



ABT Cable & STV Recommendations

In this special issue, the *Communications Law Bulletin* publishes the main conclusions and recommendations from the Report of the Inquiry by the Australian Broadcasting Tribunal into Cable and Subscription Television Services and related matters, August 1982:

SUMMARY OF RECOMMENDATIONS

In Chapter 14 of its report, the Tribunal set out its conclusions and recommendations for a strategy for CTV and RSTV in Australia.

The recommendations are:

OBJECTIVES FOR THE AUSTRALIAN BROADCASTING SYSTEM

R1. That broad objectives be determined for the Australian Broadcasting System.

R2. That the broad objectives determined for the Australian Broadcasting System be in terms of the following:

Broad Objectives for the Australian Broadcasting System

1. To provide a system that will:
 - (a) consist of a number of sectors that involve and utilise, to varying degrees and in different

ways, private and public ownership and participation;

(b) be economically and administratively viable in its various sectors and as a total system;

(c) be sufficiently flexible, dynamic, enterprising and diverse to respond to the wide range of changing needs implicit within the complexities of Australian society;

(d) be effectively owned and controlled by Australians and ensure that ownership of the system and control of the provision of program services is spread as widely as practicable throughout the Australian community;

(e) enable the various sectors to complement each other in the provision of program services avoiding, as far as practicable, unnecessary and wasteful duplication of broadcasting facilities, resources and content;

IN THIS ISSUE

ABT Cable & STV
Recommendations -
Summary 2 CLB-17

IN OUR NEXT ISSUE

Reports of ACLA speakers,
including Prof Leonie Kramer,
the Hon Neil Brown and
Mr Bill Mansfield

(f) provide program services efficiently and economically.

2. To provide program services that will:

- (a) be of a high standard;
- (b) be comprehensive;
- (c) be innovative;
- (d) be diverse;
- (e) inform, educate and entertain;
- (f) contribute to a sense of national identity;
- (g) provide reasonable, balanced opportunity for the free expression of differing views on matters of public concern;
- (h) cater for, and reflect, the widest possible spectrum of information, opinions, values, and interests in Australian society;
- (i) use, as far as practicable, Australian creative and other resources;
- (j) safeguard, enrich and strengthen the cultural, political, social and economic fabric of Australia.

3. To provide, as far as it is reasonably practicable to do so, program services throughout Australia for all people who reasonably require those services.

4. To provide regulation and supervision of the system which is flexible and readily adaptable to changes in Australian society and to technological advances.

ADOPTION DECISIONS FOR CTV AND RSTV

R3. That Australia introduce cable television services (CTV) and radiated subscription television services (RSTV) as soon as practicable.

SPECIFIC OBJECTIVES FOR CTV AND RSTV SECTORS

R4. That specific objectives be determined for CTV and RSTV in terms of the following:

- 1 As additional Sectors of the Australian Broadcasting System, to further the attainment of the Broad Objectives for the Australian Broadcasting System to the

maximum extent their particular characteristics permit.

2 To ensure that ownership of the System and control of the provision of program services is spread as widely as practicable throughout the Australian community by extending and broadening the opportunity for participation in the Australian Broadcasting System.

3 To plan, establish, maintain and operate CTV and RSTV in such a way that they will be compatible with existing sectors of, and likely future developments in, the Australian Broadcasting System.

4 To preserve the viability of the other sectors of the Australian Broadcasting System and in particular to protect the economic viability of commercial broadcasters (radio and television) to the extent necessary to enable such broadcasters to discharge their responsibilities to the communities they are licensed to serve.

5 To encourage, as far as practicable, the provision of programs wholly or substantially produced in Australia on CTV and RSTV.

6 To utilise, as far as practicable, Australian industry and technology in the establishment, maintenance and operation of CTV and RSTV and thereby facilitate the development and experience of Australian industry in these technologies.

7 To use, as far as practicable, the services of Australians in the production and presentation of programs on CTV and RSTV and the establishment, maintenance and operation of CTV and RSTV.

8 To plan, establish, maintain and operate CTV and RSTV in such a manner as will utilise available technology as efficiently and economically as practicable and be compatible with likely future developments in technology.

9 To plan, maintain and operate CTV and RSTV so that they will best meet the specific needs of particular communities or geographic areas having regard to economic, social and other characteristics of the particular communities or area to be served.

10 To make, as far as it is reasonably practicable to do so, the service provided by these sectors available throughout Australia on the basis of a direct consumer payment for all people who reasonably require those services.

11 To integrate the regulation and supervision of CTV and RSTV with the other sectors of the Australian Broadcasting System.

Additional Specific Objectives for the CTV Sector

12 To utilise the multiple channel capacity of CTV to provide program services designed to cater for a wide range of specialised interests within Australian society.

13 To utilise the multiple channel capacity of CTV to enable members of communities and community groups to participate in and provide program services that cater for the interests of a particular community, or communities, and to provide greater opportunity for the members of communities to express differing views on matters of public concern and generally discuss and debate local issues and events.

14 To provide, as far as practicable, greater and more diverse opportunities for the promotion and advertising of goods and services and the dissemination of community service information.

15 To plan, establish, maintain, operate and regulate CTV in such a way as to ensure that the convergence of entertainment, information and communications technologies is not inhibited and that the ability of CTV to meet private and commercial needs for communications services is appro-

priately utilised.

POLICY FRAMEWORK FOR CTV

(a) Establishment Policies

System Ownership

R5. That a flexible policy be adopted for the ownership of CTV reticulation systems, whereby public authorities and organisations (including Telecom) and the private sector would have the opportunity to own, either individually or jointly, CTV reticulation systems.

. That Telecom not be given the exclusive right to own CTV reticulation systems.

System Construction and Maintenance

R6. That a flexible policy be adopted for the construction and maintenance of CTV reticulation systems whereby public authorities and organisations (including Telecom) and the private sector would have the opportunity to construct and maintain CTV reticulation systems in accordance with any technical standards or requirements determined for such systems.

. That Telecom not be given the exclusive right to construct and maintain CTV reticulation systems.

. That it be determined that the owners and/or constructors of CTV reticulation systems should have the benefit of Commonwealth statutory support to facilitate the construction and maintenance of such systems. The form of such statutory support to be determined after consideration of the constitutional and other legal implications and consultation with interested groups including State Governments, local authorities and existing users.

System Operation

R7. That separation between ownership of the CTV Reticulation System and the operation of the CTV system (including the provision of services on the system) be permitted rather than be mandatory or prohibited.

System Licensing

R8. That a licence be granted which authorises a person to operate a CTV system rather than persons being licensed to operate or provide services on individual channels that form part of the system.

R9. That a designated amount of the channel capacity of a CTV system be required to be available for leased use by persons other than the licensee.

R10. That the licensing process for CTV be based, as far as practicable, on the same principles and procedures as those applicable to the commercial and public broadcasting sectors of the broadcasting system and be administered by a single Federal Regulatory Authority.

. That flexible and comprehensive criteria that address the various areas involved in the establishment and operation of a CTV system be determined and incorporated in the licensing process for CTV.

R11. That the term of the initial grant of a CTV system licence be of the order of 15 years.

. That the term of the renewal for a CTV system licence be of the order of 10 years.

R12. That the Federal Regulatory Authority responsible for CTV be provided with wide power to impose conditions on CTV system licences and an effective ranges of sanctions to apply to licensees if licence conditions or other requirements are not complied with.

R13. That the legislation applicable to CTV incorporate a system for the registration by the Regulatory Authority of the owner of a CTV reticulation system who is not the licensee of that system.

R14. That a CTV system licence be required to be held by a company formed within the limits of the Commonwealth or a Territory and having a share capital.

. That public authorities or

organisations not be permitted to hold CTV system licences but be permitted to use leased, or community access and education, channels on CTV systems.

R15. That, although the Tribunal is of the view that, in the short term, existing institutions (ABT and DOC) could be utilised in the establishment of CTV, in the long term a single Federal Authority be established with responsibility, including regulatory responsibility, for both broadcasting and telecommunications.

R16. That an annual licence fee payable to the Commonwealth, and similar to the fee payable on a broadcasting licence be applicable to a CTV system licence.

R17. That consideration be given to the imposition of a fee for filing of an application for the grant of a CTV system licence. Such fee could vary depending on the size and nature of the CTV system being licensed.

R18. That there be a statutory requirement that the licensee of a CTV system provide on this system a separate channel each for community and public access broadcasting, education purposes and children's programming.

. That there be no statutory requirement relating to the operation of these designated channels, but their manner of operation by a licensee to be a criterion to be considered in the licensing process and be subject to appropriate conditions imposed on the licence.

R19. That CTV systems be required to set aside some minimum part of their channel capacity to carry signals for upstream communications. In practice this will require a statement within the technical operating conditions for each system showing the division of the usable frequency spectrum of the cable between downstream and upstream applications.

R20. That the technical operating conditions specified for CTV reticulation systems include a statement

of the required upper frequency transmission limit for the cables used and that this limit should provide for a generous increase in the ultimate channel capacity of the system over that proposed initially.

R21. That the planning and regulatory process established for the implementation of CTV be required to identify and specify the licence areas for CTV systems.

. That only one CTV system licence be granted for any determined licence area.

Limitations of Ownership or Control

R22. That ownership or control limitations be established for CTV system licences and that they be based on the following:

(a) the fixing of a prescribed interest level of 10 per cent for a CTV licence.

(b) In a market served by 2 or more commercial television station licences (currently mainland capital cities), a person be only entitled to hold a prescribed interest in one CTV system licence in that market.

(c) An aggregate limit (to be determined) on the number of prescribed interests that a person can hold in CTV system licences. This limit to be weighted to the size and location of CTV systems rather than equating all CTV system licences in calculating the aggregate limit.

(d) The need to avoid undue concentration of ownership or control of the CTV sectors and of the media generally to be a discretionary ground, applicable in the licensing process for all markets, empowering the regulatory authority, if it considers it advisable in the public interest, having regard to an applicant's total media interests (print and electronic, local and national, direct and indirect) to refuse an application for the grant of a CTV System licence or approval of change of ownership or control of a CTV system licence.

(e) The need for the commercial viability of television and broad-

casting stations serving the area to be covered by a CTV system licence to be a discretionary ground applicable in the licensing process for all markets, empowering the Tribunal, if it considers it advisable in the public interest, to refuse to grant a CTV system licence to an applicant.

(f) That matters of concentration and commercial viability as set out in (d) and (e) above to be relevant to a determination by the regulatory authority of the suitable applicant for the grant of a CTV system licence where there is more than one applicant for that licence.

(g) That the existing television station ownership or control provisions, subject to appropriate modification, be applied to CTV system licences. In particular, the "deemed control" level of above 15 per cent and the tracing and change of ownership provisions should be applied.

R23. That no restrictions of the type recommended to apply to ownership or control of a CTV system licence (excluding foreign ownership) apply to the ownership or control of a CTV reticulation system.

R24. That restrictions in terms of the provisions of the Broadcasting and Television Act relating to foreign ownership or control of broadcasting be generally applied to foreign ownership or control of CTV subject to the following qualifications:

(a) That consideration be given to whether companies which are "naturalised" or "naturalising" for the purpose of the Government's foreign investment policy should be subject to such restrictions or some other restrictions or no restrictions.

(b) That consideration be given, at least in the early stages of the development of the CTV industry, of applying less onerous restrictions on foreign management and allied involvement in CTV than those applicable to broadcasting pursuant to the Broadcasting and Television Act for foreign manage-

ment and allied involvement in CTV.

Technical

R25. That such broad system standards as may be appropriate to assist the evolution of ultimate broadband switched communication networks be developed in Australia in discussions between the responsible Commonwealth authorities and the industry.

R26. That appropriate organisational arrangements be made to assist the short term and long term planning of the construction of CTV reticulation systems on, or beneath public property.

R27. That to the maximum extent possible the technical regulations and the equipment or system standards should be established in consultation with representatives of the various sectors of the industry and that whenever practicable equipment standards should be published by the Standards Association of Australia.

Employment

R28. That applicants be encouraged as far as practicable to propose the construction and operation of CTV systems with the maximum use of Australian manufactured hardware.

R29. That CTV systems be permitted to carry enhanced services to assist in providing employment opportunities.

(b) Industry Relationship Policies

Carriage of Local Broadcast Signals

R30. That each conventional television broadcaster whose effective or determined service area is within, or substantially overlaps, the licence area of a CTV system, should have the right to require his signal to be carried on that cable system.

R31. That if a CTV system licensee offers audio channels to subscribers, and if there are less than five radio stations licensed to serve areas which fall within or substan-

tially overlap the cable licence area, each radio broadcaster should have the right to require that his signal be carried on that cable system. In all other circumstances the CTV system licensee and local broadcaster should be allowed to negotiate carriage agreements.

Carriage of Non-Local Broadcast Signals

R32. That CTV system licensees should be generally prohibited from importing signals from conventional broadcasting and television stations in other localities. Subsequent to the granting of licences, the regulatory authority, in consultation with the various interest groups and the community, should establish criteria or conditions for the importation of particular distant signals.

Advertising

R33. That advertising should not be permitted on additional pay-tier entertainment channels of any CTV system.

R34. That advertising should be permitted on basic service channels of CTV systems.

Enhanced Services

R35. That CTV system licensees be permitted to utilise the capability of their CTV systems for the carriage and provision of enhanced services.

R36. That users of leased channels on a CTV system be entitled to utilise the capability of those channels to provide enhanced services of all types.

Copyright

R37. That in the event of a licensee of a CTV system being required to carry local broadcast (radio and television) signals on his system the licensee be granted compulsory access to all copyrights comprised in a broadcast he is required to carry.

. That where a licensee of a CTV

system retransmits broadcast (radio and television) signs in accordance with a statutory obligation there be no copyright liability imposed on the CTV system licensee for the retransmission of those signals on the CTV system.

. That where the licensee of a CTV system retransmits a broadcast (radio or television) signal (local or distant) pursuant to a voluntary arrangement and not in accordance with a statutory obligation the broadcaster and relevant copyright owners who have a copyright in material used in the originating broadcast have a copyright in the CTV retransmission of the broadcast and the level of remuneration payable for the retransmission be set by voluntary negotiation between the CTV system licensee and relevant copyright owners.

R38. That the existing rights of copyright owners to cause copyright material to be broadcast (radio and television) by wireless telegraphy include an identical right to cause that material to be originated by means of transmission on CTV systems and that voluntary contractual licences be the means by which CTV system licensees (or a person causing material to be transmitted on a leased channel of a CTV system) obtain programs to be originated on CTV systems.

. That owners of copyright in sound recordings have the exclusive right to cause that material to be originated by means of transmission in an interactive capacity on CTV systems and that each transmission of a sound recording to individual subscribers be an act comprised in the copyright for which CTV system licensees (or a person causing material to be transmitted on a leased channel) be required to obtain the negotiated permission of relevant copyright owners.

. That the transmission of original (as distinct from the retransmission of broadcast programs) programs on an educational channel on a CTV system should be subject to the negotiated permission of copyright owners.

. That the licensee of a CTV system (or a person causing material to be transmitted on a leased channel of a CTV system) have a similar copyright in his transmission to the copyright a broadcaster has in his broadcasts.

(c) Operational Policies

Censorship Classification

R39. The application of the censorship provisions of the Broadcasting and Television Act and other Federal and State legislation relating to censorship and classification of program material should be extended to CTV services.

. Program Standards for both unencoded basic CTV services and encoded additional pay services should be determined by the regulatory authority.

. Standards for basic CTV services should be similar to those for conventional television and radio services and would apply to access channels which were part of the basic service.

. Standards for additional pay services should be based on cinema-type classifications, and program material which would be rejected as unsuitable for exhibition under Film Censorship Board cinema criteria should be prohibited on CTV systems.

AUSTRALIAN COMMUNICATIONS LAW ASSOCIATION

ACLA is concerned to bring together those interested in areas of law affecting communications such as broadcasting law, defamation, copyright, advertising, contempt of court, freedom of information, entertainment, privacy and censorship. Our membership includes lawyers and others from commercial, national and public broadcasting, newspapers, private practice, law reform commissions, universities and elsewhere.

We recognise that ACLA's success depends on associating informally and freely with all those interested throughout Australia. We publish material from widely differing standpoints. The total independence of the Association, which includes people with a diversity of political and business connections, will continue to be jealously guarded.

We have no permanent secretariat and we do not maintain a routine of activities. Functions are organised to suit the needs of the community and the interests of members. Our activities have included seminars on overseas broadcasting law, commercial television licence renewals, defamation and copyright. We have held luncheons for the Commonwealth Attorney-General, the Minister for Post and Telecommunications, the Shadow Minister, the Chairman of Telecom, the Chief Film Censor and the ABT Chairman.

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