

Clutching at Straw Media: Talking Up the Internet to Open Up Media Monopolies

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Abstract

This article analyses the closure of the ‘debate’ that accompanied the passing of The Broadcasting Services Amendment (Media Ownership) Bill in October 2006. I argue that a mischievous discourse about ‘new media’ and ‘diversity’ was deployed as a legitimating narrative for the legislation, whilst a number of damning arguments that illustrate the dangers of the Bill were comprehensively ignored. The fact of the acute oligopoly in ownership of commercial media in Australia combined ill-informed policy making which fails to acknowledge the externalities and the ‘public’ status of media, can only invoke contempt for arguments about diversity. Yet, the legislation was passed, and Australia is about to witness a further level of concentration in media, the consequences of which will be disastrous for the diversity of content in Australian media.

The ease of providing print, audio and video messages via the Internet, as well as through mobile phone services, and the ability to provide additional information through digital and subscription television, has made the artificial distinction between the traditional media of television, radio and press anachronistic and unnecessarily restrictive.

Recommendation 4.15 from ‘Summary of Recommendations: The Broadcasting Services Amendment (Media Ownership) Bill Report prepared for The Senate Standing Committee on Environment, Communications, Information Technology and the Arts, October 2006. p.80

Australia has one of the highest concentrations of media ownership in the industrialised world. Just two companies have consistently owned and controlled the largest portions of Australia media over the past decade —News Ltd and Publishing and Broadcasting Limited. The level of concentration is a familiar story to most communications scholars, as it has remained relatively unchanged during this time. In Australian capital cities, 67.8% of weekday newspaper circulation is controlled by News Ltd (seven out of 12 dailies) and 78.1% of Sunday papers are also owned by News Ltd. The remaining share of Sunday papers is almost totally owned by John Fairfax Holdings (20.4) who also share the remaining spoils of Monday-Saturday circulation with West Australian Newspapers (21.6% and 8.9% respectively). The Seven Television Network (24% owned by Kerry Stokes) has, with five metropolitan stations and one regional, a potential audience reach of 71.38% of the Australian population. The Nine Network, which is majority-owned by James Packer’s PBL (Publishing and Broadcasting Corporation, a subsidiary of Consolidated Press), with three metro stations and one regional, has a potential audience reach of 51.22%. Whilst this is a smaller reach than Stokes’ network, Packer’s PBL also has a 25% investment in Foxtel. Between them, News Ltd and PBL also own 50% of the top 30 most profitable magazines in circulation. (Communications Update No. 168, June 2005)

The acute ‘oligopoly’ described above has given rise to a relatively limited number of inquiries into the ownership structure of the Australian media in the past 20 years, with the exception of the landmark petition signed in 1992 by 137 of the 224 members of the Australian Parliament (across all parties) opposing higher concentration of media ownership.

However, the introduction, in 1992, of cross-media ownership laws, restricting the concentration of ownership of different kinds of media in the one market, was seen by many to offer considerable protection to media diversity. The degree of concentration would remain high, but it would not get substantially worse.

These laws prescribed that ‘media barons’ are not supposed to have too high a stake in different kinds of media simultaneously. For example, under section 60 of the Broadcasting and Services Act 1992 a person must not control:

- a commercial television broadcasting licence and a commercial radio broadcasting licence having the same licence area;
- a commercial television broadcasting licence and a newspaper associated with that licence area;

Or

- a commercial radio broadcasting licence and newspaper associated with that licence area.

In addition, in relation to foreign investment, the maximum permitted aggregate (non-portfolio) interests in national and metropolitan newspapers is 30%, with a 25% limit on any single foreign shareholder. The aggregate non-portfolio limit for provincial and suburban newspapers is 50 %. (AGPS: 1992)

Arguably the protections offered in the above legislation are in the interests of incumbent governments who should have a lot to fear from increased cross-ownership. The potential for one conglomerate to conduct an organised campaign against a particular government on the eve of an election presents great risks. Few politicians would admit this. Usually it is only when another proprietor who is envious of their lack of media monopoly that we see public lobbying for a dilution of media concentration. Such is the case of Richard Branson, who has an 11% interest in US Cable service NTL and was beaten by Murdoch in a 2006 bid for ITV in Britain. Branson went on the attack, saying that Murdoch's media empire was bad for democracy in Britain and ought to be dismantled. In an amusing media stunt, Branson was quoted as saying: 'All of us know governments are scared stiff of Murdoch. If *The Sun*, *The Sunday Times*, *The Times*, *Sky*, *The News of the World*, just to name a few of the things Murdoch owns, all come out in favour of a political party, the election is likely to be won by that political party' (London Telegraph Transcript: 2006). Murdoch himself, in a 2006 interview, was reported to have said that when he visits the UK, the Prime Minister and the Chancellor compete to have breakfast with him.

Branson's championing of a democratised fourth estate which thinly veils his own ambition for monopoly businesses highlights the contradiction between public and private interests inherent in the new media laws introduced last year in Australia. The Broadcasting Services Amendment (Media Ownership) Bill 2006 passed on October 18 last year allows for further concentration of ownership by removing the cross-media ownership provisions and restrictions of foreign ownership. When the laws came into force in 2007 they allowed media mergers that can give a proprietor 'two out of three' media businesses, (TV, radio or newspapers) in a single market. Effectively this allows News Ltd to buy multi-channelling TV spectrum (a cheaper option than trying to takeover an FTA channel), when and if it becomes available to parties other than existing FTA parties. Similarly PBL will be able to buy a newspaper businesses. The degree of concentration can be in the 90% range, with a token provision to protect 'diversity': that there must be five independent proprietors in city markets and 4 in regional Australia (technically each could only have 1% of the market). The new media laws specify that all media takeovers must meet the approval of the Australian Competition and Consumer Commission (ACCC). However, the power of the ACCC to prevent anti-competitive takeovers has itself been restricted because of changes that have been made to the 1974 Trade Practices Act. One of the amendments gives the ACCC only 40 days in which to respond to a take-over bid.

The bonanza created for existing owners became immediately obvious. Just a day before the Bill passed through the senate, James Packer, the Managing Director of PBL, met with the only person who could have blocked it, the Independent Senator Steven Fielding. Fielding presented no opposition to the bill. Within hours of the Bill being passed, PBL sold half its interest in TV and magazines, to a European equity firm CVC Asia Pacific, whilst keeping controlling shareholding in those interests. This freed up almost 4.6 billion dollars in cash for

other PBL acquisitions. Kerry Stokes made the next move, buying a 15% share in West Australian Newspapers, a very strategic asset to have that could be sold for an extremely high price to anyone wanting to monopolise the Newspaper market in Australia. Then Rupert Murdoch made a 7.5% investment in John Fairfax Holdings, which gives him bargaining power in further acquisitions this year.

The background lobbying that went on in the days leading up to the Bill passing, revealed that the new laws were set to benefit existing FTA proprietors most of all. Besides Packer calling up Fielding, Channel 7 vigorously pursued access to free-to-air multi-channelling, arguing that it will provide more choice in the FTA market, but ignoring the fact that there are no demands on existing FTA networks who acquire multi-channelling to offer new content or content that isn't already rotated on its terrestrial FTA. Multi-channelling which was, after all, requested by the FTA broadcasters, offers the potential to retain viewers across a number of channels on the DTT platform as well as to target alternative revenue streams.

In its submission to the Senate Committee Media Ownership Inquiry, Channel 7 argued that keeping mutli-channeling with the main terrestrial FTA networks will have no impact on diversity, because there are plenty of other sources of 'fragmentation' in media sources.

'New digital technologies are increasingly competing for viewers' attention. Pay TV, DVDs, the Internet and computer games are changing the way people use their time and their television sets consequently reducing free-to-air viewing. In coming years, technologies such as PVRs are likely to exacerbate this trend and challenge the traditional broadcasting model even further. p. 7

Spin it again

Before *the Bill* was introduced last October, the Minister for Communications, Information Technology and the Arts, Senator Helen Coonan, denied that the legislation would cause any frenzied takeover activity, which she had to recant a day after the Bill was introduced. She had apparently under-estimated the value which traditional media held for proprietors.

But this is not all that she got wrong. Senator Coonan's under-estimation of the value of traditional broadcast media stocks was directly related to her wildly exaggerated speculation about the potential of internet media to compensate for any further concentrations in media ownership.

Not only is this argument radically flawed as I will argue, but it barely conceals the fact that the same spin about de-regulation has been used before in the UK and the US, two other markets with a small number of FTA providers, and similar oligopolies in their press industries. (see Herman and McChesney, Honig, McChesney 1999, 2000, 2003, and Schiller 1999).

Veteran analyst of regulatory frameworks in the US, Robert McChesney, has been a strong critic of enlisting 'new media' arguments for deregulating traditional media. He has seen these arguments at work in the U.S and warned against their use in the UK (see McChesney 2004)

‘the argument that new digital technologies render regulation ... obsolete ... does not even pass rudimentary analysis. Merely being able to launch a website is wonderful and it has opened up the media system, but what has been striking has been how little effect it has had on the commercial media system so far. Not a single new commercially viable media content concern has been introduced on the Internet. The power of the market trumps the magic of the technology.’ (2004)

In fact, for McChesney, rather than the internet being a justification for deregulation, the only way that content is actually going to appear on the internet, is by more regulation and policies to steer such a development, not less.

I would argue here that Coonan’s advisors seem to have largely taken their cue from the overseas campaigns conducted by powerful private broadcasting interests. However, Coonan’s arguments, particularly about television were in fact difficult to distinguish from those put by the big media players in Australia

Coonan’s arguments leading up to October 18 were simply dishonest. That is, she claimed that the influence of traditional broadcast media had crumbled in the face of new media, despite the fact that no evidence could be produced to show that new media had produced any new content that had any influence over users and audiences:

Two weeks before the bills passing she said: "Media players are now facing even more competition from amateur content. These days young people are more interested in creating their own content and showing it on forums such as YouTube than just taking what is on offer on traditional television," Senator Helen Coonan Communications Minister 3 October 2006. (cited in Murphy 2006)

Coonan gave no empirical evidence for this, nor an account of why such a purported attraction carries enough weight to ‘take audiences away from the broadcast sector’, let alone justifies further monopolization of the broadcast sector. But she nevertheless went so far as to say, "Innovations such as YouTube are just one of many reasons why technology and time are making a nonsense of the current media rules." (cited in Maiden 2006) Nor did Coonan have any evidence at the time of how, what she calls, ‘citizen journalism’ is set to overtake traditional journalism.

But these fragmented sound-bites that peppered the lead up to the legislative reform, were rolled together much later in a speech she gave one month after the reforms were passed which actually did contain more empirical detail, but unfortunately not much improvement in argument.

Coonan’s central argument is that contemporary media consumers have become ‘digital migrants’. Having abandoned traditional media, these ‘digital migrants’ are ‘everywhere’, blogging, youtubing and creating their own content in web 2.0 and that this migration has created the ‘end of media as we know it’.

The digital migrants have not only abandoned traditional media but are constantly updating their new digital world.

The threat of obsolescence looms as large for this group as it does for those with a primary attachment to the traditional telephone, the television, the radio and newspapers.

Every week there are reports about how the existence of these traditional mediums are under threat as users move online to create and watch their own content. Next generation networks are being rolled out, wireless broadband is on the rise, we are increasingly tied to the office by Blackberries and even more sophisticated next generation mobile phones. The sheer pace of this change is breathtaking. It is, indeed, a brave new world for the digital migrant.” (Andrew Olle Lecture 2006)

The digital migrant Coonan contrasts with the ‘digital native’ that is, 21 year olds and younger who, Coonan claims, never had any interest in broadcast media:

.... a 21 year old – born in 1985 - was born after computers went mainstream but before the World Wide Web was invented. However, by the time this generation hit uni and now, the workforce, they were performing like digital natives

These ... 21 year olds are more likely to access their news and opinion online, do research online and shop online. They date online and can even pray online. For advertisers they are fast becoming the 'lost generation'. They are fickle consumers, are difficult to tie to one place and they are increasingly sceptical of attempts to market to them through their online communities or other new wave mediums. The ramifications of this new digital world are particularly relevant for two sectors that have traditionally relied on a static audience that listens to radio, watches TV and reads newspapers – the media industry itself and the political class. Up until recently we knew how to get the eyeballs and ears. We knew where they were and when they watched TV, how long they spent in their car and whether they were likely to read a broadsheet or a tabloid newspaper. We could tell whether someone listened to Alan Jones or Virginia Trioli, what sort of people would be captured by a newspaper insert or opinion piece and we could get to most voters by standing in a shopping centre on a Saturday afternoon. But this has all changed. We are all grappling with how to remain relevant in the fast paced world of new media. (Andrew Olle Lecture 2006)

How to remain relevant? Coonan’s speech would be entertaining were it not for the fact that it is supposed to be a cogent justification for new media laws.

Coonan’s argument is resonant with an account of media, popular with academics and journalists in the 1990s – the second media age thesis. (Gilder 1993, Rheingold 1994, Poster 1995) In short, this thesis held that we are witnessing the end of the dominance of broadcasting and the rise of interactivity as the defining practice of ‘media environments.’ The influence of traditional media has been purportedly been annulled by various forms of the democratization of the means of communication. However, there are many problems with this view:

- The forecasts of the early 1990s of George Gilder, Nicholas Negroponte and Mark Poster, that new ‘interactive’ technologies would bring about the end of television, radio and print have not come true.
- To single out a few faddish ‘Web2.0’ innovations like YouTube and other Opensource platforms as the killer applications that are heralding a second media age, is a banal repetition of new media spin that we have been hearing about every internet related technology, from the I pod to Skype, all of which have largely just provided different ways of meeting old addictions.

•No 'new media' technologies have resulted in content that has the influence that broadcast media content has. Broadcast media, not only has more reach than network media, but has an influence that derives from its live and totemic nature, of audiences tuning in at the same time. For example the serialized drama of a media spectacle like *Beaconsfield* or *Garuda 200* simply cannot be sustained by the likes of a YouTube or a series of blogs, only the feed provided by the big audience broadcasters can transform disaster into a social current so powerful that it suffocates other forms of content.

What is absent from Coonan's speech is consideration of indeed what might be lost, not from an imaginary scenario of new media making old media irrelevant, but from the crucial role that a diverse, properly regulated broadcast media plays in public life and democracy.

In moving to further 'deregulation' of media, the legislation demonstrates some serious misconceptions about what 'traditional' media actually is. Media and media systems cannot simply be treated as an economic category, which can be sorted out by the 'market' – they are also public goods which have crucial social consequences – the transmission of culture, and providing information that is politically relevant and factual. Media also exhibit what economists call 'externalities'. These externalities are costs and benefits which accrue to the whole of society not just an individual buyer/seller, producer/consumer, broadcaster/audience. As McChesney explains: If the market generates a lousy journalism that keeps citizens poorly informed, the entire society suffers — not just the consumers of particular media – because the resulting political governance will be shoddy.' (131) This state of affairs may lead to corruption, even war. The purpose therefore of competent policy making and regulation for the public good is to maximize the positive externalities of diverse content and impartial journalism, over the negative externalities of, for example, the 'shoddy'.

According to McChesney, in the case of mass media, 'deregulation' is a misnomer:

the real issue is not regulation versus free markets, but, to the contrary, regulation in the public interest versus regulation to serve purely private interests. The latter is often called deregulation, but that is not the case. Deregulation is better thought of, in most instances and certainly in the case of media, as a misleading term for unabashed and unacknowledged regulation on behalf of powerful self-interested private parties.

Certainly, the greatest winners from this legislation will be the FTA proprietors, whose only anxiety is that they retain their FTA audiences by being able to duplicate their market share in digital multi-channelling. Thus, News Ltd, which has always been left out of the FTA pie, because of cross-ownership rules, and now because of multi-channelling going to the incumbent FTA players has the most to complain about.

The nature of their complaint in their submission to the Senate Committee, is not unlike Branson's complaint about Murdoch's media empire, that too much monopoly is bad for democracy! The News Ltd submission, argues that, if the Bill is passed it will 'short change consumers and various sectors of the industry on several fronts.' These include:

- the removal of cross and foreign restrictions will distort the market even further, reduce diversity and shore up protection for free to air television

- without the prospect of additional free to air television licences, the reforms will prevent new players from competing against the highly profitable commercial free to air television sector
- meanwhile, all other sectors will be exposed to increased competition and industry consolidation - this highly protectionist approach will entrench the oligopoly enjoyed by incumbent free to air broadcasters and enable them to be the most likely predators in inevitable industry consolidation
- the proposed benefits of allowing free to air broadcasters to multi-channel will be illusory because only the incumbent broadcasters are allowed to operate these new channels. This will provide no new jobs and no new content.
- there is no basis for the argument that the market cannot support an independently owned 4th free to air network, but can support up to 8 new free to air multi-channels

Of course, the News Ltd submission writers are profoundly realistic about what effect the new Bill will really have. The position is not a moral one, it is driven by an interest in breaking into the ever more protected FTA market. But it is interesting that, whilst the government is clutching at straws, it takes a corporate player who is on the losing end of the new laws to point out that it is not 'deregulation' that is being enacted in this legislation, but just another form of 'regulation' that serves the existing monopolists.

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