**Conference Report**
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# Pirate Pay TV: Could it Happen?

**While Australia dithers over the introduction of pay television, we could face encroachment by 'pirate' pay television from beyond our borders.**

Dr Peter White of La Trobe University put forward this hypothesis at the AIC Satellite and Cable conference last month.

White said that there were four principal market characteristics of pirate broadcasting.

- It fills a market niche.
- It overcomes delays in service provision.
- It overcomes impediments to entry into legitimate markets.
- It is essentially opportunistic ('here today, gone tomorrow').

In the United Kingdom, technical problems which caused a two-year delay for the BSB pay TV consortium in starting operation allowed Rupert Murdoch to use his Europe-based Astra satellite to broadcast into Britain. As a result, BSB was 'critically wounded', White said.

The Australian market shows many similar characteristics to that of the UK at that time. It will be at least two or three years before satellite digital television transmission is viable, and constant changing of the rules has caused an atmosphere of uncertainty.

In 1994, PanAmSat will launch a system which duplicates much of the AUSSAT beam and would allow a high power signal to be directed to major cities in Australia. Hong Kong-based Star TV (see pp.9-10) receives a substantial number of requests for its program schedules from Australia, suggesting that some people here with suitable receivers are already watching Star TV via AsiaSat, and AsiaSat's second satellite, due to be operational by July next year, will cover 62 per cent of the world's population, including all of Australia and New Zealand. Australians who can afford to fork out as much as $10,000 for these receivers can already tune to CNN and other international services.

While overseas-based satellite operators co-ordinate frequencies with the Australian Government, the question of frequency allocation is the only one on which they need to agree. Governments in this situation have no control at all over program content issues, Peter White said.

Though the Broadcasting Services Act stipulates a $2m penalty for unauthorised satellite broadcasting services, White believes that unauthorised offshore operation is a distinct possibility. The Government could act against the sale of subscriptions and receivers *in Australia*, though at the moment sale of reception equipment is essentially unregulated.

Meanwhile unencoded, advertiser-supported conventional television could be provided using existing technology. The Government could be forced to abandon its chosen technology if delays become extensive, or if reception costs blow out.

## Wait and Pay More

Australia has shown a tendency to wait for the best technology but to price the services beyond the market as a consequence, White said. For example, unrealistically low predictions were made for the cost of receiving HACBSS and RCTS services.

Some conference participants were sceptical about the feasibility of a pirate television scenario. There were differing views over the size and cost of the receiving dish that would be required, and some foresaw problems in that the dish might have to be directed solely to that service.

One overseas participant said that pirate television was already becoming a major problem in the UK. Hard core porn channels, for example, were being beamed in from Scandinavia. On the issue of directing the receiving dish, he added that 'steerable' dishes were becoming available and were not particularly costly.

*CU* was left musing whether Rupert Murdoch might already be negotiating with PanAmSat or AsiaSat to reprise his UK 'pirate' performance.

## Licensing and Regulatory Issues

It is essential that only one pay TV licence is issued during the start-up phase of any service. If more than one licence is issued, there will be a long and costly rationalisation process and we will end up with a single licensee anyway.

This was the argument put by ANZ Capel Court's analyst Bob Peters in his conference paper.

Peters was also critical of the 'huge anomaly' between the allocation of licences for satellite pay television and those for all other technologies. Fees of many millions of dollars will be paid for the privilege of operating the former, but it appears on current arrangements that none of the others will be subject to a price-based licensing mechanism. If the Act were truly technologically neutral, similar fees or no fees at all would be paid for all licences.

The case in favour of a monopoly licence is 'both straightforward and commercially compelling', Peters said, and is not based on media mateship or the technological superiority of competing distribution mechanisms. Rather, it is based on commercial logic, pragmatism and the accumulated ex-

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perience of the world's most successful existing pay TV systems - all of which are regulated monopolies. This is probably why it has not been advocated by politicians, broadcasting bureaucrats and most existing or aspiring major pay TV operators.

## Advantages of Regulated Monopoly

Bob Peters believes the advantages of a regulated monopoly are obvious, and the key factors are:

- access to the highest quality programming at the lowest possible price;
- reaching a critical mass of subscribers as quickly as possible, which is best achieved by charging consumers a low subscription price for a quality service.

Inefficiency and market dominance/ abuse are not necessary outcomes of a regulated monopoly situation in Peters's view. There will be plenty of competition from existing services, cinemas and the video hire industry.

After a suitable period, say five years, consideration could be given to issuing additional licences.

The monopoly licence holder should choose the transmission system that it uses for pay TV, and the most likely eventual outcome will be a mix of MDS, cable and satellite, as suggested by Robert Schmidt.

Community ownership and control concerns could be addressed by requiring that the monopoly licensee is held by a corporate entity with appropriate limitations on dominant and foreign shareholders, and shareholders with other local media interests.

Peters was pessimistic about the chances of a monopoly licence being issued. What was far more likely, he thought, was that multiple licences would be issued and most of the holders of these licences would either go broke or merge. In the meantime,

> *consumers will be confused and perhaps required to pay more for pay TV than they should, many investors probably will lose a lot of money, Australia as a nation will pay much more for foreign-sourced programming than it should, and......we will have lost the opportunity to develop a successful pay TV service like the French have done (through Canal Plus)*.

## No Controls on Ownership?

On the issue of ownership and control of pay TV, Martin Cooper, media lawyer, thought there was no case for control of ownership, and that the arguments in favour of control were 'basically emotional'. There is no intellectual justification for it when we do not attempt to limit ownership and control of other forms of media, he said.

Like Bob Peters, he pointed out the anomaly between the strict control proposed for satellite pay TV and the virtually unlimited approach to ownership and control of pay TV using other technologies.

As an illustration of the problems inherent in the proposed arrangements, he said that defining a 'mass market' newspaper by its circulation, as the Act does, is nonsense. By this yardstick, the Fairfax-owned *Financial Review*, a national paper which however sells fewer than 100,000 copies, would meet the criteria for a licence, while a local Gold Coast paper which sells over 200,000, would not.

In response to Peters, Cooper commented that the downside of having a single licensee would be that they would pay low prices for local programs as well as for imported ones. Canal Plus (which is controlled by a non-French owner) has certainly kept the price of programs down, but United States product is being withheld, and Canal Plus has set up a studio in Los Angeles making films (like the current feature *Indochine)* which are ostensibly French but are actually aimed at the US market.

Cooper believed the only monopoly should reside with the common carrier and that there should be a diversity of program operators with an AUSTEL-type regulator if necessary to ensure access. While there are monopoly operators in most US markets, they are obliged to carry network and other programming. He found the prospect that someone already involved in broadcasting could control all pay TV channels 'frightening'.

Cooper said that the requirement for predominantly drama channels to direct 10 per cent of expenditure to Australian content offered 'enormous opportunities for manipulation': for example, could an operator claim the cost of purchasing the world rights to an Australian program as expenditure on local content? ❑

# Landmark Appointments

February: **Malcolm Long,** Assistant Managing Director of the ABC and driving force behind the Australia TV International iniative, was appointed the new Managing Director of the Special Broadcasting Service.

March: **Michele Grattan**, longtime Canberra-based political correspondent for *The Age*, was appointed editor of *The Canberra Times* - the first woman to edit a major metropolitan newspaper in Australia. *The Canberra Times* is owned by Kerry Stokes, who said that Grattan was appointed because she was the best person for the job.