

Proposed program regulation for pay television in Australia

Richard Rowe argues that pay TV should be permitted to carry advertising and that the program siphoning regime should be modified

As the details of the Federal Government's plans for pay television become clearer, it would seem that there are a number of areas in which the deregulatory stance favoured by a number of influential senior bureaucrats, and given occasional endorsement by a few less enthusiastic Government Ministers, will not apply. This is particularly true in a number of areas affecting programming, where the theory of "you pay your money and you take your chances" is only partially embraced.

Two such areas are the proposed ban on advertising (and sponsorship) for the first five years of pay TV's operation; and the regulations proposed to inhibit the transfer of coverage of high interest events (principally sports events) from existing free-to-air television to pay TV services, known as "program siphoning".

Advertising ban

Leaving aside the motive for the Government's decision to bar pay TV from carrying advertising, and its rather obvious attempt to protect the interests of existing commercial television operators, there is the question of whether the perceived problem which this decision is designed to address is really a problem at all. Whether pay television is interested in carrying advertising, given its potential to irritate consumers who have already paid directly for the program being viewed, and whether the advertiser is interested in financially supporting a service whose audience is likely to be relatively small and non-homogeneous, are moot points. One might conclude that regulation in this area is simply not necessary, at least for some time.

The advertising ban does raise other considerations which one might have expected to be of concern to the Government. Firstly, there is the right of intending subscribers to the pay TV system to be able to enjoy the programming of the service at the lowest possible cost. This presumably would be assisted by the service operator having access to even modest advertising

revenues, thus enabling him to keep the regular fees levied on subscribers to a minimum. Secondly, there is the right of advertisers to expect to be able to access all new forms of mass communication, even those directed to a restricted market. Neither of these rights appears to have been recognised.

Of possibly greater concern, however, is the apparent extension of the Government decision to ban "advertising" to one of banning "advertising and sponsorship". One might adopt the "rose by any other name" line and argue that the principle supporting the ban on advertising (if such a principle exists) should apply equally to sponsorship. I would argue, however, that at least in one respect the role of sponsorship may be of some importance in the operation of pay TV in Australia, and this is in relation to the possible sponsorship of program development.

Pay TV In focus

Sponsorship arrangements directly between a commercial entity and a program producer/packager for pay TV could allow for the development of quality programming which does not impose too great a cost burden on the system operator. Providing there is no sponsorship payment made by the commercial entity directly to the pay TV operator, the spirit of the Government's decision will be maintained.

Program siphoning

Turning now to the perceived problem program of siphoning, particularly of major sports and other events, I will not assess here the legitimacy of the argument that such siphoning will occur. In my view the fear of siphoning is based on an assumption that pay TV in Australia will be just like cable television in the U.S. For reasons which I cannot detail in the limited space of this article, I do not agree that Australian pay TV in the short term will (or should) bear any resemblance to U.S. cable TV, and, therefore it follows that I do not accept that the siphoning of the

coverage of major events inevitably will occur.

But let us again turn our attention to the declared regulatory approach to overcoming the perceived problem. It seems that again there may have been a modification to the government's original position. The announced proposal appears to be based, somewhat loosely, on a concept framed to deal with the possible problem of siphoning put to the inquiry into pay television undertaken by the House of Representatives Standing Committee on Transport, Communications and Infrastructure, and supported by the committee as the most practical approach to avoiding the prospect of siphoning. This was described as a system of "dual rights".

Dual rights

The basis of the dual rights approach was to ascribe to every major event both free-to-air and pay television coverage rights. The original rights holder could negotiate the assignment of both sets of rights, but in neither case could this be exclusive. Therefore, all such events had the potential to be carried on either free-to-air or pay television, or both, with the decision in each case resting with the operator. As the Parliamentary Committee noted, this was both workable and met the policy objective of avoiding siphoning.

The approach proposed in the Broadcasting Services Bill involves a subtle change to the dual rights concept by requiring that rights to a major event be picked up by a free-to-air television service before the pay television rights can be assigned. This places the free-to-air operator in a very favourable negotiating position, and would be of particular concern to the holders of original rights in major sporting and other events because it introduces an element of artificiality into the rights negotiating process.

It is not clear to me what this modification to the dual rights concept is designed to achieve, nor why the concept as originally proposed could not have been accepted as outlined to the Parliamentary Committee.

I believe that the Government's proposed approach to both these program regulation issues deserves rethinking along the lines suggested above.

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