

'A More Diverse Media: Can the Club Be Busted?'

FABIAN SOCIETY: Parliament House, Macquarie St, Sydney

Another Lost Generation

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Good evening ladies and gentlemen, it is a privilege and a pleasure to be here this evening. I have called my presentation *Another lost generation*, because that is what I fear will happen as a result of political prevarication and the proposed changes to the media ownership laws.

We are standing at the beginning of a new media age and yet we are still conducting the argument that will determine the shape of this future as though we lived in a world of letterpress printing presses and family dynasties. It is not in the interests of those who have benefited from the old regime to make the possibilities of the future clear – their interests are in slowing it down, so that they have the time to maximise their entrenched advantages just as they have done in the past.

What is needed is clear thinking, good ideas and political leadership. Instead what we are getting is a rehash of old policies and a persistent refusal to grasp the opportunities that are available. Removing the cross media laws, like the privatisation of Telstra, has been one of the pillars of the Howard Government's agenda. Not so fundamental that that Prime Minister thought that it would be worth using up his political capital to get it implemented in the past, but central none the less. And now that the government has control of the Senate it is something that can be done without depleting this precious capital - if the right deal can be struck.

The danger – and the likelihood on past experience - is that in doing this the old regimes will be entrenched, their protection extended into the future. This is what has happened in the Telstra debate. We have had to endure years of argument about

the services to the bush – essentially redressing old grievances which desperately needed to be solved and pork barrelling in the least populous parts of the country– and almost nothing about the need for a telecommunications infrastructure that is sufficiently robust and extensive to provide the platform that will be needed for the information age. We have heard *ad nauseum* about the connection rates in the bush, hundreds of millions of public dollars have been spent each year fixing old problems there – and almost nothing where most of us live, nothing to equip the whole country with the future infrastructure it will need. Almost nothing about the future. Old thinking prevailed. In this time Australia has slipped from having a world leading telecommunications system to virtually last amongst developed countries in terms of access to broadband of sufficient quality to enable the converged media of the next generation to develop. The legacy of generations of public investment has been squandered at precisely the time when we will need it most.

Elsewhere in the world governments have taken the possibilities of convergence seriously, have recognised that the merging of telecommunications, media and IT is transformative. Here we still have them locked up in their little boxes and we are still talking about privatising Telstra and removing the cross-media laws. Both are iconic issues that divide public opinion, get those close to it extremely agitated, have been rejected by the Parliament in the past and don't make much sense to most people.

If virtual abolition of cross media laws occurs it has the potential to inhibit media innovation for a generation, by protecting the club again. On the other hand, with a bit of imagination and policy courage, a reform of the country's media laws that removes embedded protections could break the power of the club and create a more vibrant media sector than we have had for years.

Like the Telstra privatisation and the industrial relations laws, the removal of cross media ownership restrictions is essentially about the division of power in this society. And there is a very influential club that currently has hold of this power. Don't be under any illusions about the lengths they will go to, to hang on to it. For a glimmer of this I suggest you seek out the coverage of the court case between Kerry Stokes and C7 and Foxtel, News Ltd and ACP currently underway. It is the sharpest public insight we have ever seen of the way the club works, even to do down each other.

The danger is that removing the cross media laws at this stage is likely to exacerbate the problem it is claimed it will solve – increasing media diversity at a time of great technological change.

The Minister Helen Coonan in her press interviews has indicated her sensitivity to this dilemma and signalled she knows that the media may change more in the next decade than it has for the past 20 or 30 years. Unfortunately in her speech to the National Press Club a couple of weeks ago she essentially proposed a solution which reinforced the old shibboleths – remove cross media limits because they are an inhibition to growth and competition (indeed she said that they were an inhibition that prevented Australian media companies becoming globally competitive firms...which might be news to the investors in News Ltd); remove restrictions on foreign ownership, itself really a straw man since the FTA will set its own pace on eliminating this restriction; and say no to a fourth commercial television network and consider giving the spectrum to the existing companies.

Although she spoke at length about this being a once in a generation opportunity to get the settings right and achieve what she described as the government's endgame – increasing media diversity – there was little tangible

evidence of how this might be achieved, or measured, and plenty of signals of how the existing companies might block it. The proposals she outlined could entrench and protect the existing players, limit the opportunities for real diversification and innovation and give us more of the same old same old. Her model would see the existing media companies reduced to five in the capital cities, and four in regional areas, would allow acquisition across the sectors, would see existing television licensees having both high definition television and multi channels, would see the spectrum not given to a fourth channel allocated to restricted datacasting or maybe more pay television.

Now it is relatively early days in this particular game, and she is wise not to frighten the horses. Rather gamely she encouraged the industry to think of this as an opportunity rather than a threat, all the while hinting at how big a threat they were facing from new ways of delivering old services. As communications ministers have discovered in the past though, the best policy options in the world can be as naught by the time media policy changes get to the cabinet room, when the direct lobbying of more senior ministers is likely to hold sway. Nonetheless there was nothing in her speech to give heart to those of us seeking a media environment that encourages innovation, fosters diversity and keeps the power of the club in check. Instead it was possible to foresee a world in which the existing companies became further entrenched and the others pushed to the margins.

If the cross media rules are to be changed in the name of convergence, on the past record this will be done as an exercise in political will. The pay off will be patronage and the continuation of disproportionate power to a handful of companies that have been prepared to use the quasi-institutional status of the media – the old idea of the fourth estate – for direct commercial advantage over a long period of time.

There is a great illustration of this in her speech – an election promise that the minister assured her audience the government would honour: that the commercial television licences that come up in January 2007 will be allocated directly by the government. There will be no regulator getting in the way of the government's ability to hand out licences as it sees fit. The public interest rationale about licensing of a public resource, access to the airwaves, has been jettisoned. This came as a surprise to me and I follow this area reasonably carefully. It not only goes to the heart of the power game that is in play, but makes me wonder what other promises we haven't heard about.

If the government goes ahead with the removal of the cross media rules it will not be because there is any great urgency about this, but because it can. Convergence provides the pretext. It has never been clear to me why existing companies could not be permitted to move into new technologically determined territory, television over broadband, datacasting, movies on demand, podcasting of newspapers -there are lots of possibilities.

The main beneficiaries of the removal of cross media inhibitions will be the investment companies who are currently gearing up for an orgy of buying and selling, and a handful of owners and major shareholders who are anticipating windfall profits. In most countries cross media ownership rules have only been relaxed because of economic crisis in the industry. There is no sign of that here. That said the arguments for relaxation of the rules in regional markets to increase the capacity to produce relevant local content do make sense.

With the exception of the repeated calls by Fairfax for the opportunity to invest in television and radio in its home states or in other states where it might like to start a newspaper (or probably more likely, to be made available for sale to one of the

companies that already operate in these spheres) there is not much of a clamour for the removal of the cross media laws from the big companies – News Ltd is increasingly an American company still playing politics here but without the urgent commercial-political bite it once had, Packer has seen the writing on the wall in terms of the future of free to air television and while ACP would probably like to own the *SMH*, by all accounts Kerry Packer no longer regards such an acquisition with the same vengeful urgency he once did. They know the game has moved on.

Let's put this in context – the audience for the traditional media while still large is falling inexorably – you see it in the declining circulation figures for the newspapers and the difficulty the television networks have in holding the mass audiences which once underwrote their enormous profitability. The internet is where people are increasingly going for news, information and entertainment, a trend which is particularly marked for the under 30s. The provision of news and current affairs - the public role of the media that underpins the rationale of these companies to be regarded in a different commercial category to mining, banking or retailing - is a diminishing part of the services they offer. Both News and ACP, the companies that have traditionally driven media policy agenda in this country, are more focussed on the internecine battles with pay television which is looking increasingly like the thin end of the wedge in the future of media policy and a significantly more fragmented and competitive environment.

The need to act comes because of triggers put in place in the past when the government also squibbed the tough calls that could have set up media policy as the forefront of innovation in the past. On January 1, 2007 the prohibition on a new commercial television licence ends; the initial digital broadcasting framework expires with its complicated rules about multi channelling, high definition television,

datacasting, genre limits and so on; the anti siphoning regulations which protect the free to air industry from pay television's power to target niche audiences also need to be reassessed by 2010; and of course the free trade agreement with the USA makes the foreign ownership rules look like a relic from another age.

Rather than dealing with these issues one by one, the government is likely to do what all governments have done in the past – prepare a package of media reforms that provides the greatest opportunity for trade offs and deals and can be justified in terms of removing complication and over regulation. And as with past reforms it is likely to entrench the power of the existing players at considerable cost to the rest of us.

This time, because we are standing at the real beginning of a new world of media possibilities, if the wrong decision is taken it has the potential to reverberate in a negative way for decades. The stakes are as high as they have ever been. What is needed is some clear headed thinking about what the future is likely to be and some real political courage and leadership – not something we have had much experience of in this country in media policy.

According to the minister, the proposed removal of the cross media laws is to be done to increase media diversity. As she put it in her speech a few weeks ago: “in a converged environment it will become almost impossible and certainly counterproductive to stop new players and new services from emerging. In my view regulatory strategies need to move away from relying on controlling market structures in the way they have to date to a new framework that allows some efficiencies of scale and scope while encouraging new players, new investment and new services.” That is rather like saying we need to fatten up the elephants to allow more native grasses to flourish – the metaphor is not right, but you get the picture. Nonetheless

Senator Coonan - whose media image is of an elegant, if slightly stressed, blond taking on the boys club – has talked about the transformative potential of technology in this environment. Unfortunately this laudable image is not justified by the exposition she presented in this speech – which as far as I know is the only place she has formally put her ideas on the public record, the other being interviews with journalists, which remain a better way of flying a few kites and seeing what gets shot down than really revealing your hand on policy proposals.

In her speech she spoke about the future media environment she envisages, and said that increasing diversity was the government's endgame. When I think of diversity I think of content, of different voices and perspectives, of a picture of the society which is more wide ranging than that of those who share a certain view of the world or economic position. I think of a robust editorial culture – I don't actually think about ownership. For too long we have conflated ownership and diversity. It is possible to have media diversity from a consolidated media company, but it requires a strong editorial culture to achieve and that bit of the equation is not much in evidence these days.

Diversity is the buzz word in media circles. Not only has it become the government's endgame but it is the stated motivation of one of the world's largest media companies, News Ltd, as the one time heir apparent, Lachlan Murdoch said in his Andrew Olle memorial speech a few years ago: "Expansion drives diversity and diversity protects and strengthens our craft" (by craft I assume he meant business, not journalism). We need to be very careful in this embrace of diversity. If it is the government's endgame how will it be measured? Will the new regulator – which still does not have a chairman – be given this task? Or will it like the issuing of licenses be something that is done by the government directly?

Not so very long ago the media companies which had grown fat, and somewhat complacent, on the spoils of a mass market were worried sick about the possibility that technological change would lead to fragmentation of their audience. How could their business models work if they weren't reaching a mass audience? It was a scary question. Now rather like the marketing of Coca Cola and Peat's Ridge Water by the same company, the reality of the modern corporation has hit home in the media. But diversity of this sort is a costly and very different business model unless you have access to cheap content.

You may recall the huge determination about five years ago to restrict multi channelling which became possible with the opening up of digital spectrum. The free to air stations, with the exception of Channel Seven, turned themselves inside out to prove that multi channels of digital television wouldn't work, would destroy the business, would lead to the end of the world as they knew it. (Heaven forbid that multi channel television might have given audiences more choice or provide new creative opportunities for program makers.)

The climax of this campaign took place at Parliament House, with a display of high definition television by Kerry Packer and his troupe, they tantalised the audience of polities and their advisors with the allure of pictures so life like you would want to touch them – it was a gorgeous, glamorous pitch and a spectacular display of power and technological wizardry to a group of people whose very success depended on a co-operative relationship with the media. This in due course led to amendments to the legislation that limited the material that could be shown on the multi channels that the ABC and SBS were allowed to broadcast, genre restrictions designed to protect the patch of the existing players, to ensure that viewers continued to turn on just one

channel and when they did they would do so in sufficient numbers to continue generating a huge revenue from advertising.

The upshot of this was to give the networks more or less what they wanted, to give the ABC and SBS a bit of what they wanted, and most importantly to slow down the uptake of digital television for five years or more. It is worth remembering that only a few years ago it was anticipated that analogue television would be switched off by 2008. Not much of a chance of that now with digital take up just nudging into the double digits. The empire was protected for a while. Now they are talking about a 2012 switch off date.

It is worth recalling how this happened, because if we are interested in imagining a more diverse media the techniques of the players is an important element, and because the greatest changes are happening in digital broadcasting and the broadband internet environment, that is where we need to focus.

I am the first to acknowledge that changing media policy is not easy, it is something that scares the daylights out of many politicians. It is not surprising – they are right to be cautious, the media in Australia is despite our dissatisfaction, not all that bad. It is also not nearly as good as our pollies have convinced themselves it is, or as good as it might be with a little more competition.

But the reason they are right to be cautious is that the power this club has aggregated for itself is real – even at a time of failing circulations, ratings, esteem and relevance – and they are prepared to exercise it. We need look no further than the *Daily Telegraph* for evidence of this. Not the daily symbiotic agenda setting as government media units work hand in glove with the editors and reporters, but the flashes that prove the point. Poor John Brogden could be the poster boy for this and a warning to them all. The pursuit of Brogden after his resignation was unseemly,

unnecessary and highly effective. It also carried a message that was impossible to ignore. Barry O'Farrell took the point very quickly and withdrew from the race for the position he had been dieting for months for.

Interestingly the journalist who wrote the story which has now been widely discredited was described in another News Ltd paper as the *Daily Tele's* "attack dog". Who has attack dogs? Images come to mind of dodgy scrap metal yards in a hundred bad movies, or those with a mansion to protect or a community under siege. The rest of us make do with friendly dogs, pets, man's best friends. But the *Tele* has an attack dog. This hides a more serious point. Reminders of the power of the press are particularly important at times when policy changes are on the agenda...it could happen to you.

There have been very few moments when politicians in this country have been prepared to challenge this media power, very few moments when they have been prepared to grab the opportunities for change, diversification and innovation that the technology has offered. One was when Paul Keating introduced his much maligned prince of print, queens of screen legislation in the late 1980s. I know there have been a lot of critics of this change, suggesting that this was done to benefit a few mates and disadvantage the enemies. No doubt there were winners and losers. Some made almost obscene fortunes from quickly selling businesses that they had grown on the back of licences granted by successive governments, others lost their birth rite, eventually others ended up in jail or in exile. Though of course the change in legislation need not have forced such a spectacular shake up – if wiser heads had prevailed Fairfax could have remained the diversified conglomerate it was at the time – but it did force a spectacular shake up. While one of the unintended consequences may have been a weakening of the editorial culture in the Australian media, the

benefit for media consumers and producers, and not to mention public figures has been considerable – there are now more than a dozen significant media companies operating in a space that was once dominated by just three. Convergence may blur the boundaries of delivery mechanisms, but why not simply allow existing companies to move into new services unhindered, they don't need to gobble each other up to do that.

Remember what the media scene was like in this country before this change, timely because it could be what will happen again. The three companies – News, Fairfax and Packer effectively controlled almost all the newspapers, radio stations and television networks in the country. Australia had one of the most concentrated media industries in the world. Fortunately these companies didn't have a huge diversified range of interests so their power was largely restricted to the media for most of the time, but they used this quite ruthlessly to cross promote their products, to protect their patches, to seek political advantage and to engage in a range of behaviour that today would be considered anti competitive in the extreme and attract the interest of the ACCC. It was a very cosy cartel – great if you were on the inside, pretty chilly if you weren't.

Paradoxically the rigidity to this system meant that there was an occasionally robust editorial culture. These companies did think that they were, as I called a book I edited more than a decade ago, *Not just another business*. The old media companies took this seriously – they weren't above seeking commercial advantage, but they were driven by an editorial impulse. You would be hard pressed to find much evidence of that today – the recent research by Denis Muller from the University of Melbourne paints an alarming picture of the deterioration of journalistic values in this country over the past decade. But I think it would be unfair in the extreme to blame the

presence of cross media ownership limits on the weakness of the editorial culture in the Australian media today. And I certainly don't think that removing this restriction would reinvigorate the editorial culture in this country.

Now where there were three big companies there are now more than ten, and probably closer to fifteen. They may not be as spectacularly profitable as the companies of old but they aren't going broke in a hurry either. I completely accept that for a strong editorial environment to be created media companies need to be profitable – as *The New York Times* used to say in its slogan, *From real estate to fourth estate*. I can't understand why the cross media laws need to be removed to achieve it – it should be sufficient to allow anyone to bid for the new services which the government has the capacity to license, and for those that don't require licensing, let 'em rip.

Technology is about to present some wonderful opportunities – and if it is harnessed to encourage media diversity it might also serve to reinvigorate the editorial culture in this country. There is already some tangible signs of this. The independent media sector is more robust at the moment than it has ever been. Think of *Crikey*, *New Matilda*, *Griffith Review*, *The Monthly*, *Quarterly Essay*, *Online Opinion*, dozens of blogs to name a few. The energy in these ventures is having positive impact – opening up new areas for debate, providing space for the reporting of things that would otherwise be invisible. In part this is because of technology; in part it is a reaction against the limits of what is happening in the mainstream. The danger is that by removing the cross media ownership laws, not only will big companies get bigger, but they will also have the ability to stifle – or simply ignore - these independent voices much more effectively than they can now.

Let's be clear about this the growth is not in newspapers, or in free to air television – it is in the new media, it is in broadband. The big companies don't need to get bigger to make money out of the new media; they just need to be smarter, and hungrier. If they do get bigger they stand to have a chilling effect on the whole sector, to kill many new ventures before they even start because the game looks too tough. Surely it is in the interests of politicians to have a very diverse media sector, not least because it reduces the power of the club.

Let me give you a very brief potted history of how this chilling effect has already had an impact in the last decade.

When the decision was made to switch off analogue television and adopt digital those close to the policy were keen to ensure that there be some incentive to drive the switch. The proposition that a fourth television license – a digital only channel - should be issued. It would have to be innovative, it would have to be good and it could act as the burr in the saddle of the industry while not unduly challenging the existing companies which stood to move into this digital space a few years later. This inquiry looking at this went nowhere. It wasn't that the free to airs were especially vehement in their opposition, after all a digital only channel would not be much of a threat, but there was no particular advocate for the service either. News Ltd was focussed on pay television wasn't demanding a new channel, nor was Fairfax. Not surprisingly then the decision was made not to go ahead with a fourth channel – a decision which expires in a couple of years, even though the minister has already ruled it out.

Then a couple of years later when the potential of digital became clearer – there was an unseemly fight between the major companies of which the current court action is a bit of the backwash. News Ltd had by this time decided it would rather

like a fourth digital channel – the success of the digital pay television services in the UK had shown them how to make money out of it. For a couple of years they played hard ball to disrupt the plans of the free to airs to gobble the spectrum and slow down the take up of digital.

The outcome was to slow down of the take up of digital. The potential for digital broadcasting to transform the viewing experience with interactivity, multi channels was stopped. Precisely what they wanted. Many hundreds of millions of dollars – much of it public money - have been spent upgrading to digital broadcasting, but the output remains limited. Now as people snap up their big flat screens to watch DVDs, they are drifting towards digital. Unfortunately the Australian content they have to watch is more limited than it has been for decades, even though everyone agrees that it is relevant local content that drives up take. Nothing in the ownership proposals is likely to change that, again the focus is on structure not content.

Meanwhile it is becoming increasingly clear that television over broadband will be a viable option. It already is in many countries with more sophisticated broadband than we have. One does not need a broadcasting licence to transmit television type channels over broadband. TransACT in Canberra is leading the way with this – with its parliament channel and its Canberra channel. In a decade the debate about digital television, about free to airs and so on is likely to look arcane – as people increasingly find the channels they want on the internet. That is of course providing the investment is made in properly wiring the nation – currently Australia ranks 10th out of 11 OECD countries in terms of broadband availability and is about to slip to 11th as Ireland brings new systems on line. And what we have is slower and less robust than elsewhere.

Meanwhile in this country we are still talking about improving Telstra's fault rate in the bush, removing cross media rules which have not caused any demonstrable economic stress in the industry. What we need is a policy framework that opens the sector up, that removes the protection of the club, and ceases to inhibit innovation under the cloak of excessive regulation that only benefits a few and that provides benefits to the whole nation. Protecting the dinosaurs by removing the cross media laws will not provide the diversity and innovation that is the promise of the technological transformation.

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