Casenote: *Cullen v White*

Kerin Forstmanis looks at a recent damages award for defamation on the internet.

A journalism lecturer at Edith Cowan University in Perth has recently been awarded AUD$95,000 damages for defamation by the Supreme Court of Western Australia against Los Angeles resident, Bill White (the defendant). The case, *Cullen v White*,[1] concerned publication on the internet.

Dr Trevor Cullen (the plaintiff) and Bill White were former colleagues at the Divine Word University (***DWU***) in Papua New Guinea, although they had little contact. According to Dr Cullen, Mr White was dismissed from his employment at DWU in February 1997. Eighteen months later, Dr Cullen was researching HIV/AIDS in the Pacific when he came across an internet discussion forum which contained a number of derogatory postings in relation to DWU and its staff.

Dr Cullen sent the webmaster a letter complaining about Mr White's postings. That letter was published on the discussion forum web page. According to Dr Cullen, within days he started receiving emails from Mr White alleging that he was an academic fraud. Shortly after, Mr White created an internet website for his attacks on Dr Cullen. Subsequently, Mr White started 'bombarding' Dr Cullen's colleagues with false allegations about him, and publishing similar allegations on the website.

Dr Trevor Cullen commenced proceedings in the Supreme Court of Western Australia in 2002 claiming damages for defamation against Mr White in relation to the emails and articles on the website. Dr Cullen alleged that four specific publications contained imputations that he was a paedophile; had committed academic fraud; had falsified his credentials; was a dangerous felon; had committed blackmail; and that he had falsely pretended to be a priest.

Leave was granted to serve the writ outside of the jurisdiction of the State of Western Australia. Mr White was served but did not file an appearance and judgment in default was entered against him.

Master Newnes of the Supreme Court of Western Australia subsequently heard the plaintiff's application for an assessment of damages. Once again, the defendant made no appearance. Master Newnes accepted that the words complained of conveyed the alleged imputations. He commented that the fact that the publications were disseminated over the Internet 'was plainly designed to maximise their detrimental effect'.

On the question of what damages should be awarded, Master Newnes awarded $70,000 in compensatory damages and $25,000 by way of exemplary damages. He held that the defamatory publications were likely to have a 'very harmful effect' upon the plaintiff's reputation and standing as an academic, and that he had suffered a great deal of personal distress and anguish. In awarding exemplary damages, Master Newnes said that the defendant's conduct 'can be attributed to a conscious desire on his part to cause the plaintiff the maximum amount of damage, hurt and embarrassment by what amounts to a campaign of deliberate offensive vilification'.

Although decisions of masters (who are not judges) of the state supreme courts carry little weight as precedents, Master Newnes' judgement suggests that the fact of publication on the Internet may increase the amount of damages which might otherwise be awarded as that avenue of publication suggests an intention to cause as much harm as possible to the subject of the defamatory material.

Dr Cullen may have difficulties trying to enforce the judgment against Mr White, however, the publicity which has surrounded the award of damages has gone a long way towards restoring his reputation.

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1 *Cullen v White* [2003] WASC 153 (3 September 2003).

Local Advertising on Regional Television

In this edited version of her paper presented at the Communications Research Forum 2003, Helen Wilson looks at the state of regional television, and the contrast between local news content on the one hand, and local advertising content on the other.

Historically, localism has been the basis for ownership restrictions and for distinguishing between different types of service: what the Australian Broadcasting Authority (***ABA***) calls 'capital city' and 'non-capital city' licensees. The former are in Sydney, Melbourne, Brisbane, Adelaide and Perth, and jointly operate as networks negotiating program supply and national advertising. They are centred in Sydney and exercise dominance over the rest of the system, a cause of regulatory anxiety. I refer to them as the metro networks. The non-capital city licensees are an assortment of arrangements in smaller markets, including the licensees in the 'aggregated markets' of Queensland, Northern NSW, Southern NSW and Victoria; a few markets with one or two licensees (such as Tasmania, Darwin, Mildura) and the licensees of the remote satellite services in Central Australia and Western Australia.

The metro networks take large risks in the field of program decisions and the regional licensees pay an affiliation fee, a proportion of revenue, which entitles them to broadcast the network signal. Although now consisting almost entirely of network programming, regional television is still distinctive in its varying attempts to match news and information to the spatial location of viewers, and in its advertising's insistence on versions of that location.

The Northern Rivers and Wollongong were originally solus markets until the policy of aggregation was introduced in the late 1980s and are now parts of the aggregated markets (*AM*) of Northern and Southern NSW respectively. They function as one of a number of submarkets, 'splits' or 'windows' within the AM, with a certain amount of distinct content. The complexity of this distribution system allowing the insertion of separate content for a number of areas is an aspect of regional television that the metro networks do not deal with. It involves offices and branches with varying functions throughout the licence area as well as a formidable technical infrastructure.

The way regional broadcasters operate was, however, addressed by the ABA in the report of its inquiry into the adequacy of news on regional television (2002) following the closure of a number of regional newsrooms. The ABA found that the news services offered by many licensees were not adequately local, and that the previous service areas prior to aggregation remained significant. The resulting new licence condition specifies a large number of 'local areas' within each AM which the licensees will have to provide with local news and information. This finding indicated that the ABA recognised that the AMs had, by and large, not worked as vehicles for ensuring localism in news and information programming. We await with interest the new local content, although compliance will not be monitored until 2004.

THE PLAYERS

Although aggregation, introduced in the late 1980s, was planned to create equally sized markets of about a million people, these differ in terms of geography, size, the presence and location of sizeable cities, and whether the AM coincides with state boundaries. In the case of Victoria and Tasmania this is so and this creates a stronger social basis for AM identity than the arbitrary NSW divisions. Though all originating as local broadcasters, regional and remote television is now almost entirely run by a few companies, as shown in Table 1.

Nationally, the major players are WIN Television (Nine affiliate in most markets), Prime Television (allied to the Seven network) and Southern Cross Broadcasting (now branded as Ten Southern Cross). However, instead of WIN, the Nine affiliate in Northern NSW is NBN, the original Newcastle station. WIN is a private company still headquartered in Wollongong, where, like NBN in Newcastle, it is a prominent corporate presence. The company is the only one to provide local news in all its markets. All three major players are in fact national networks of a distinctive regional type; they operate as single entities with respect to metro network affiliation, a small amount of program production, some advertising sales, and increasingly presentation and 'playout'. In the process the aggregated market licence areas are becoming redundant.

Table 1: Ownership of Regional and Remote Television Services

Market	Operators		
Queensland	WIN	Southern Cross	Seven
Northern NSW	NBN	Southern Cross	Prime
Southern NSW	WIN	Southern Cross	Prime
Victoria	WIN	Southern Cross	Prime
Western Australia	WIN		Prime
Central/South Australia	Imparja	Southern Cross	
Tasmania	WIN	Southern Cross	New combined licence

In view of the transition to digital broadcasting, Prime and Southern Cross are currently restructuring to become relatively centralised operations headquartered in Canberra. Prime has gone further than Southern Cross in relocating its functions from the various regions, leaving many people redundant and many facilities unused. Its new digital centre allows all input for its 17 splits (generally the commercial breaks) to be inserted in Canberra. Southern Cross, on the other hand, has offices covering sales, engineering and production in both Canberra and Coffs Harbour (for Northern NSW), but accounting, 'traffic' (scheduling of inserts) and operations are directed from Canberra. Southern Cross had analog playout centres in Townsville, Coffs Harbour, Canberra and Bendigo, for each of its AMs, but the functions are being combined in Canberra, from where playout of the 22 distinct signals began from mid 2003. Despite the centralisation, both companies maintain a presence in as many localities as possible, but these are basically sales offices. WIN is a rather different operation, still a large employer and much less centralised.

Apart from the anomalies of NBN and the Aboriginal owned Imparja, there are then basically three regional television companies, operating, like the metro networks, across the country to distribute content to their far-flung audiences. Just as the capital city licensees are also metro networks with a command and control structure, so are regional and remote licensees also regional networks. They are a B team of broadcasters and like the A team or metro networks, are prevented from expansion by ownership legislation.

THE ADVERTISING BUSINESS

Although news is the most high profile and controversial area of local content, all regional stations feature local advertising. It is in general easily recognisable and strikingly modest in comparison to the excesses of national campaigns. It is also odd for a city dweller to see local businesses so prominently advertised on television, an unusual phenomenon on all but perhaps late night city television. But what is local in this context? Many questions arise. Does it correspond to the AM or is it aimed at a submarket, or an even smaller locality within that? What is the proportion of local to national advertising and how consistent is it over time and between markets? What is its economic value? How are ads for local outlets of national chains produced, where is the money raised and how are they to be classified?

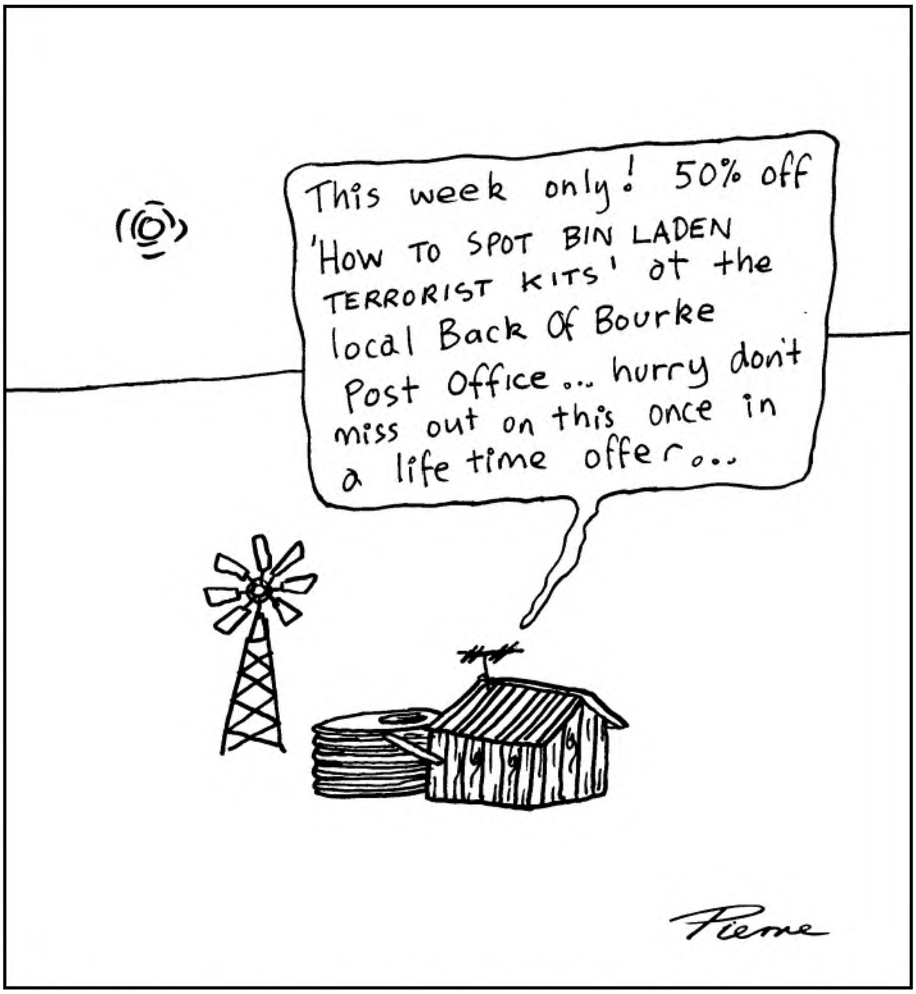
Detailed economic information distinguishing different markets is hard to find, and like the media sector generally, the advertising industry is city (and Sydney)-centric. So, evidently, are large advertisers, for many 'national' campaigns do not get beyond the large cities. This is a situation regional broadcasters are keen to address in the face of a stubborn lack of fit between regional population numbers (35% of the nation) and advertising revenue (22% of national television advertising revenue), both little changed since the advent of aggregation. *The Australian* (14 August 2003) reported that regional television operators are acting together to jointly attract advertisers, to establish that regional populations are similar in consumption patterns to those of the smaller cities and to counter the preconceptions of media buyers that regional populations are 'less savvy, poorer and lacking in audience numbers'.

In its *Commercial Television Industry 1978/9 to 1998/9* study (2001), the ABA presents revenue and expenditure in different licence categories in such aggregate form. In terms of revenue, capital city stations' total revenue is over three times that of non-capital city services, with a lower proportion of revenue attributed to advertising, which for regional services is more like 90% of revenue. This is a significant difference, for metro networks have other income streams including the affiliation fees of the regionals, and therefore are perhaps less dependent on general economic conditions that impact directly on advertising expenditure.

The ABA distinguishes between agency advertising (generally national and subject to discounts on the basis of bulk sales) and non-agency advertising, generally local and not subject to such discounts. Not surprisingly, the proportion of agency advertising for non capital licensees was much lower in 1998/9 (68.1% as against 93.7% for capital city licensees).

It is clear that regional services have both a greater dependence on advertising and carry a greater variety of types including a significant grass roots component. The scattered and roving ground force of 'hunters and gatherers' selling advertising time to businesses of varying local provenance with small advertising budgets is then a distinctive aspect of regional television and contrasts with other centralising tendencies. There are still copywriters and camera people in all the regional offices of Prime, for example, almost all of which are solely sales offices.

Managers operate in terms of the distinction between local and national advertising in accounting for their



revenue, corresponding to two levels of negotiations: those conducted by the regional network and those by their own sales staff. National sales are done by organisations such as 7 Affiliate Sales, which is 75% owned by Prime. This organisation has offices in all metro centres and its head office will stay in North Sydney. The other 25% is owned by the Seven Network, which operates in regional Queensland. Southern Cross has national sales offices in all the capital cities to deal with the large advertising agencies. WIN and NBN also have a combined operation to sell for Nine affiliates.

Workers in the traffic section of the Prime broadcast operation schedule the ads in terms of those going to the entire aggregated market (usually national ads) and those going to particular windows. Prime has a fairly standard pattern of ad breaks consisting of a program promotion followed by two national ads, then two local ads and another national one. This may be an emerging pattern for all the regionals. Clearly the move to centralised playout means a more standard structure for advertising breaks, which will mean pressure to equalise the amount of local advertising in terms of time. On the other hand, WIN and NBN, being separate companies contracted to the Nine network, will not necessarily follow the same pattern either in terms of the structure of ad breaks, the proportions of local to national advertising or the relative income derived. Despite the ABA aggregated industry figures, the relative proportions of revenue from national and local advertising cited by managers vary considerably. Figures between 50 and 70% are given as the norm for the national component, with fluctuations of 5% cited as common.

For a high rating service (traditionally the Nine affiliates), national advertisers tend to book there first, and buy fewer slots at higher rates than on other services. Nine affiliates cite national revenue at around 50%. Prime's Doug Edwards says that for his network, on the other hand, levels of national advertising involve more slots at lower rates, with the result that its revenue is 65-70% from national advertising. The only way to increase the proportions for local areas is through local sales, which may come from the service's particular profile and connectedness to its local areas.

FINDING THE LOCAL

In investigating the nature of local advertising, then, there are three measures to look at: the ad's revenue source, its content, and its placement in the ad break sequence. The first is not apparent to a viewer, although the production values usually make locally sourced ads readily recognisable. Place in the break is only consistent for Prime, as WIN and Ten Southern Cross appear to run sequences of entirely local or entirely national items. Many ads on regional television are local in one way or another, but from the viewer's point of view it's a roving kind of localism, only sporadically bringing their own locality into focus. In extreme cases such as the remote service in WA, ads for local businesses in Broome are seen in Esperance, for there are only two splits in that service.

Perhaps most advertisers aim to reach beyond particular localities and address audiences that don't primarily identify themselves geographically. We all know how similar shopping malls are and these retailers are heavy advertisers. Does it matter then if they don't tell us where the local dealer is? Sometimes they do, sometimes not, and it takes some concentration to pick it up. The commercials for national chains such as K-Mart typically have a standard generic form, but are sometimes tagged with the location of particular outlets, usually in the final shot or by pull through. But the listings may be more or less extensive, covering just a local window or a larger agglomeration. It is not always possible to tell whether the revenue for these is raised locally or nationally.

In our study of the advertising on Lismore services in December January 2002/3, we found a greater prominence of ads originating in the narrower Northern Rivers area, as against a wider (or longer) North Coast region, especially on NBN. What is striking, however, is the lack of ads customised for the entire aggregated market. One could imagine advertisers wanting to target specific windows only (Canberra, Wollongong and Newcastle, for example) rather than both entire AMs. The present system militates against such a choice, which advertisers might prefer to including Adelaide in the schedule, for example.

As in the case of news, a close look at current practice shows the irrelevance of the category of the aggregated market as any sort of 'space of identity' for viewers. This may be less so in the case of Victoria and Tasmania, where we have the situation of the AM being coextensive with the state, creating a similar structure to that of the ABC, which broadcasts regional radio programs across states. We might expect the state identity and state politics to give the AM clear and distinctive news, talk or sport programming, and certainly state-based advertising. This is the case to some degree, particularly in Tasmania, which has a strong community of interest and is excluded from the mainland capital city loop, but less so in Victoria, where Melbourne and its capital city links dominate.

CONCLUSION

We can see three layers of the spatial reach of commercial television. Firstly, there is a predominance of national networked programs and national (and frequently global) advertising. Like the ABC, the commercial networks also run state based news programs which are intensely city-centric in orientation. But a viewer of, say, Ten in Sydney or Melbourne will not be able to locate themselves as readily with reference to the advertising on these channels as with reference to the news or (even more tellingly) the weather and traffic information given. In Wollongong , for example, the situation is reversed: the news (except for half an hour on WIN) tells where we're not, but the ads tell us (roughly) where we are.

I see this division in Australia's television system as an example of the growing tendency towards a binary divide in the relationship between metro and regional networks, as both take on network structures and respond to the digital imperative by putting resources into technological development. I term this the A team/B team situation. The A team decides what programs to make and show, and sells these to the B team and others. It provides some city-specific program content amidst generally national advertising. The B team transfers resources from its branches to its centres, sets up an elaborate infrastructure to broadcast the A team's programs and some of its advertising, and grows its ground force of hunters and gatherers as the only means available to increase its revenue. The situation clearly suits the A team, which has no need of such a ground force, well.

So localism in the cities means some place-specific news, sport and weather information, but in the country it means a greater mixture of advertising styles and sources, many of which are outside the ABA's designated 'local areas', which are proposed as the basis of a revived localism in news. There are no longer local stations, but different kinds of branch operations or hubs of large and diffused networks. The category of 'local area' may enliven the regional policy landscape, but at present the only essential local presence in all the regional offices is a sales team, with news production the exception rather than the rule. But when the ads are produced and programmed at a distance, is it possible that advertisers would prefer to use a medium with a stronger local identity, such as the press? Why do we need local television advertising in the regions when city businesses by and large don't use it?

Aggregation created no real increase in revenue, but it did give regional viewers the sense of being included in the national mediascape, so there is no going back. The pace of going forward in the digital future is at issue however, and it is possible that the changes being made are so drastic as to undermine the rationale for having a separate category of regional television.

The present requirement to turn off the analog signal is seeing the regional broadcasters re-inventing themselves as national organisations centred outside Sydney, so aggregation is becoming redundant even faster with digital broadcasting. Unless the new licence condition can deliver local news and information that is of real value to audiences, I suggest that we abandon the pretence that unsubsidised commercial television is an effective local medium in most places, and regulate accordingly.

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