1. Introduction

Developments in technology over the previous two decades have allowed different parts of the radiofrequency spectrum to be opened for use for broadcasting. New transmission techniques being forecast promise to allow existing spectrum to be used more efficiently. Long standing prohibitions by Government on the use of telecommunications infrastructure for broadcasting, that once prevented its capacity being added to that of terrestrial radiocommunications, have become untenable as policies have been implemented to liberalise the telecommunications market.

The changes to broadcasting law introduced by the *Broadcasting Services Act 1992* (BSA)[1] brought Australia up to date with these technical realities. The BSA also implemented the Government's objectives for reform of the broadcasting industry by separating technical regulation from content regulation, reducing the regulatory intervention in the industry so that only the regulation necessary to achieve specific objectives is applied, and promoting the use of market mechanisms to resolve access issues.

The BSA, nevertheless, retains many of the features of the preceding regulatory regime, including a relatively narrow definition of broadcasting, the application of specialist regulation by an expert body, the imposition of a range of cultural expectations on some types of service, and provisions for administrative scrutiny of the industry in the expectation that the best interests of the viewing and listening public will be served. In short, Government intervention in the broadcasting industry has been reaffirmed by the BSA.

A new technological environment is developing. This environment appears to be characterised by the adoption of communication systems that combine the digital manipulation techniques of computing with transmission of services over telecommunications systems. These developments are often described as the convergence of computing and communications, and they have important implications for understanding of mass communication.

Scope of the Study

Convergence

Schaap offers a simple definition of convergence as follows:

> The “coming together” of formerly distinct technologies. Relevant here are the convergence of telecommunications and computing technologies and that of telecommunications and broadcasting.[2]

Such a broad definition allows considerable scope, and therein lies its strength. As a definition, it is capable of being applied to any technological development, and, although Schaap uses examples exclusively from the electronic communication domain to develop the definition, it does not preclude consideration of the what appear to be the most significant trends in electronic communication: those related to *substitution* of formerly physical distribution systems with electronic systems.

However, I contend that the notion of convergence goes well beyond purely technological issues, although that may be a first order outcome. Convergence needs to be thought of in terms of its effect on services. As an example, it can be cheaper to send an electronic facsimile of a letter from one place to another in a city than it is to post the material.[3] This is an example of communications technology substituting for physical distribution systems, in this case, with implications for postal services.

Services are at the heart of the issue of convergence. I therefore have modified Schaap's definition to provide a new definition of *convergence of services*, as follows, to emphasise the service dimension

> The lessening of the distinction between formerly separate and discrete communication service types in response to developments in communication technology.

These definitions operating together highlight that convergence of communication technology opens the way for convergence of communication services and the development of hybrid service types. It is possible that some of these new types of service will challenge the notion of mass communication as we currently understand it. The challenge for regulators is that many of these hybrids are intended to operate in the electronic domain, like broadcasting, yet they emulate older more traditional forms that have never been subject to restrictive regulation such as that applied to broadcasting.

Electronic Mass Communication

The term electronic mass communication is used as a means of extending the scope of the study beyond the services currently captured by the definition of a broadcasting service offered in the BSA:

> a service that delivers television programs or radio programs to persons having equipment appropriate for receiving that service, whether the delivery uses the radiofrequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means, but does not include:
>
> (a) a service (including a teletext service) that provides no more than data, or no more

than text (with or without associated still images); or

(b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service; or

(c) a service, or a class of services, that the Minister determines, by notice in the Gazette, not to fall within this definition.[4]

As will be shown, some of the mass communication forms being forecast are excluded from the current definition of broadcasting service, for example, the electronic multimedia newspaper, and "dial-up" television. They are nevertheless mass media and their potential existence in the electronic domain, but outside the scope of broadcasting regulation, raises issues of consistency in the overall approach to media regulation. These services are currently excluded from regulatory oversight because they are considered not to be as pervasive in the home environment as free-to-air broadcasting services. Broadcasting regulation intrudes heavily into industry conduct and, therefore, it ought to be applied carefully. Transactional services, such as electronic newspapers or dial-up television, seem not to invoke the public concern that traditional broadcasters invoke.

This dissertation is concerned principally with electronic mass communication. This effectively limits consideration to the Commonwealth's interest in mass communication policy, since only the Commonwealth has direct Constitutional power to make law with respect to *postal, telegraphic, telephonic and other like services* by virtue of s.51(v) of the Constitution. This paper is not concerned with postal services, since they are generally not considered mass communication. It is also not concerned with the responsibilities of the states and territories in regulating the physical media forms, although I will argue that trends in technology may well relieve the states of some responsibility in this regard, as service providers migrate from the physical to electronic domains.

In practical terms, the study is limited to the future of broadcasting policy, because broadcasting is currently the only area where the Commonwealth seeks to apply industry specific regulation of private mass communication. Commonwealth legislation also regulates the telecommunications and radiocommunications sectors and provides for the direct provision of national broadcasting services by the ABC and SBS. These industries and services form part of the environment in which the private media operate, but they are beyond the primary focus of this study.

The range of media types considered will be necessarily broad and includes many of the media forms currently not subject to industry specific regulation; film (videocassette) hire, the press and, of increasing significance, the computer software sector. The criterion for inclusion of a media form within the scope of the study is that, when coupled with emerging technical environment, *would the content of the*

medium be able to be disseminated to a mass audience using any "....telegraphic, telephonic and other like service"? If so, then it is within the scope of consideration. As will be shown, there are few media forms that are unaffected by the advance of technology.

This study is limited to circumstances in Australia and trends in the Australian environment. It therefore does not seek to draw international comparisons about regulatory approaches, although that may offer fruitful grounds for future research.

Research Questions

The objective of the study is to identify and explore the implications of convergence of technology and services for electronic mass communication policy in Australia. The key questions to be addressed in the study are:

- what are the stated rationales that underpin the existing Commonwealth electronic mass communication policy, and how are they articulated in law?
- what technical and service developments can be anticipated that will affect this policy approach?
- are the currently stated rationales relevant to these new circumstances? and
- what other issues emerge that might contribute to the development of new rationales for regulation?

Limitations of the Study

This study is subject to a wide range of limitations and some of the more important ones are set out below:

- the study is confined only to Commonwealth interests in regulation and is not concerned with the legitimate interests of the states in regulating the physical media;
- the study is limited by depending on forecasts of developments in technology and services. While there are many clues in the literature about the likely directions of technology and of entrepreneurial responses in service concepts, these must be recognised as being no more than forecasts;
- the study is limited to considering the impact of convergence on the *existing* publicly understood regulatory rationales. Even if these rationales are held to be questionable, no conclusion ought to be drawn other than that the existing approach to regulation may be misdirected. There may be other

prima facie justifications for regulation that do not appear in the literature and these fall outside the scope of this study;

- the study ignores the social, political and economic environment in which policy will ultimately be framed. The conclusions offered only relate to the practicality and consistency of *existing* rationales and their ability to sustain regulation when challenged by convergence;

- the study assumes that technology is changing (independent of any government attention) and that services will evolve to exploit the opportunities offered by technology, and that Government will necessarily be in a reactive rather than proactive mode in regard to these services; and

- the study offers a critique of the public trust paradigm of regulation, but, for reasons of space, it does not go on to offer a comparison with the alternative market paradigm of regulation, which is the natural alternative. I will leave that to others.

Methodology

The methodology adopted for this study is borrowed loosely from the field of strategic planning, and the work of Smalter and Ruggles[5], Steiner[6], Whittaker[7] and others. The dissertation seeks to question the assumptions and rationales for broadcasting policy in the light of emerging technical and service convergence. In order to do this, it draws on a wide range of contemporary literature on matters of communication policy and technology.

The organisational framework provided by the strategic planning methodology involves analysis of the present situation, analysis of the environment to identify issues that require response, analysis and review of the assumptions on which action is based, and finally the setting of objectives for action.

Such a framework was chosen because it provides a simple yet robust model for undertaking such a study, and because it represents an opportunity to examine broadcasting policy from a different perspective to the generally incremental approach which has characterised policy development since the 1920s. As the approach is so different, there is an expressed hope that it may offer insights to some of the intractable problems in media regulation.

This dissertation is concerned only with the *needs research* first stage of strategic planning. The later planning phases of systems analysis and programming, where plans of action are formulated, executed and evaluated, are not treated in this study.

Assumptions

This dissertation is intended to open questions about the often unstated assumptions that have underpinned broadcasting regulation during its development. It therefore assumes that there are long-standing assumptions to challenge, and that these are able to be identified from an examination of literature. As part of this, it also operates from an assumption that the literature has correctly identified the assumptions that have existed in the minds of policy advisers and policy makers during the development of policy. *This is no small matter.* The development of policy options and the deliberations of Cabinet in deciding policy directions are, by convention and necessity, matters of extreme confidentiality. Advice to the Government on options and assumptions in all matters of policy are private to the Government. While the Government does announce its decisions to the public, the background and discussion is rarely released. Understanding the motives of Government must therefore be based on secondary materials, with the inherent colouring of perceptions that this presents.

Ethical Considerations

These assumptions lead to ethical concerns which have played on the development of this dissertation.

I have been fortunate to have been able to undertake this research on Scholarship from the Department of Transport and Communications. My duties in the Department normally include the development and assessment of policy options for consideration by the Government on broadcasting policy and law.

I have taken the following steps while undertaking this research to avoid potential conflicts of interest and duty.

- the study has been deliberately focused on the future, therefore avoiding issues that have been under consideration in my work area;
- only third party and official materials that exist in the public domain have been used in the course of the study, except where specifically noted;
- the dissertation is subject to the general disclaimer that ***the views expressed are those of the author and do not necessarily reflect the views of officials in the Department of Transport and Communications or of the Australian Government***.

Format

The structure of this dissertation follows the format suggested by the research questions and the strategic approach to analysis. Chapter 2 firstly provides a *position audit*. It describes the state of broadcasting regulation in Australia and how it relates to other areas of Commonwealth responsibility for communication issues. It identifies the rationales that have traditionally underpinned broadcasting law and shows how these rationales have been articulated in the legislative approach. Chapter 3 considers technological and service convergence and describes some of the implications that trends have for the types of services that will be possible in the future. Chapter 4 revisits the rationales underpinning broadcasting regulation and evaluates them against the forecast technical and service environment. Chapter 5 reviews and summarises the implications and conclusions of the study.

Importance of the Study

On 1 July 1997, the restrictions on competition in the domestic telecommunications market will be lifted. The process to enable this is already in place. The Government has signalled a review of commercial television before 1 July 1997 by requiring an investigation into the national benefits that would accrue if more than three television services were to be permitted.[8] Developments in technology, combined with the forecast revolution in telecommunications that open competition will promote, herald fundamental changes to the way that media are experienced.

Tensions in the existing scheme are already developing. Conceptual development of electronic newspapers is already underway. Newspapers have, in the past, enjoyed relative freedom from industry specific regulation from the states, yet their move into the electronic domain may open the way for industry specific Government intervention. At what point will the distinction between television, as it currently exists, and a newspaper, perhaps with embedded video footage, be made? Inconsistencies between broadcasting law and the law applying to other mass media are becoming more apparent. While those inconsistencies where once trivial (because of the profound differences between service types), those differences are rapidly disappearing.

There is a trend to globalisation of the mass media, riding on the technology of satellite distribution. Once large numbers of Australians begin to select services from Australian satellites, as the Government is currently encouraging them to do, there will be nothing at all to stop them also tuning to foreign satellites, especially if common transmission standards are employed. Some Australians already tune regularly to foreign satellites.

If Australia is to participate as a nation in the developing world information economy, we need to have well considered and developed responses to these pressures including the globalisation of markets and continuing pressure in the international community for liberalisation of international trade, including in the cultural industries. Our current regulatory scheme for mass communication, while appropriate for today, may not be appropriate for the mass communication environment of the future, and thus its assumptions ought to be periodically revisited - *they should never be taken for granted*.

It is therefore timely, appropriate and most of all necessary to think about how our regulatory response to the broadcasting industries of the future should be shaped.

This paper will hopefully provide an input to the coming debate.

Notes on Chapter One

1 Australia, Parliament (1992) *Broadcasting Services Act 1992*, Canberra: AGPS.

2 Schaap, R. (1993) *A Dictionary of the Australian Communication Debate: 1993*, Canberra: Glovebox, p.18.

3 This assessment is based on a 45 cent postage stamp compared with an untimed local telephone call from a private phone at 25 cents/call. This assessment does not take into account the depreciation and operating costs of facsimile equipment, but note that as the volume of material to be transmitted rises, the facsimile connection cost remains at 25 cents per call, whereas postal services rise in cost with the mass of the article.

4 *Broadcasting Services Act 1992*, s.6

5 Smalter, D. and Ruggles, F. *Long Range Planning*, March 1968.

6 Steiner, G.A. (1979) *Strategic Planning*, New York: Macmillan.

7 Whittaker, J.B. (1978) *Strategic Planning in a Rapidly Changing Environment*, Lexington, Mass: Heath.

8 *Broadcasting Services Act 1992*, s.215.