcasting, like a great many other facets of life in New Zealand, was characterised by a heavy measure of State control.

State broadcasting, and that's the only kind there was for decades, grew up under the influence of the Reithian concept of public broadcasting - broadcasting as an influence on our society directed to particular ends - educational, political, social

and cultural. Because licences are not allocated to narrowcasters there is no ABA control over candidates for them. There are no restrictions under *the Act* on their ownership or control. This means that owners of commercial broadcasting licences are not prohibited by *the Act* from operating narrowcast services.

It was stated in the Explanatory Memorandum that concentration in ownership and control of narrowcast services was to be regulated by the provisions of the *Trade Practices Act 1974*. However, it would be difficult for the TPC to monitor any such concentration because of the lack of individual licensing which might assist to identify providers. While those services using the radio spectrum must at least obtain transmitter licences under the *Radiocommunications Act*, as the *Paper* points out a narrowcasting service may be delivered by cable, optical fibre, satellite, or other means as well as by broadcasting services bands or other radio spectrum.

conclusions

The *Discussion Paper* leaves many questions about narrowcasting services unanswered, as have the published opinions. The *Paper* does not discuss issues of ownership and control, and adds little to the information already available under *the Act* and the Explanatory Memorandum as to which services will be considered to be narrowcast services. This is particularly unacceptable given that the ABA itself considers that the provisions of section 21 are intended to give certainty to service providers.

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factors which created the climate for the changes of the late '80s. Telecommunications and broadcasting were just a part of the picture.

key factors for change

Firstly, in the drive for a more internationally competitive economy, all regulated industries came under intensive scrutiny. Secondly, regulatory (public sector) reform focused on those industries in which Government trading enterprises operated. Government dominated the broadcasting industry. By mid 1987 the Government had adopted a new framework for Government enterprises.

They were to be placed on a more commercial, competitive footing with managers held accountable for performance. There was to be a competitive neutrality with the private sector, ie Government-owned enterprises were not to have any disadvantage or advantages vis a vis private broadcasters. Policy advice and regulatory responsibilities were to be separated from commercial activities. And, the delivery of social objectives was to be separated and transparently contracted and not mixed with commercial objectives.

Thirdly, there was dissatisfaction with the degree of choice in broadcasting services. Broadcasting was dominated by the state broadcaster, Broadcasting Corporation of New Zealand (BCNZ) and its predecessors. Frustration had built up with the restrictions on entry for the private sector into radio and television broadcasting.

Fourthly, the broadcasting warrant system administered under a quasi-judicial tribunal system was seen as cumbersome, time consuming and not able to keep pace with technological change. The BCNZ itself faced a range of restrictions on its commercial operations and wanted flexibility. Television especially would increasingly have to operate in a global environment in which international partnerships needed to be formed.

Fifthly, demands for greater diversity of programming, including programming reflecting our own society, were not being fully satisfied. Yet the public broadcasting fee was controlled by the BCNZ and it had conflicting objectives. Relevant social objectives were also obscured by Reithian doctrines that were out of touch with the modern consumer service environment.

legislative reform

The new legislation of 1988/89 sought to eliminate those problems. It provided a fundamentally revised framework for broadcasting, including:

- the introduction of various measures to promote competition in the broadcasting industry - notably the removal of all statutory restrictions on entry into broadcasting and the introduction of tradeable property rights in radio spectrum;
- the replacement of the BCNZ by two new state-owned companies - Television New Zealand Limited (TVNZ) and Radio New Zealand Limited (Radio NZ). These companies were to operate along ordinary commercial lines but they were still required to promote NZ identity and culture;
- cross media ownership restrictions were removed and foreign ownership restrictions reduced and finally abolished;
- "public service" broadcasting objectives were redefined into more concrete targeted objectives to be facilitated by a transparent subsidy scheme funded by the broadcasting fee and administered by an independent statutory agency. The new Broadcasting Commission/NZ On Air was to assess competitive bids for funding and programming within the specified categories of social objectives, notably the advancement of New Zealand culture and identity including Maori programming and minority programming; and
- an independent statutory body, the Broadcasting Standards Authority (BSA), was established to maintain certain defined broadcasting standards.

public service objectives

At the time the proposals for the reforms were being worked through, the Government considered two options for achieving public service objectives, either subsidies or regulation.

The subsidy approach was adopted for various reasons. It provides for competitive neutrality thereby enabling greater competition between broadcasters. Costs and benefits are readily identifiable (ie transparent). It allows clear targeting of assistance to particular social groups. It provides flexibility in mechanisms for delivery of public service programmes. It keeps costs of funding down as it is a top-up system (few programmes are completely non-commercial).

Three main categories of concern were identified within a wholly commercial environment - sufficient local content to reflect and develop NZ culture and identity, (it was rightly assumed that commercial broadcasting, supported by advertising would provide certain types of NZ programming without subsidy); access to signals for small and remote communities; and sufficient coverage of minority interests. Support for archiving was added during the progress of the new legislation through Parliament.

NZ On Air

The result was the Broadcasting Commission, NZ On Air, whose functions are:

- to reflect and develop New Zealand identity and culture by promoting programmes about New Zealand and New Zealand interests, and, promoting Maori language and culture;
- to maintain, and if the NZ On Air believes it to be cost-effective, extend radio and television coverage to communities that would not otherwise receive a commercially viable signal;
- to ensure that a range of broadcasts is available to provide for the interests of women, children, persons with disabilities, and minorities (including ethnic minorities) in the community; and
- to encourage the establishment and operation of archives.

results of reform

There has been a range of good news results of NZ On Air.

fee collection statistics - Our gross revenues have increased by 10% from \$82 million in 1989/90 to over \$90 million in 1993/94. The number of fee paying households is up by 18% to 1 million or 87.2% of liable households.

Our collection costs have fallen from 14.5% of gross revenues to 9.8%. This is despite a 19.1% increase in the CPI and a \$1.3 million advertising and promotion campaign designed to brand fee-funded services and inform fee payers of their obligation to pay and tell them where their money is spent. Our administration costs are around \$1.5 million compared with a reported \$10 million by the BCNZ.

local content levels on television - NZ On Air will fund or partially fund around 1200 hours of television this year. These hours contribute to a general increase in

local content across the three free-to-air channels.

Total hours of NZ content are up from 2112 hours in 1988 to 4866 in 1993 - more than double but still only 23% of total broadcast hours. Volume of local content will always be a problem in a small economy like ours. Primetime hours of local content increased by 160% since 1988 from 686 hours to 1789 hours in 1993. Drama, comedy, documentary and children's programmes have increased most significantly, largely as a result of NZ On Air's role.

increased productivity - In television production and the cost of running National Radio and Concert FM and in the costs of providing television signals into remote areas, significant cost reductions have been achieved with increased levels of service to fee payers with the monies freed up.

improved services for fee payers - Since its inception NZ On Air has concentrated on initiating new services for poorly serviced fee payers such as people with impaired hearing, arts audiences, children, people in remote areas and Maori.

A sampling of new services includes:

- 20 Maori radio stations, a Maori Radio news service and linking systems;
- 2 Pacific Island Radio stations in Auckland and Wellington;
- 7 Access Radio stations in different centres;
- 3 grant schemes designed to promote New Zealand music on radio and television plus dedicated New Zealand music programmes, both pop and rock, on 17 commercial radio stations throughout the country;
- an increase in teletext subtitling for people with impaired hearing from 10 hours per week to over 40. This was after extensive consultation with deaf communities and now includes regular feedback from them;
- the first 5 day per week soap; and
- National Radio (a news and information service) and concert FM (a fine music service) into several new centres.

problems encountered

Jockeying for position: The 1989 broadcasting reforms, accompanied by significant argee-bargee, introduced radical change into New Zealand. We have had protracted negotiations with the key vested interests, Radio NZ and TVNZ, about NZ On Air's role. The very branding of NZ On Air caused a lot of grief at TVNZ, which still surfaces periodically.

However, from the research we conduct into the efficiency of our advertising

campaign, it has undoubtedly paid dividends with the public. Not only has it in our view assisted us to increase our collection rate, it has also made the public - over 92% of them - aware of who we are and what we do. Around 75% of them support or at least are not unhappy with our performance. Not bad for what is essentially a tax collection operation.

conflict and confrontation: The productivity increases have also been hard won and continue to be hard fought. We are currently engaged in meaningful discussion with TVNZ about what exactly constitutes "non-commercial coverage" and how much it should cost. At last count the parties were over \$10 million apart in their calculations!

Maori Radio development: This has been a difficult but rewarding exercise. However, a parallel body, Te Mangai Paho, has now been set up and as from 1 January 1995 will allocate the portion of the Fee Income currently allocated for specialist Maori broadcasting purposes together with funds from Government Vote. Personally I hope they are more successful than we were with ensuring that Maori radio contributes fully to the revival of the Maori language. Theirs will be the responsibility of funding specialist Maori language and cultural programming on radio and TV.

It will then remain for NZ On Air to fulfil its function to "promote Maori language and culture" through programming targeted at mainstream audiences on radio and TV.

perception of the fee as value for money: There is always a level of complaint about the existence of the Broadcasting Fee. For example, those who do not receive TV3 may take the view that they should pay less, those who claim to use their TV sets for videos or viewing pay service only, call for exemption; those who dislike types of programming or levels of advertising also complain.

Whilst there is bound always to be a measure of dissatisfaction with any regime, there is a prospect that these types of grievances could eventually destabilise the regime. If we solve the TV3 coverage problem (which we are currently seeking to do), then the questions of additional regional services for remote areas will surely arise. The numbers of people with pay services will certainly increase although research to date suggests that the free-to-air networks are likely to be the mainstay for at least a decade. Of more concern, perhaps, is what many people perceive to be a debasing of the free-to-air services and a corresponding decrease in what some vociferous sectors regard as the stuff of a quality broadcasting service such

as in depth news and current affairs, sustained documentary programmes, and high production value drama. There is also a lot of dissatisfaction expressed with the levels of advertising.

issue for the future

The result of the debate over these issues is frequent discussion of the Government's stated policy to consider selling Channel 2 and make TV One a semi-commercial public broadcaster - whatever that might be. There are endless rumours and discussions on this with no conclusion as yet. However, I do not believe these rumblings will go away.

As long as public funding is involved, we in the industry cannot avoid engaging with the public in the discussion of the role and nature of publicly funded broadcasting.

The old arguments for public broadcasting are under serious threat from new technologies and new and increasingly dominant ideologies on the conduct of human affairs. The technologies offer more, the ideologies idolize the consumer. Both developments challenge the core theories of public broadcasting: that broadcasting utilizes a scarce natural resource which must be regulated in the public interest, and that the audience consists of citizens eager to engage with the quality entertainment and information with which you wish to ply them. Neither of these is any longer plausible so the argument for public broadcasting has to be elsewhere.

In New Zealand the reforms translated public broadcasting, almost by sleight of hand into three specific concepts - New Zealand culture and identity including Maori, remote coverage, and minority access. These concepts were underpinned by the belief that deregulation would bring a range of new broadcasters into the picture whose existence would, by definition, provide choice for the consumer; choice, in the terms of the prevailing market ideology, being of its very nature a public good.

However although deregulation has certainly brought us a greater number of broadcasters - we now have 3 free-to-air national broadcasters, 5 free-to-air local broadcasters, 2-3 cable trials and 4 subscription channels with several more in the pipeline - it is debatable whether it has brought the public much in the way of real choice. In any case, only around 2-3% of the population so far is exercising that choice. And for the rest of us, consumers of the free-to-air services, our choices reduce by the

day as all three channels look more and more alike even to the extent of 3 news bulletins head to head at 10.30 at night.

A number of commentators have observed that programme material in New Zealand is heading steadily downmarket with a disproportionate emphasis on criminals, victims and freakish events encapsulated into sensationalised fragments.

I have already observed that choice on the free-to-air schedules is diminishing. Last year the TV One schedule allowed for a weekly one hour arts programme in late prime time or just at the edge of prime time. This year because of the move to the late news it does not. Last year the TV One schedule allowed for a half hour observational documentary series using one person Hi-8 crews. This year it does not for the same reason.

In New Zealand we have constructed a very efficient commercial broadcasting structure. But, call me old fashioned, I do not believe that the highest economic return equals the greatest public benefit where broadcasting is concerned.

In New Zealand we have NZ On Air as a public good mechanism to leaven the otherwise purely market driven structure. It has to date proved very effective but I believe there are signs which give rise to concerns for the future.

conclusions

I do believe the public wants choice and I know for sure that the various publics are clear that expenditure of public monies must be targeted at worthy objectives, although of course, the exact nature of those objectives would be vigorously debated. But in a situation where choice in free-to-air television is reducing and the ethics and quality of a lot of television programming is coming under fire and the levels of non-programme material are perceived to be reaching even greater heights, I think there is likely to be increasing levels of political disquiet.

Just as the violence debate has at least produced a response from the broadcasters, there may well eventually be sufficient public concern about the direction in which free-to-air television in New Zealand is currently heading to motivate politicians to reassess the current structures. On the other hand, it may be that, again as in the case of television violence, the broadcasters themselves perceive the problem and self-correct. Watch this space!

This is an edited version of an address given by Dr Ruth Harley, NZ On Air, to Communications & Media Law Association.