

Television Stations' Compliance with Australian Content Regulation

Franco Papandrea

WHEN television was introduced in Australia in 1956, it was expected that much of the programming would be produced in Australia. But, according to the Australian Broadcasting Control Board (ABCB, 1960:38), 'by December 1959, the majority of the commercial stations televised practically nothing but imported films between 7.30pm and 9.30pm on any evening'. Consequently, in 1961 regulation of the quantity of Australian programming on commercial television was introduced. It is now a permanent feature of the industry. It has been reviewed and amended on many occasions, and the obligations on commercial broadcasters have been steadily increased. It is now once again under review, and further increases in the obligations of broadcasters are in prospect (ABA, 1994).

Yet the objectives of the regulation are not readily identifiable. Over the years, the regulation has been deemed to serve a variety of indeterminate employment and cultural objectives. The latter objectives, in particular, are essentially intangible and have eluded a quantifiable definition.

This article assesses how effective the current Australian programming requirements for commercial television have been in achieving their explicit and implied objectives. It does not address the issues of whether the regulatory objectives are desirable or whether the regulation is efficient in the sense of generating a net welfare gain. The analysis therefore deals mainly with the television companies' degree of compliance with the regulatory requirement. Since regulation aims to alter behaviour that would otherwise result from the pursuit of market incentives, it implies the presence of a cost that rational broadcasters would attempt to minimise. Consequently, results that consistently approximate mandated outcomes would indicate that the behaviour of operators is being driven by the regulation. Conversely, regular substantial over-performance would indicate that other factors are influencing behaviour.

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A Brief History of the Regulation

When television was introduced in Australia in 1956, commercial operators were subject only to a general obligation, under the Broadcasting and Television Act 1942 (s.114 (1)), to employ 'Australians, as far as is possible, in the production and presentation of programs'. Although the Royal Commission on Television had been sympathetic towards arguments favouring program regulation, it believed that it was not practicable to set quotas 'before any actual experience has been gained as to the amount of talent available or its capacity to provide a good standard of programme' (1954:157). The general employment obligation, however, proved ineffective and was eventually replaced by specific programming obligations.

From 1961, commercial stations that had been established for at least three years were required to use Australian material for not less than 40 per cent of their total transmission (50 per cent from 1965) and at least one hour a week (two hours after 1962) of Australian material during prime viewing time (7.30-9.30pm). Prime time requirements were increased to twelve hours every 28 days in 1967 and to 18 hours every 28 days in 1969. The first program-specific requirements were introduced in 1967.

Those early requirements, and their administration by the ABCB, were strongly criticised by the report of the Senate Select Committee on the Encouragement of Australian Productions for Television (the Vincent Committee). The Committee was particularly critical of the 'inadequate' level of domestic programming and of the resultant 'undesirable sociological and cultural consequences' (Vincent Committee, 1963:15-16), and was concerned about the lack of employment opportunities for creative people.

In the late 1960s various interest groups initiated concerted lobbying for program regulation to generate increased employment opportunities. This culminated in the establishment of the 'TV — Make it Australian' committee by a group of actors and performers. The committee attracted the support of trade unions and the Labor Party and its campaign was a major influence on the nature and structure of subsequent regulatory provisions (ABT, 1991a, vol. 1:188). In 1971 prime time requirements were increased to 45 per cent Australian content overall (50 per cent in 1972) and six hours of drama every 28 days. As well, stations had to transmit four hours of children's programs every 28 days at times suitable for school-age children (ABCB, 1971).

Following the election of a Labor government in December 1972, the quota arrangements were replaced in 1973 by a 'points system' designed to generate further increases in Australian programming and to encourage greater diversity and quality. Under those arrangements, Australian programs were accorded points ranging from 0.5 to 10, based on their contribution to desirable diversity and their 'quality, cost, employment opportunities and time of presentation' (ABCB, 1973: 110). Stations had to earn a points total at least equal to the number of hours of transmission by the station between 6am and midnight each 28 days. They also had to broadcast six hours of first-release Australian drama each 28 days during prime time (subsequently increased to 104 hours plus four 'big-budget specials' a year).

The points system was replaced by the current provisions in 1990. Currently, 50 per cent of a commercial station's actual transmission time between 6am and midnight, averaged over the year, must be occupied by Australian programs. In addition, sufficient first-release Australian drama and diversity programs have to be broadcast to secure a minimum annual drama/diversity score of 1,320 points a year and 4,260 points over three years. The points' score for eligible programs is calculated by multiplying the program's duration in hours by an 'Australian' factor and by a 'quality' factor (the latter is related to program costs). Additional quantitative requirements for children's programming also apply.

Effectiveness of Earlier Regulations

The pre-1973 regulatory mechanisms were aimed at inducing television operators to increase the amount of Australian programs broadcast and ensure that some Australian programs were broadcast during the evening prime time. The ABCB's desire for an 'adequate' level of Australian content was balanced by the expressed concern that the burden imposed on stations should not be onerous. Although the stations made some attempt to comply partially with the requirements, breaches were commonplace (ABCB, 1966). The breaches themselves seem not to have attracted any penalties other than being recorded as annotations in the ABCB's annual reports. So the regulation appears to have been little more than the statement of an aim that the stations were expected to pursue.

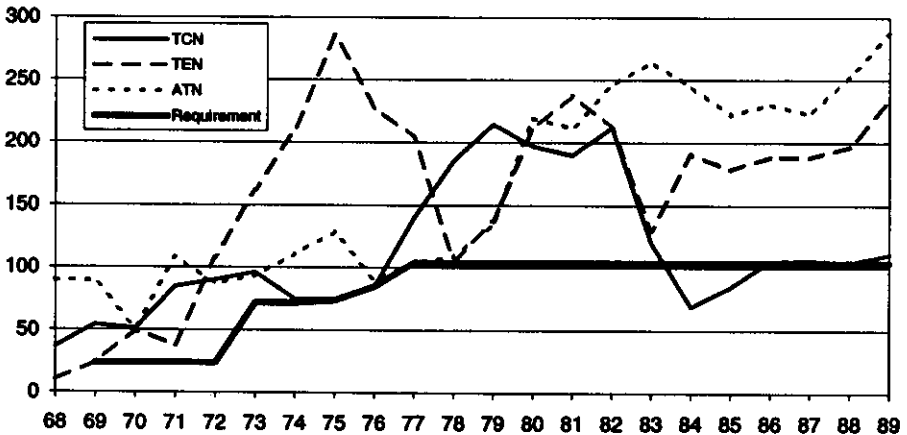
The points system introduced in 1973 was 'designed to achieve more, and better quality Australian programming' and 'to encourage production in fields which have been relatively neglected, with the object of offering viewers a wider choice of entertainment' (ABCB, 1973:113). Although promoted as a major change to the regulation of Australian content on television, its impact was minor. In a detailed critique of the system in the period to 1978, Harrison (1980) concluded that it had failed to achieve its major objectives of raising program quality and increasing the quantity and diversity of local programs. According to Harrison, the stations easily met the point targets without major change to their programming. Thus, the targets contributed little to the scheme's objective of promoting higher quality (high point scoring) programs. The available data for the period after 1978 tend to support Harrison's conclusion that the points system had little influence on stations' Australian content and program schedules.

The increase in overall Australian content in 1973-89 can be directly attributed to the expansion of sports and 'news and current affairs' programs. The annual reports of the ABCB and the Australian Broadcasting Tribunal (ABT) show that the yearly average number of hours devoted to those programs by metropolitan stations increased by 1,110 hours, compared with an overall increase in the average total time devoted to Australian programs of 1,078 hours. Since sport and news and current affairs programs were not specifically encouraged by the points system, their growth is unlikely to have been related to the regulation. Similarly, although the impact of the first-release drama requirement on the performance of stations

cannot be established clearly, the outcome appears to have been influenced substantially by other factors.

Figure 1

**Sydney commercial stations' first-release drama in prime time:
hours a year, 1968-89**



Notes: 1983: annualised performance based on nine months data to March 1983.
1984, 1985: excludes non-peak drama credited to TCN as peak performance.

Source: ABCB and ABT annual reports.

Figure 1 shows the amount of first-release Australian drama broadcast during prime time by each of the Sydney stations along with the minimum amount set by regulation.¹ The figure shows that for several years TCN's performance was only just adequate to comply with the regulation, and that in 1984 and 1985 its actual performance fell short of the minimum requirement.² By itself, this would suggest that the regulation had been exerting substantial pressure on TCN's performance. However, this would be inconsistent with the performance of the other two stations and with the performance of TCN itself in other years. Had the regulation been the main determinant of behaviour, it is unlikely that the substantial over-performance clearly evident would have occurred.

¹ Because of the extensive use of networking, the figure is broadly representative of commercial services in mainland State capital cities.

² TCN (and associated stations in other cities) achieved nominal compliance with the quota by obtaining the ABT's agreement to credit 35 hours of non-peak viewing first release drama in 1984 and 20 hours in 1985 towards its quota obligations.

Other evidence suggests that stations were responding to audience preferences. As early as 1969, the ABCB (1969:101) noted that stations were willing to televise Australian programs 'to a much greater extent than is required' in response to improved popularity with audiences. In a recent assessment of that period, Moran (1993:22) observes that Australian serials had become the 'backbone of the program schedule' and were used to ensure 'a solid audience for the other program offerings of particular networks'. Figure 1 is consistent with these observations. In the late 1960s and early 1970s, all three networks developed drama series in response to the increased audience demand. Unlike the other two networks, however, TCN failed to develop drama serials with sustained audience and eventually largely abandoned them in favour of sports and current affairs.

Although the output of television stations does not appear to have been directly related to the preceding regulatory requirements, the regulation possibly acted as a catalyst for changed behaviour. Australian drama has often achieved relatively high audience ratings; yet it is not uncommon for some imported drama programs to achieve comparable ratings (ABT, 1991a, vol. 3:9-54). But imported drama has a substantial cost advantage and can readily be purchased for less than a third of the price of domestic drama. Under such circumstances, domestic drama may not have been sufficiently popular to overcome the reluctance of commercial stations to broadcast it without regulatory pressure in the form of a minimum performance standard.

How effective then is the current regulation?

Transmission Quota

Data on compliance with the regulation are currently available only for the years 1990-93. The data indicate that generally all stations have met or exceeded each of the annual requirements.³ All three Sydney commercial stations complied with the transmission quota requirement each year (ABA, 1993, 1994). TCN has maintained its traditional relatively high level of Australian content and has exceeded the quota by a substantial margin. In contrast, TEN had to increase its quantity of Australian programming by about five percentage points to comply with the quota and will need to maintain the higher level for future compliance. ATN increased its Australian content marginally to ensure compliance with the quota over the period. The impact of the quota on ATN and TEN suggests that the regulation is producing the intended small increase in Australian content.

Drama/Diversity Score

Drama and diversity programs are subject to two specific requirements. Sufficient combined drama and diversity programs have to be broadcast to achieve an annual minimum score of 1,320 points and an annual average of 1,420 points over three

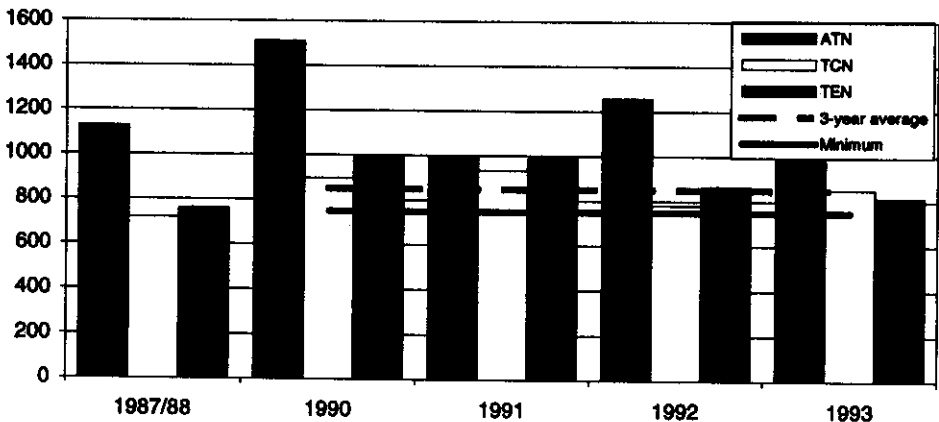
³The only reported breach relates to a scheduling oversight by QTQ Brisbane resulting in a two-points shortfall in the station's minimum children's drama score (ABA, 1993).

years. Although both types of programs are encouraged, the requirement emphasises drama. A minimum of 750 points annually must be gained from Australian drama (annual average of 850 over three years). An additional 170 points each year (125 in 1990 only) must be gained from children's drama. Any drama (adult or children) in excess of the minimum score earns points for the diversity score.⁴

ATN has exceeded both the annual minimum and the three-year average (annualised) scores for drama/diversity and adult drama by a substantial margin each year. While the other two stations complied with the minimum score requirements each year, their medium-term (three-year average) performance just met or slightly exceeded the requirements. During the period under review, the performance of both TCN and TEN was marginally higher than their performance in 1988-89. Given that TCN was barely complying with the requirements in 1988-89 (see Figure 1 above), it is highly likely that the current regulation has induced that station to broadcast a higher level of drama/diversity programs than it would otherwise have chosen. Such a conclusion is consistent with reports of statements by the network's executive chairman (*ABA Update*, 1993:12-13). To a lesser extent, this may also be the case for TEN. The adult drama scores achieved by the Sydney stations are shown in Figure 2.

Figure 2

Sydney stations' adult drama score: points, 1987-93



Source: ABA (1993,1994) and ABT (1988, 1991a).

The principal aims of the adult drama component of the current regulation were to secure a small increase in the quantity broadcast and to encourage an improvement in its quality. In the first two years of the current arrangements, the total

⁴ Excess children's drama may also be used as a substitute for adult drama. Diversity points cannot be substituted for drama.

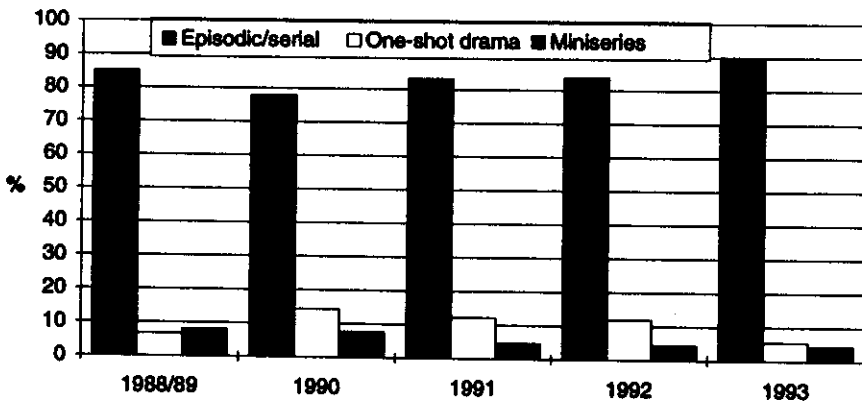
quantity of first-release drama (adult and children)⁵ broadcast by the Sydney stations was approximately 100 hours more than the level prevailing in 1988-89. By 1993, however, the quantity of first release drama had declined to a level marginally higher than the 1988-89 level (ABA, 1993, 1994). This outcome was not surprising since the adult drama score had been set at a level roughly equal to the 1988-89 average performance of the stations.

High Quality Drama

The second element of the aim was to encourage the broadcasting of higher quality drama, defined in terms of average expenditure per hour of program prevailing at the time the requirements were set by the ABT. Increased quality, as envisaged by the regulation, would have been reflected by increased usage of higher cost programs such as 'one-shot' drama and miniseries. While the usage of such programs increased as a proportion of total drama broadcast by the stations in 1990, in subsequent years the proportion declined steadily. Thus, the regulation does not appear to have achieved its aim. The composition of the drama programs on Sydney stations is shown in Figure 3.

Figure 3

Composition of Sydney stations' drama programs, 1988-93



Source: ABA (1993, 1994).

The ABT's strategy to encourage stations to use higher-cost programs was based on a schedule of points that ensured that broadcasters faced roughly the same cost per point irrespective of the type of drama selected. That strategy, however,

⁵ Particularly because the current regulation has necessitated an increase in children's drama by all stations, it is unfortunate that separate data are not available.

provided little incentive to broadcasters to increase usage of higher-cost programs since it failed to take account of differentials in the profit potential of different programs.

Although successful mini-series and one-shot dramas tend on average to attract relatively larger audiences than lower-cost drama, the differential is seldom sufficient to justify the additional cost involved. For example, a serial with an average 1988-89 cost of \$110,000 an hour has a quality factor of 1.1, whereas that for a miniseries with an average cost of \$330,000 an hour is 3.3. While successful miniseries generally attract larger audiences than successful serials, the extra audience is seldom large enough to generate the additional advertising revenue of at least \$220,000 an hour to cover the higher program costs.

The disincentive facing operators is aggravated by the relatively higher risk associated with one-shot drama and miniseries. Audience appeal can be determined only after a program is broadcast and cannot be guaranteed by high production costs. Serials and series representing the lowest-cost form of drama have advantages over higher-cost products in this respect, since the popularity of a serial can be tested in advance by the screening of a 'pilot' episode. Furthermore, if the serial fails to generate adequate audiences, production of further episodes may be discontinued to minimise losses. On the other hand, once a serial becomes established with audiences, it is generally assured a following for an extended period of time. The replacement of a serial by an equivalent number of hours of one-shot drama programs or mini-series (restricted to a maximum of 13 hours) would thus highly compound the level of risk faced by the broadcaster. In addition, the regulation itself contains an inherent disincentive against higher-cost programs, since all programs, irrespective of cost, are of equal value for transmission quota purposes.

Children's Programs

The performance of the Sydney stations clearly shows that the requirements for children's programming and children's drama are having a substantial influence on broadcasters' behaviour. In both cases the stations are screening just enough programming to ensure compliance with requirements (ABA, 1993, 1994, and personal communication). Stations generally appear to be reluctant to supply children's programming without some form of regulation. This is mainly the result of financial disincentives arising from the relatively low advertising revenue earned by stations during the specified children's programming time bands. For example, the 1994 agency rate-card for ATN in Sydney quotes an average weekday rate of less than \$300 per 30 seconds advertisements during most of the afternoon designated time band for children's programming.⁶ This compares with an average rate of over \$5,000 per 30 seconds advertisements for the period 6pm-10pm.

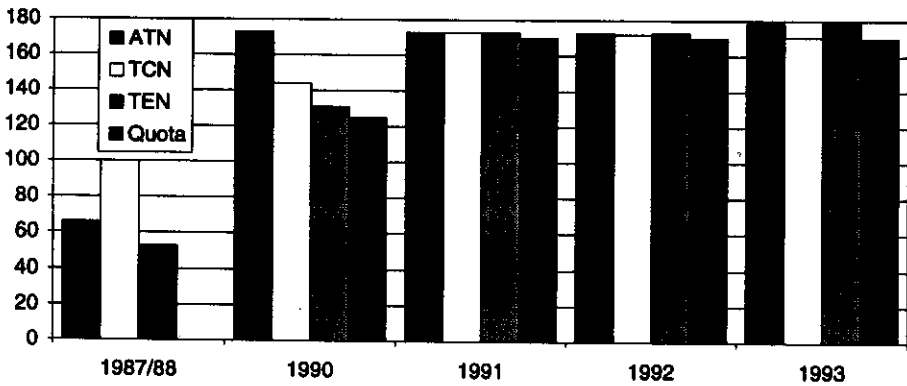
The results with respect to children's drama are particularly interesting (see Figure 4). The increases in children's drama broadcast by the stations in 1990 and 1991 are clearly related to the changes in the quota. The reluctance of stations to

⁶ A rate of just \$700 per 30 seconds is quoted for the half hour period starting at 4.00 pm.

exceed the quota, even though any excess children's drama can be offset against their adult drama obligations, is understandable. In the case of drama, the financial disincentive of stations against children programming is aggravated by the much higher programming cost involved: in 1988-89, the average cost of children's programming and of children's drama on commercial television was approximately \$11,200 and \$130,000 per hour respectively (BTCE, 1991). From the stations' viewpoint, therefore, the children's drama requirement largely represents a cost burden that they endeavour to minimise.

Figure 4

Sydney stations' children's drama scores: points, 1987-93



Source: ABA (1993,1994) and ABT (1988, 1991a).

Effects on Employment

Although the regulation does not set specific employment targets, the current provisions are clearly linked to the regulation's underlying employment objective. Stations have always had the general obligation to employ Australians in the production and presentation of programs.⁷ More important, the current regulation gives 'Australian' status only to programs employing Australians in virtually all aspects of production. Consequently, to the extent the regulation generates increases in programming output it also generates increased employment.

Increased employment is likely to be an important feature of the first-release drama/diversity provisions only. Drama and diversity programs tend to be more

⁷ Although not adopted by the Broadcasting Services Act 1992, the provision of the earlier legislation was converted into an ABA-administered standard by the Broadcasting Services (Transitional Provisions) Act 1992 (s.21(3)).

labour-intensive than other programs. Drama programs also generate substantial demand for post-production labour resources. The transmission quota, in contrast, is unlikely to generate sizable increases in employment since all Australian programs, including repeats, qualify for the quota.

Technological Environment

Government regulation effectively controls most operating aspects of television services, including the number, type, location, coverage area and technical operating conditions. To some extent, such regulations have been justified by the limited amount of the electromagnetic spectrum available for the distribution of television signals. Recent developments in information and communications technologies, however, practically eliminate the earlier spectrum constraints and make possible the provision of hundreds of services (BTCE, 1994). Indeed, some new services are already in operation and compete directly with free-to-air television for audiences and program material.

Of the new services already introduced, only pay television is subject to a form of Australian-content regulation. Under the Broadcasting Services Act 1992 (s.103), licensed pay-television services must ensure that 10 per cent of programming expenditure on channels devoted predominantly to drama is spent on new Australian drama programs. Narrowcasting services and other specialised audio-visual services are not subject to Australian programming regulation. Nor, of course, are any services that may be broadcast by international satellites that are beyond the reach of Australian regulation.

The audience for traditional free-to-air television services undoubtedly will be eroded as demand for new and emerging services grows. In the United States, for example, where they have been established for many years, pay-television services attract more than 30 per cent of all television audiences (National Cable Television Association, 1993). Erosion of their audience will reduce both the audience influence and advertising revenue of commercial television services. In turn, reduced advertising revenue will weaken the capacity of operators to sustain the cost of compliance with the Australian programming regulation.

In any event, as the number and variety of services expand, continued application of the current regulatory approach will mean that only a diminishing proportion of the available services will be subject to the Australian-content regulation. This will not only weaken the effectiveness of the regulation but will also distort industry structure and competition among the available services.

Conclusion

The above analysis demonstrates that, while some elements of the current Australian content regulation are having a substantial influence on the behaviour of commercial operators, other elements have little or no effect.

The transmission quota is the element of the regulation with the least impact. The quota was set at a level that was regularly exceeded by stations in earlier years

when no specific quantitative requirement was in place. Consequently, its effect has been largely confined to the TEN network, which had to increase marginally its transmission of Australian programs. Since any program, even if a repeat, qualifies for the transmission quota, the resultant financial burden on the network should be minimal. The transmission quota, by itself, is also having little impact on employment generation.

More substantial effects flow from the drama requirements for both adults and children. It is evident that at least one network (TCN) would screen a lower level of adult drama and that all three networks would screen substantially lower levels of children's drama without the regulation. Because compliance with the requirements is secured only by first-release drama programs, produced with predominantly Australian resources, it is likely that a substantial flow-on employment effect is also generated. In those respects, therefore, the effects of the regulation appear to be consistent with its aims. The regulation, however, has proved ineffective in encouraging stations to broadcast higher quality (higher cost) drama.

It is also possible that, without the regulation, some stations might have been, or would be, reluctant to risk broadcasting Australian programs, since imported programs are readily available, relatively inexpensive and popular with audiences. As well, the mechanisms may have had some impact by setting minimum standards for expected outputs that the stations are willing to adopt in the hope of averting the possibility of greater regulatory intrusion in their operations.

Notwithstanding the limited effectiveness of the present arrangements, it is also doubtful whether regulatory intervention in its current form will be sustainable in the years ahead. The multitude of audio-visual services expected to be generated by the rapid technological advances in communications undoubtedly will erode the audience of free-to-air television as well as the effectiveness of Australian-content regulation. Consequently, should the supply of Australian programming to audiences continue to be a desirable national objective, other forms of market intervention, more appropriate to the new industry structure, will need to be developed.

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