



The Fairbane Group

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8 July 2020

The Manager
Broadcasting Carriage Policy
Australian Communications and Media Authority
PO Box 78
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Sent by email to: bcp@acma.gov.au.

Dear Committee

**DISCUSSION PAPER ON THE PROPOSAL TO REMAKE THE PRIMARY TV
SERVICES DECLARATION - IFC 11/2020**

We would like to extend our gratitude for the opportunity to provide a discussion paper to the *Proposal to Remake the Primary TV Services Declaration* by the Australian Communications and Media Authority.

ABOUT FAIRBANE

The Fairbane Group (“Fairbane”) is a consulting and private investment group that provides advice and opinions on policy issues to various industry groups and interested stakeholders. Fairbane is the successor entity to a series of consulting and investment groups that date back to the early 2000s. With experience in finance, legal services, accounting, management consulting, our operations include in Australia, the United States of America, the United Kingdom of Great Britain, Canada, Dubai, as well as parts of South-East Asia and Europe.

Fairbane is fortunate enough to have had members work with organisations such as: Deloitte, Ernst & Young, the Australian Government in the Departments of Defence, Trade, Health and Aged Care, the United Kingdom Departments of Defence, and National Health Service, various medium to large companies in industries ranging from Finance, Aerospace, Biotechnology, Communications, Computing, Construction and Resources.

Fairbane is a truly future-oriented organisation with a unique vision for the world.



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Fairbane's vision is to push the boundaries and reach out to the horizons of scientific and technological boundaries and do so by ensuring there is the freedom and flexibility available to individual businesses and their industries as a whole to compete and prosper.

At Fairbane, the world in the year 2020 is seen through the lens of what the world could and may well be like in the year 2100 and 2200. This means encouraging development of new ideas and providing a foundation for the new technologies that come from them.

Fairbane provides advice to various companies and individuals in the media industry, primarily in the emerging sub-markets and emerging technologies and platforms, particularly start-ups. Our expertise comes from a management consulting perspective and from legal advice to clients and partners, and policy advice to various entities.

REMAKE OF THE PRIMARY TV SERVICES DECLARATION

This paper will discuss in general terms regulation within the Broadcasting industry and regulation of the media industry, as well as the specific operation of the legislation in question.

Regulation of the broadcasting industry, not unlike any regulation, has the unintended effect of limiting freedom and limiting options for consumers and users. It also has the effect of creating artificial barriers for new entrants by creating an increase in business costs that larger businesses can absorb, but which smaller businesses will often struggle to deal with.

This concept seems profoundly lost on policy makers in government across almost every industry. Often the counterarguments are conveniently veiled in justifications such as preserving public confidence, or for product, business – and in the case of broadcasting – operational integrity. Little thought is given to the notion of the community – dare it be said, the market – being able to decide for themselves that which the government (through its regulators) decides on their behalf.

Fortunately, technology comes along to displace this infinite wisdom and in the case of



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broadcasting, particularly in the context of the regional locations specified in the legislation, the hope is that most of them will not rely on the Primary TV services for the most part.

The notion that this legislation will remain in place, that further regulation is necessary is not consistent with the notion of a free market, nor is it the position of this paper.

In the interests of succinctness, we will only venture so far back in history to provide ourselves with examples of why such regulation leads to a less favourable outcome for the end users, and a more favourable outcome for the large players that arise from such regulatory environments.

In 1956, Sir Frank Packer (has he would later become) then owner of Australian Consolidated Press, was able to become one of two commercial licensees for the new television networks across Australia. Whilst there are some technical (and at the time – technological) reasons why there would be limits for the number of television stations, there is no doubt that technology evolved rapidly in the early stages of the second half of the 20th century, let alone in the last 30-40 years that would have allowed for more broadcasters than what were allowed. It was obvious that the Packer progeny that followed were not only well positioned but ensured they remained well positioned to benefit from the regulatory environment.

Ironically it was Sir Frank's son, Kerry Packer who once said

“Every time you pass a law, you take somebody's privileges away from them”¹

This would include sustaining existing laws, as in the present case of the continuation of the legislation and legislative framework that this paper is discussing.

Relevantly, the line of inquiry to which Mr Packer's quote is sourced from typifies the mindset that government through its regulators see fit to regulate and keep regulating. This is notwithstanding the fact that the Packer dynasty sought to reduce regulation when it was convenient for them.

¹ Australian House of Representatives Print Media Inquiry, Kerry Packer, 4 November 1991.



Fairbane's view is that regulation from an external party, any regulation, will always have the effect reducing the self-regulating ability of the entity that is being regulated. To be put another way: regulation is like motivation. You can instil motivation into someone through coercive means but whether that self-motivation needed to survive and prosper, does not always flow as a natural consequence.

It may seem contextually out of place to use analogies that relate to nature, but as a philosophical construct, it would be worth indulging these notions in a world that has become increasingly stagnated in terms of growth and development and increasing dissatisfied in its social and cultural coherence. It has been said that all the answers in life can be found in nature.

Even radio waves, which directly relate to the broadcasting industry, are derived from nature in the form of the biological sensory system of the common bat *Chiroptera Mammalia Chordata Animalia* or in the similar sonar system of the Dolphin *Artiodactyla Animalia Mammalia Delphinus*. These systems were developed from their environment and continually improved through the challenges that they face. The same can be said of businesses in the artificially orchestrated regulatory environment. There is no doubt, as was the case in Mr Packer's speech that the rules will be set in place and businesses will work out ways to operate within and around them.

Fortunately, technology always has the last say on these issues of policy. The expansion of the internet, and the systems of media streaming continue to improve the performance outcomes for intermediate and end users. Irrespective of the existence of this law, the world has already moved on to internet streaming, and there are already other systems being developed that will surpass internet 2.0 that will be so far advanced by the time government has the political will let alone functional pulse to once again over-regulate it.

The view in this paper is to repeal as much of the legislation, or not re-enact it to allow for self-regulation, and the increase in the waning of radio-based broadcasting will mean that these issues will resolve themselves.



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We are fortunate to have the current federal government recognising that more regulation, unnecessary regulation, is not good governance.

We live in an age where companies such as J.P. Morgan are removing the terms “master” and “slave” from their computer programming software infrastructure.² In the chaos of wanting governments to provide more for the citizens it represents, we could take pause to consider that regulation in and of itself creates an environment by which citizens are slaves to masters, whether those masters are big businesses protected by regulation or the government and its agents seeking to regulate.

Fairbane takes the view that the best regulatory mechanisms are those that allow for self-regulation and regulation by peers, not by governments, not by masters, not by those who would make others subservient.

We want to again express our gratitude for having an opportunity to comment. We provide advice to media companies, primarily in the emerging markets and emerging technologies and platforms, particularly start-ups, so this subject matter area is of interest to us.

If you have any questions or wish to invite us to talk on any issues, we welcome any further consultation. You can contact us at office@fairbane.com.au.

Yours faithfully

Fairbane

Francois “Frank” Brun

Director

B Bus Com, B Laws (Honours), GDLP, M Laws

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² **JPMorgan drops terms 'master,' 'slave' from internal tech code and materials, obtained 3 July 2020.**

<https://www.reuters.com/article/us-minneapolis-police-jp-morgan-race-exc/exclusive-jpmorgan-drops-terms-master-slave-from-internal-tech-code-and-materials-idUSKBN2433E4>