

Resolving Conflict Between Cultural and Trade Policies: The Case of Australian Content on Television¹

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ABSTRACT *The article examines the potential impact of a recent decision of the High Court of Australia on the effectiveness of Australian content regulation for television programmes. The High Court's decision requires non-discriminatory treatment of New Zealand television programmes in the Australian content regulation to prevent conflict with trading obligations between Australia and New Zealand. The analysis presented in the article finds that claims of serious implications for the effectiveness of the regulations are largely unfounded.*

Keywords: TV regulation, TV quotas, TV programme choice, trade in TV programmes.

Introduction

Many countries, including Australia, require television operators to supply domestic television programming in excess of minimum prescribed levels. The Australian regulation requires commercial (advertiser-financed), free-to-air television stations to screen Australian programmes for at least 55% of a station's airtime between 6.00 a.m. and midnight. It also prescribes minimum quantities of first-release Australian drama, documentary and children's programmes. Primarily, domestic content regulation is intended to correct for the inherent bias of commercial stations to supply lower-cost, mass-appeal programmes and for the failure of freely operating markets to take account of external benefits such as the enhancement of a national culture that may be generated by domestic programming².

The regulation of Australian content of television is determined and administered in the form of a standard by the Australian Broadcasting Authority (ABA). The enabling legislation³ requires the ABA to perform its regulatory function in a manner consistent with, *inter alia*, Australia's obligation under any convention or agreement with another country. One such agreement, the Australia New Zealand Closer Economic Relations Trade Agreement (CER) and the related Trade in Services Protocol, binds the two signatories to treat each other's services no less favourably than their own. In a decision handed down on 28 April 1998, the High Court of Australia determined that the ABA's Australian Content Standard was not consistent with Australia's CER obligations.

In attempting to rectify the situation, the ABA will need to develop a formulation of the standard that fulfils the legislated objective of promoting 'the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural

diversity' without giving preference to Australian programmes over those from New Zealand. In developing its solution to this dilemma, the ABA will need to exercise care to ensure that the effectiveness and efficiency of the standard is not compromised and that the benefits currently enjoyed by television viewers are not eroded.

The issue of Australian content on television has always been characterised by emotive claims and counterclaims that attract considerable media attention. On this occasion the television production industry and related interests on both sides of the Tasman Sea have mobilised their opposing forces to lobby for an outcome favourable to their particular interests. On the Australian side, the industry predicts that it will be devastated by any change to current arrangements. Its New Zealand counterpart, not surprisingly, claims that the changes will have little, if any effect. Neither side has produced objective analysis to support their claims.

As with any regulatory interventions in a market, any action that may be necessary as a result of the High Court's ruling will need to consider all the related costs and benefits and should be implemented in a manner that maximises the net benefits to society. The necessary assessment of costs and benefits, of course, should be based on likely outcomes rather than hypothetical scenarios that may have little chance of actually occurring. The aim of this article is to inject some rationality in the debate by undertaking an independent assessment of the potential impact of including New Zealand programmes in the current quota arrangements. Hopefully, the analysis will also assist regulators in determining an appropriate response to the High Court's decision.

Australian Content Quotas

Because of the pervasive and extensive use of television as a source of information and entertainment, television programmes are often thought to have an important or pivotal influence on the development and enhancement of national culture and identity. For example, the Explanatory Memorandum to the Broadcasting Services Act 1992 states that the legislation 'recognises that broadcasting can play an important role in shaping Australia's collective views, values and culture'. Domestic television programmes do this by depicting Australian themes, situations and shared experiences, which assist or enhance the development of a common national culture and identity. Conversely, the consumption of imported programmes will tend to erode desirable national cultural traits by reinforcing those of another culture.

In its inquiry on the performing arts, the Industries Assistance Commission acknowledged the existence of external cultural benefits in the consumption of cultural products and considered them to be sufficient justification for government intervention.⁴ An even stronger case for intervention can be made for television programmes. While participation in the arts is restricted to a small proportion of the population, almost all Australians consume television programmes and, on average, do so for more than 20 hours per week. Also many domestic programmes are popular with audiences. Consequently, to the extent that cultural benefits exist in domestic programmes, their influence on national identity and culture is more direct and more widespread than that of other cultural activities.

A major study of Australian content regulation found extensive support for the current level of domestic programming on television and moderate support for an increase in local content.⁵ Using a contingent valuation survey to measure the willingness of Australians to pay for Australian content on television, that study found that Australians were aware of the cultural benefits of domestic programming and were prepared to pay the associated cost. Australian children's programmes and documen-

taries in particular were strongly supported. Overall, that study found the benefits produced by the regulation to be at least commensurate with the costs and consequently justifiable in social welfare terms.

Under these circumstances, a weakening of the regulation by extending 'Australian' status to New Zealand programmes may result in a potential loss of social welfare. New Zealand television programmes have found little favour with Australian audiences and are notable by their absence from Australian television screens. To the extent that television stations will substitute New Zealand programming for Australian content to comply with quota obligations there will be a commensurate loss of external cultural benefits to society. There may also be a loss of private benefits to viewers who may be forced to watch less desirable programmes or use their time to pursue less desirable activities. Alternatively, an increase in the mandated quota levels to accommodate preferential treatment of New Zealand programmes has the potential to reduce consumer benefits by displacing other imported programmes likely to be more attractive to audiences. The extent of the potential loss of social welfare will depend on the approach taken to implement the High Court's decision.

Programme Choice

The final product, which commercial broadcasters sell to advertisers, is access to audiences generated by programmes. Advertising is sold in the form of airtime and its price reflects both the amount of airtime and the size and characteristics of the audience to which access is provided. For any given programme cost, therefore, broadcasters have an incentive to maximise the size of the audience. Whether or not cultural benefits accruing to society are maximised in the process is of little concern to broadcasters and has little, if any, influence on programming decisions.

While the cost of a programme is a major consideration in the selection of programmes for broadcasting, it is not the only determinant of programme choices. Because programmes generate different audiences, both in terms of size and composition, programme selection usually involves a trade-off between programme costs and the advertising value of the expected audience. Generally, the choice between two programmes to fill an available slot on a programming schedule is determined by the combination of cost and expected audience likely to generate the larger profit. A high-cost programme, therefore, would be preferable to a lower-cost alternative whenever its audience is likely to generate sufficient advertising revenue to outweigh the higher cost.

In the absence of regulation, a competitive broadcaster in a limited channel market would attempt to maximise profits by selecting an appropriate mix of imported and domestically produced programmes. The available slots on the broadcasting schedule are filled sequentially with programmes selected from the available pool of domestic and imported programmes in order of their potential contribution to profits. An imported programme is selected in preference to a domestically produced programme only if its potential profit exceeds that of the domestic substitute. In a system where the number of television channels is not limited by either technical or regulatory constraints, all programmes capable of generating advertising revenue at least equal to their cost would be broadcast. If, however, the number of stations is limited, then the available slots on programming schedules may not be sufficient to accommodate all the available profitable programmes.

When domestic content regulations are in place, the filling of programming schedules follows a similar process. As in the unregulated case, the initial selection of potential

Table 1. Australian content quota compliance by Sydney commercial TV stations

Australian Quotas	ATN 7		TCN 9		TEN 10	
	1996	1997	1996	1997	1996	1997
All programs ^a (50%)	56.4	52.7	60.6	62.9	51.3	50.9
Drama (225 points)	335.7	263.9	268.7	272	248.4	266.5
Docos ^b (10 hrs)	20	34	19.5	24	10	10.5
C children ^c (130 hrs)	144	134	133	133.5	160.3	131.5
C drama ^c (1996-24 hrs; 1997-28 hrs)	24	27.5	24	28	24.3	28
P children ^d 130 hours	131	131	131	131	131	131

Notes: ^a = all programs between 6.00 am and midnight, both first release and repeat programs qualify for quota.

^b = first release documentaries.

^c = programs suitable for primary school children.

^d = programs suitable for pre-school children.

Source: Australian Broadcasting Authority.

programmes to fill the schedule will be based on the programmes' relative contribution to profits. However, if the quantity of domestic programmes selected in this way is insufficient to satisfy the regulatory obligations, stations will be forced to displace more profitable imported programmes on the schedule with less profitable or unprofitable domestic programmes. Obviously, to maximise profits stations will replace the less profitable imported programmes already on the schedule with the more profitable of the domestic programmes previously excluded from the schedule.

An effective domestic content quota alters the market behaviour of broadcasters and forces them to supply a mix of programmes that may not be consistent with profit maximisation. The mandated quantity of particular programmes has to be supplied irrespective of their profitability. The degree to which a station is forced to alter its 'market' behaviour represents a cost that manifests itself in the form of higher programme costs or lower audience appeal (and thus lower advertising revenue) or a combination of both. Stations, of course, would be keen to minimise their cost of compliance with regulatory obligations. Consequently, where compliance imposes a net cost on stations, the supply of a mandated programme is likely to be at or only slightly higher than the level required by the quota.

When assessing the likely impact of changes to quota arrangements it is informative to examine the performance of stations against existing requirements. Table 1 gives details of the compliance with quota requirements by the three Sydney commercial stations. Because of the relative high level of networking and parallel scheduling by commercial stations in Australia, the performance of the Sydney stations should be broadly representative of stations throughout Australia.

Competitiveness of Domestic Programmes

Most television programmes are produced primarily for the domestic market in their country of origin and are typically intended to cater for the tastes and preferences of viewers in that market. Sales of the programme to other countries are usually a secondary consideration with limited influence on production decisions. Virtually all the production costs of information and similar products, including television programmes, are incurred in making the first copy. These costs are 'sunk' and will not be affected by

subsequent copies produced for sale in different markets. Their attributes are more like those of research and development or design costs which are common to many consumer products. Once the first copy is made, the marginal cost of additional copies is very low and amounts to little more than the cost of videotape or film stock required for the copy. Consequently, copies of programmes produced for initial release in one country can be supplied profitably at very low prices to broadcasters in other countries.

The culturally specific nature of programmes produced primarily for domestic consumption in one country diminishes their appeal to viewers in other countries. The extent of the diminished appeal to viewers and diminished advertising value to broad-casters will depend on differences in language, values, beliefs and other culturally related factors between the producing and consuming countries. Hoskins and Mirus⁶ describe the programme's diminished value to foreign viewers as a 'cultural discount' and use it to demonstrate the disadvantage of small countries in the production of high-cost television programmes.

Countries, such as the United States, which have a large population with a common language and high per capita income, have considerable advantages over smaller countries in the production of television programmes. The large home market can generate large advertising revenue and in turn support large production budgets that can sustain the use of high-value production inputs and the employment of popular stars, directors and script writers. The international dominance of the United States in the international trade of television programmes has been found to be related to these factors as well as the effects of the cultural discount.⁷ Because of the use of high-value production inputs, large-budget, high-quality productions can mitigate some of the effects of the cultural discount and retain popularity in foreign markets where they generally compete with much lower-budget productions.

The sale of programmes in foreign markets at relatively low prices does not constitute dumping or unfair competition as is sometimes alleged.⁸ In trade terms dumping usually refers to the selling of products in foreign markets at prices that are below production costs or at prices below those charged in the home market. Because of their particular attributes, however, the pertinent costs of audiovisual products are not readily identifiable. The sale of programmes in foreign markets at prices lower than the total cost of production or lower than those ruling in the home market is a feature of the industry that has little to do with dumping. Indeed, it is a practice common to every country, including Australia, engaged in the sale of programmes in foreign markets. Consequently, on such a basis, every country selling programmes in a foreign market could be alleged to be dumping. But this is not the case.

In this context, production cost generally refers to the incremental cost of production to supply the foreign markets. For many products these costs do not vary greatly from one unit to the next. But for information products, there are large differences between the cost of producing the first copy and that of subsequent copies. When dumping is alleged, typically the price in the foreign market is inappropriately compared to the cost of the first copy rather than the more pertinent incremental cost of additional copies (including appropriate amortisation of the sunk cost of making the first copy). When prices in foreign markets are compared to the relevant production costs, there is little, if any basis, to substantiate dumping allegations.

Allegations of dumping on the basis of foreign prices being below domestic prices are also difficult to sustain. Observations that prices for the programming rights paid by broadcasters in the home market are larger than those faced by stations in the foreign markets require careful consideration. Typically, broadcasters purchase the rights to broadcast a programme and are prepared to pay a price for those rights that is commensurate with the size of the expected audience. Thus the relevant price for

comparison is the programme price per unit of audience and not the absolute prices for broadcast rights paid in markets of different sizes. On this basis again there is little evidence to support allegations of dumping. Indeed, the available evidence suggests that differences in prices can be largely explained by differences in market sizes and other market-specific factors.⁹

Potential Impact of High Court Ruling

The following sections of the article examine the potential impact of according New Zealand programmes equal status to Australian programmes for the purpose of the Australian Content Standard. The potential impact on each of the major components of the standard is examined separately. For the purpose of the analysis, it is assumed that the current regulatory requirements are not altered other than to allow the use of New Zealand programmes for compliance with the quotas. This approach is used to help identify provisions whose effectiveness is likely to suffer substantial erosion unless corrective action is undertaken as part of the implementation of the High Court's decision. For provisions likely to sustain substantial impact, the analysis offers suggestions for measures that may be used to safeguard the integrity of the cultural objectives of the quotas.

Transmission Quota

The Australian Content Standard requires commercial television stations to broadcast Australian programmes for 55% of their transmissions between 6.00 a.m. and midnight. It also sets specific quotas for first-release adult and children's drama, documentaries and children's programmes. The public broadcasters (the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS)) are not subject to the standard, although the ABC is required to take the standard into account in its programming.

This element of the standard imposes little disincentive to broadcasters in terms of programme costs or potential loss of audience appeal. Both first release and repeats may be used to comply with the transmission quota. Traditionally stations have had little difficulty in meeting their transmission quota obligations. Even during the period from 1973 to 1989, when a 'points system' was in place and compliance could have been achieved with a much lower proportion of domestic programmes, the quantity of Australian programmes rarely fell below 50% of transmission hours.¹⁰ The natural protection of news and current affairs and sports programmes, coupled with their popularity, is sufficient to ensure that a large proportion of all programmes are of domestic origin. The audience appeal of some of the other categories of programmes, including light entertainment, panel shows and game shows, is also largely dependent on their domestic character. In total, programmes with a significant level of natural protection account for about 80% of the compliance with the transmission quota.

As detailed in Table 1, in 1996 and 1997 all the stations broadcasted Australian programmes in excess of the 50% level mandated by the quota. TCN 9, in particular, exceeded the requirement by a substantial margin. On the other hand, TEN 10 has exceeded compliance levels only marginally. The increase in the transmission quota level to 55% in 1998 and subsequent years should not pose any major difficulties for stations.

The potential use of New Zealand programmes for compliance with the transmission quota is unlikely to have a noticeable impact on the programming carried by stations. Because of the popularity and cost competitiveness of many of the programme genres from which compliance with the quota is currently derived, there would be little incentive for stations to replace them with lower-cost New Zealand programmes. Even

if cost were to be the primary consideration of stations in complying with this quota, New Zealand programmes would not be the most attractive option available to them. For example, stations already have substantial Australian programme libraries available for repeat broadcast at virtually no additional cost and could use these to make up any quota shortfall.

The availability of low-cost New Zealand programmes could nonetheless be attractive in some circumstances because of their potential to increase the diversity of programme schedules or to help minimise the cost of compliance with the quota if that was a concern to stations. Any such impact, however, is likely to be marginal and highly dependent on audience reactions to New Zealand programmes. A similar situation arose in Europe in 1992 as part of the harmonisation of regulatory arrangements within the European Union. There, the introduction of a common European content quota for television programmes meant that stations could use programmes from any member country to fill the quota. A report by London Economics¹¹ suggested that, to reduce compliance costs, some stations might have had an incentive to replace domestic programming with low-cost non-national programmes during low-audience, fringe hours. Although comprehensive data on subsequent performance by stations are not available, there is no indication that stations have done so to any significant degree.

A potentially simple solution for implementation of the High Court's decision for this and other elements of the current regulation would be to give New Zealand and Australian programmes equal treatment by setting equal individual quotas for them. Such a measure could have serious negative consequences to both stations and viewers and should be avoided. Its only beneficiaries would be television producers and related interests in New Zealand. Television stations would be likely to have difficulty in securing suitable programmes and could be forced to commission specific costly programmes, particularly drama and children's programmes, to comply with such a quota. At the same time, viewer benefits would be reduced substantially if the displaced programmes had greater appeal to viewers. Furthermore, it would be difficult to justify such a proposal in cultural benefit terms.

First-Release Adult Drama

Domestic drama is popular with audiences and regularly attracts audiences of a size similar to those of highly popular imported substitutes. Although popular with audiences, the relatively higher cost of domestic drama renders it less profitable, and thus less attractive, to stations than high-rating imported substitutes. Consequently, a rational profit-maximising broadcaster will always choose a high-rating imported drama programme ahead of an equally high-rating domestic substitute. Indeed, an imported programme attracting a similar, or even somewhat smaller, audience than that of a higher-cost domestic substitute is likely to be preferred by a broadcaster. However, most imported programmes attract substantially smaller audiences than popular domestic substitutes that can more than dissipate their cost advantage.¹²

In terms of profitability, this implies that the performance of domestic drama sits somewhere in the middle of the range of profitable programmes and is flanked above and below by imported programmes. This means that a broadcaster considering the replacement of a costly domestic drama programme with an imported substitute would be able to choose the replacement only from the available pool of lower-rating less-profitable imports. The higher profitability of higher-rating imports would ensure that they are always included in the broadcaster's schedule ahead of domestic substitutes. Consequently, as long as the demand for drama programmes necessitates the use of lower-

rating imported drama, popular domestic substitutes for such programmes can be more profitable and more attractive to stations.

Although successful Australian drama is usually competitive with imported substitute programming, domestic production of drama is a considerably more risky investment proposition than the purchase of programmes whose audience appeal has already been tested in their domestic market. In such circumstances, without regulatory requirements, the level of domestic drama production in Australia would be likely to decline¹³. Consequently, it would appear that without the regulation some of the domestic drama currently broadcast by stations would be replaced by imported programming. If New Zealand programmes qualify for Australian content quota, then it may be possible that their price advantage and their lower investment risk to stations may be sufficient to outweigh their audience disadvantage and thus they might supplant some Australian programming. To what extent is this likely to occur?

A New Zealand programme is unlikely to be chosen ahead of an Australian programme simply because it may be cheaper to purchase. The programme will also need to be able to attract a sufficiently large audience to ensure that the returns to the broadcaster are not less than those from alternative Australian programmes. To date, New Zealand programmes have not proven to be popular with Australian audiences. Although occasionally New Zealand programmes have been included on Australian television programming schedules, no Australian television station has ever screened such programmes on a regular basis. Some years ago the SBS purchased the rights to the New Zealand soap opera, *Shortland Street*, but discontinued broadcast of the series because it failed to attract a sufficiently large audience. Given that regular SBS programmes achieve audience ratings of around 3%, the axing of *Shortland Street* suggests it was unable to attract an audience of that size. To secure a place on the schedule of a commercial station, a programme must be capable of attracting much larger audiences.

There are few data available on programme prices in general. The Chairman of the ABA, Professor David Flint, suggests that 'best-rating US programmes sell (in Australia) for something approaching \$30 000 an hour'.¹⁴ This is consistent with US\$ 10,000–30,000 (approximately A\$16,000–48,000) average prices being paid by Australian commercial stations for US drama.¹⁵ Given that New Zealand programmes are not popular with Australian audiences, it is unlikely that they would be able to attract prices similar to those of lower-rating imported programmes from other sources. In recent years, the only reported sales of New Zealand drama in Australia were to SBS. According to Television Business International,¹⁶ 'SBS pays a standard tariff of US\$75 net per minute for all non-feature film product' which is equivalent to less than A\$6,000 per hour. In other words, a New Zealand programme has a price advantage of around A\$10,000–32,000 per hour over other imported programmes. This means that it would be attractive to commercial stations as long as the loss in advertising value due to the smaller audience does not exceed A\$10,000.

Low-rating imported drama programmes broadcast on commercial channels in Sydney attract average audiences of the order of 220,000. Following Papandrea¹⁷ it is possible to estimate that to be competitive in the Sydney market, an average-priced New Zealand programme would need to attract an audience of around 204,000. Although audience data for New Zealand programmes in the Sydney market are not available, indications are that very few New Zealand programmes have such a potential.¹⁸ By qualifying for Australian quota, however, New Zealand programmes would have to compete with Australian programmes against which they have a larger price advantage. On the basis of current ruling prices, New Zealand programmes would be attractive to broadcasters in the Sydney market as long as their audience size was no more than

150,000 smaller than the alternative Australian programme. This could bring New Zealand programmes within striking distance of some lower-rating Australian drama shown in late-night slots. But even then the New Zealand drama programmes would need to generate audiences in excess of 100,000 to be competitive.

In any event, only small quantities of New Zealand drama potentially suitable for the Australian market are produced each year. As indicated above, television programmes are produced primarily to cater for domestic audiences. This is true also for New Zealand. The production of drama in New Zealand suffers even greater disadvantages to those faced by Australian producers in relation to imported programmes. The price of US drama programme rights for the New Zealand market is in the range of US\$4,000–12,000 per hour (i.e. 40% of their price for Australian rights). The cost of local production in New Zealand is not substantially lower than in Australia. Nor, as it is sometimes claimed, are New Zealand production subsidies substantially larger than those available in Australia.¹⁹ Furthermore, New Zealand productions have the relative disadvantage of a considerably smaller home market and thus smaller audiences and advertising revenue. This means that most television drama in New Zealand is uncompetitive with imports and largely explains its almost total absence from the privately owned television network (TV3). While the state-owned channels supply some New Zealand drama productions, an important element of their motivation seems to be to minimise the risk of politically motivated government intervention imposing minimum domestic content quotas.²⁰

In total, the three national networks in New Zealand screened 171 hours of first-release drama/comedy in 1997, including 17 hours outside of prime viewing time.²¹ The New Zealand definition of drama/comedy includes comedy programmes that would not comply with the equivalent Australian definition. Most of the programmes on TV3 would be in that category. Taking this into account, prime-time drama on New Zealand television totalled around 140 hours in 1997. The bulk of this was made up of screenings of the series *Shortland Street* and *City Life*. Neither of these series is thought to appeal to Australian commercial television audiences. Indeed, as indicated above, *Shortland Street* was screened briefly on SBS some time ago but failed to attract the relatively low audience that would have been sufficient to justify retention on that channel.

The high disincentives facing domestic production of drama in New Zealand suggest that, in the longer term, very little will be produced without financial support from New Zealand on Air (NZOA). In the year to June 1997, NZOA provided approximately NZ\$16 million (or 55% of the total production cost) to assist the production of 62 hours of drama/comedy programmes (including 20 hours of comedy).²² Its intention is to fund a similar level of production for each of the three years to June 2000.²³ Although this level of output is equivalent to a little less than 12% of the total hours of Australian drama broadcast in 1997 by the three commercial networks,²⁴ not all of it is likely to be potentially suitable for screening in Australia.

A related potential concern is that an extensive library of previously produced New Zealand drama would be available to Australian stations for use as first-release drama for quota purposes. While a substantial library of New Zealand programmes would be available, on the basis of past performance its attractiveness to Australian audiences is dubious. Therefore, their extensive use to comply with quota obligations would not appear to be a realistic proposition. However, the possibility that some stations may make limited use of them to comply with quotas, particularly if they are having difficulty in securing high-rating Australian programmes cannot be excluded. To minimise the risk of extensive use of such material, the Australian content standard could be amended to redefine first-release television drama programmes (excluding cinema movies) to be

programmes that are broadcasts within, say, two years of their production.²⁵ Concurrently, prime time could be restricted to peak viewing times when stations would be reluctant to risk negative audience reactions by broadcasting programmes of limited appeal.

Overall, there would appear to be little need for any special action by the ABA in this regard. In the short term there is little scope for New Zealand drama programmes to be introduced in significant quantities in Australia. However, as a further measure to allay fears of potential erosion of the objectives of the quota, the ABA could announce the intention to increase the annual Australian drama requirements to accommodate actual usage of New Zealand drama by commercial stations in the event that the situation changed significantly. Faced with such a prospect, commercial channels in Australia would not have any incentive to displace Australian drama and would use New Zealand drama only to the extent it proved to be popular with Australian audiences and was competitive with other imported programmes. Any such move would also have marginal impact on consumer welfare. With a potential utilisation of less than 60 hours per year, New Zealand drama would replace less than 1% of the total amount of drama currently imported from other countries.

Children's Programmes

The children's programming requirements specify separate programming obligations for pre-school (P) children (130 hours per year) and other (C) children (260 hours per year). Since 1996 only Australian programmes qualify for the P programmes requirement. For C programmes, stations are required to supply 130 hours of first-release Australian programmes including an increasing amount of first-release children's drama (24 hours in 1996, 28 hours in 1997, and 32 hours in 1998 and later years).

Regulation of children's programming is more complex than for other programmes. The need to protect children extends beyond programmes to advertising, where the regulator imposes controls on both the type and quantity of advertising during children's programmes. Programmes for pre-school children are not permitted to carry any advertising. But even without stringent advertising restrictions, children's programmes typically attract small audiences and thus have a low commercial value to television. In most cases, children's programme requirements impose a net cost on stations that they would be keen to avoid. Without regulation, therefore, it is unlikely that children's programmes would be supplied in significant quantities by commercial channels.

Faced with substantial disincentives, broadcasters will be concerned primarily to minimise the cost of compliance with the children's programmes requirements. This is clearly evident from the compliance data presented in Table 1, which show that all three networks supply only the minimum level required to comply with the regulation. Therefore, the availability of children's programmes, particularly drama, from New Zealand that could be used to reduce the cost of compliance may well be attractive to stations.

Television stations in New Zealand face the same cost disincentives with regard to children's programmes as their Australian counterparts. Information published by NZOA gives details of children's programming production in New Zealand.²⁶ The information indicates that no children's drama has been produced in New Zealand in recent years. In 1997, the three national television channels in New Zealand broadcasted a total of 367 hours of first run (P and C) children's programming (cf. 403 hours in 1996 and 467 hours in 1995). Virtually all New Zealand's production of children's programming is subsidised by NZOA. In the year to 30 June 1997, subsidies amounted to 78%

of total production costs. Currently, although eligible for at least part of the C programmes quota, New Zealand children's programmes are seldom used by Australian television stations. This would suggest that they are not suitable for Australian audiences or they are not competitive with imports from other sources or with Australian first-release and repeat programmes used to comply with the quota.

Inclusion of New Zealand children's programmes within the quota is likely to improve their relative competitiveness. Because of substantial subsidies by NZOA, New Zealand television networks can acquire first-release children's programmes for an average of around NZ\$6,000 per hour. Presumably those programmes would be available to Australian stations at the same or a lower price. Currently Australian networks pay an average of around A\$10,000 per hour for equivalent Australian programmes (not including drama). By using New Zealand children's programmes for first-release quota purposes, Australian networks, therefore, could save as much as half of their programme costs for each hour used. Total savings could be as much as A\$2 million per annum if all the children's programmes produced in New Zealand were used to fill the first-release Australian quota. The actual savings would depend on the quantity of New Zealand programmes that comply with the regulatory definition of Australian children's programmes and are considered by the networks to be suitable for Australian audiences.

In this context, it should be noted that only programmes classified as such by the ABA may be used to fill the C or P programmes quotas. The classification criteria are set out in the ABA's Children's Television Standard 2 and include requirements for high production values, enhancement of a child's understanding and experience, and appropriateness for Australian children. It is not possible to assess how well New Zealand children's programmes satisfy these criteria, but it is likely that some of them, at least, will not.

Substantial use of New Zealand children's programmes to fill the quota for first-release Australian children's programmes would seriously erode the objectives of the regulation. A recent survey found that the Australian public places a high value on Australian children's programmes and would like to see an increase in the supply of such programming.²⁷ The challenge for the ABA, therefore, will be to develop arrangements for the inclusion of New Zealand children's programmes in the quota arrangements without engendering a substantial reduction in the supply of Australian children's programmes.

The problem of accommodating New Zealand children's programmes in the quota arrangements is likely to be confined to the C programme category. The P programmes requirement has been in place since 1980 and until 1996 there was no requirement for those programmes to be Australian. Nonetheless, virtually all programmes used to fill that quota throughout its life have been Australian. This would suggest that New Zealand programmes do not offer significant scope to fill the P quota.

There is even less scope to use New Zealand children's drama in place of Australian. Children's drama is relatively expensive to produce and can cost more than A\$100,000 per hour. The advertising revenue they generate is generally insufficient to cover costs. In other words, children's drama typically represents a net cost to networks. This appears to be the main reason why no children's drama has been produced for several years in the unregulated New Zealand environment. Extension of the quota eligibility to New Zealand children's drama programmes is unlikely to alter the feasibility of its production and, therefore, should pose no threat to the effectiveness of the current quota arrangements.

The C programmes quota requires the broadcast of at least 260 hours of C programmes per annum, of which 130 hours must be first-release Australian programmes. A possible solution to the problem would be to expand the first-release Australian requirement to accommodate New Zealand programming without changing the overall quota limit of 260 hours. Because it is not possible to predict accurately in advance the extent to which networks will seek to fill the first-release quota with New Zealand programmes, only a small increase in the first-release quota level of, say, no more than 40 hours per year is suggested. The quota level could be kept under review and amended in stages in the light of actual experience with utilisation of New Zealand C programmes by the networks. Should there be a concern about extensive use of previously produced New Zealand children's programmes, eligibility for first release could be limited to the first two years after production as proposed for adult drama.

The suggested measure should not impose a significant burden on stations. To the extent that the increased quota can be filled with New Zealand C programmes, the cost of such programmes is likely to be similar to that of programmes likely to be displaced by the change. Only in the case that insufficient New Zealand material is available to make up the increase would the networks be facing increased costs. The suggested ongoing review by the ABA would be able to detect any such difficulty arising from overuse or underuse of New Zealand C programmes and to adjust quota levels accordingly. The benefits accruing to children are also unlikely to be affected significantly, as all programmes used for this quota have to comply with the appropriate classification criteria administered by the ABA.

First-Release Documentaries

Commercial television stations are required to broadcast 10 hours of first-release Australian documentaries annually. The quota was first introduced in 1996. The limited available information on the performance of stations in the preceding years suggests that the commercial networks had been supplying substantially more Australian documentaries than the quantity set by the quota. Two of the three commercial networks have continued to do so after the introduction of the quota (see Table 1). In the past two years, both ATN 7 and TCN 9 have supplied two to three times the mandated level of Australian first-release documentaries. The third network (represented by TEN 10) has been supplying only enough material to comply with the quota.

These results suggest that the supply of Australian documentaries by the networks is driven by market incentives rather than by the quota requirements. This is clearly the case for ATN 7 and TCN 9. In the case of TEN 10, the constraining factor appears to be its tendency to pursue relatively younger audiences than those attracted by the other two stations. Although popular with audiences, documentaries tend to appeal to relatively older audiences (30 years or more). Apart from the mandated level of Australian documentaries on TEN 10, that network carries virtually no other documentaries on its schedule during prime time. In contrast, the other two stations carry almost equal amounts of Australian and imported documentaries in prime time.

Although approximately 100 hours of documentaries are produced in New Zealand each year, they are rarely broadcast on Australian television, which suggests they have little appeal to Australian audiences. On the other hand, the appeal of Australian documentaries to Australian audiences is unlikely to change in the short to medium term. A recent survey found substantial support for increased levels of Australian documentaries on television.²⁸ Under those circumstances it is unlikely that Australian stations

would replace popular and profitable Australian documentaries with product of doubtful profitability because of a change in its eligibility for domestic content quotas.

Conclusion

The implementation of the High Court's decision on the Australian Content Standard for commercial television does not appear to be a major cause for concern. The above analysis gives little support to claims that accommodation of New Zealand programmes within the current quotas will have serious implications for the Australian television programme production industry. In the worst case scenario, the analysis suggests minor impact on the overall transmission quota and on the separate quotas for first-release drama and documentaries. The potential erosion of the objectives of the children's programmes quotas seems to be the only aspect that is likely to require some special attention by the regulator.

Notes and References

1. A somewhat different version of this article was presented as a paper at the Communications Research Forum, 24–25 September 1998, Canberra. The views expressed in this article are those of the author and should not be attributed to the Communications Research Unit of the Department of Communications and the Arts.
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6. C. Hoskins and R. Mirus, 'Reasons for US dominance in the international trade in television programmes', *Media, Culture and Society*, 10, 4, 1988, pp. 499–505.
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8. D. Flint, 'Blue skies (with cloud increasing)', *The Age*, 3 May 1998, p. 17.
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13. *Ibid.*
14. Flint, *op. cit.*
15. *Television Business International*, October 1997, pp. 126–7.
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23. New Zealand on Air, *Statement of Intent 1998/99*, New Zealand on Air, Wellington, 1998.
24. Australian Broadcasting Authority, *op. cit.*

25. Under European rules new releases are limited to five years after production; Canada restricts assistance to qualifying television programmes screened within two years of production.
26. New Zealand on Air, *op. cit.*
27. Papandrea, *op. cit.*
28. Papandrea, *op. cit.*