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Consolidation in the Oz Media

Since the last edition of the AMM, there has been significant consolidation in the Australian radio and news industries.

As expected, after a long period of tension and disagreement, Fairfax Media have finally merged their radio network with the Macquarie Radio Network (MRN), resulting, so far, with at least 18 jobs being cut. The merged entity will see Fairfax Media take-up a controlling 54.5% of the consolidated commercial radio network.

The deal doesn't include Fairfax Media's 96FM because as required by the 'two to a market' media ownership rule, it was sold to APN News and Media for a reported \$78M ('Fairfax and Macquarie Radio Network Strike Merger Deal', *Mumbrella*, 22 December, 2014 <http://mumbrella.com.au/fairfax-macquarie-radio-network-strike-merger-deal-268888>). *Mumbrella* quote Fairfax Media's CEO Gregory Hywood as saying, 'The merger creates a genuine national talk radio network that was not previously available to advertisers,' and also, 'The merger provides both cost and revenue synergies from enhanced network and sales opportunities that will create a more efficient and effective network for news, talk and sports radio along with music stations.'

It makes a total of seven stations in the new network, and 2GB's Alan Jones and Ray Hadley will apparently stay on with the new entity, despite their earlier refusals to play a part in the merger. The stations are 2GB and 2UE in Sydney, 3AW and Magic 1278 in Melbourne, 4BC and Magic 882 in Brisbane and 6PR in Perth. Jones will be expanding his reach by being broadcast daily on the Brisbane 4BC station. His breakfast program actually began being broadcast during the Queensland election in January and February, and some consider that Jones' campaign against the incumbent Newman government contributed to the Labor's party's success. There has been a ratings increase at 4BC in the recent period (Jared Lynch, 'Macquarie dominates metro airwaves', *Australian Financial Review*, 22 April 2015).

Print media moves

Almost a third (30%) of the stock in APN News and Media changed hands in March. News Corp. Australia purchased a 14.9 percent stake in the company, the maximum amount possible before it is deemed to be a controlling shareholder and create regulatory problems. But most commentators believe that News Corp. is never a passive investor. Prior to these events three owners – News Corp Australia, Fairfax Media and APN News and Media – held approximately 98 percent of the sector, and News and Fairfax together held about 88 percent of the print media assets in the country. Internationally, this is very high: the United States, with a population of around 307 million, has three corporations controlling 26 percent of the circulation of newspapers. The United Kingdom, with a population of 62 million, has three corporations with 62 percent of the circulation. News alone owns and controls approximately 65 percent of the circulation of Australia's capital city and daily newspaper titles. However, with the APN News and Media acquisition it now means that to all intents and purposes, two

companies News Corp Australia, Fairfax Media now control 98 percent of Australia's print media.

So media ownership in Australia is like Coles and Woolworths: two big players who dominate the market (Fairfax Media and News Corporation) and no real choice for the majority of Australians. News Corporation owns a huge swathe of print media (and that now means online news sites) – so about two thirds. Media savvy people can develop media consumption habits to work around what is one of the most concentrated in the world for comparably developed nations. But everyone else will continue to get dished up the usual very unhealthy media diet until our politicians do their jobs properly.

Tony and Malcolm almost agree

The standoff continues between Communications Minister Malcolm Turnbull and the prime minister, Tony Abbott regarding the removal of the remaining diversity maintaining rules for commercial networked TV in Australia – the so-called out of 'two-out-of-three' and '75 percent reach rules – but it may not be as divisive as some pundits suggest.

It's reported that now while Abbott, like Turnbull, regards the cross-media rules as outdated, he's prepared to consider changes to the anti-siphoning sports rights rules in any media reform package (Dominic White, 'Siphoning rules face shake up', *SMH*, Business Day, 27 April 2015). The only impediment all along has been a lack of consensus among the main stakeholders, with some of the free-to-air owners supporting the changes, while others, notably Kerry Stokes, not in support. Interestingly though, the two major print media players, Fairfax Media and News Corp. Australia, now both support the changes, so it's really only a matter of when, not if, providing that can craft siphoning rules which don't put the electorate or the FTA owners offside.

It's probably worth a quick refresher on the immediate history of the cross-media rules. The 'two-out-of-three' rule was part of a package of amendments introduced by the Howard Govt. in 2007, which included removing foreign ownership restrictions. The laws removed the main cross-media ownership restrictions allowing television/newspaper/radio mergers with a 'two-out-of-three' media sector limit. In other words, media proprietors were now permitted to own two of these three categories of media in a market.

The newly liberalised rules resulted in some dramatic changes to the Australian media landscape: the foreign ownership changes allowed the Seven and Nine commercial TV networks to be financially restructured, with US private equity groups moving in to take up around half of each network.

The immediate effect of introducing a two-out-of-three rule was also to increase concentration in the newspaper and radio sectors. The 'reach' rule refers to a law which restricts commercial TV network owners to 75 percent of the total national audience.

What impact would changing media ownership laws have on Australia? As intended by the advocates of ongoing deregulation, removal of the remaining diversity rules would lead to further ongoing concentration and consolidation in media ownership across media sectors – that would dial down the number of media voices in Australia.

The argument from the advocates of liberalising the 75 percent rule, is that it will save the commercial TV industry's bacon from the likes of Google (YouTube) and various IPTV on demand providers like Netflix, Stan, Quickflix, Foxtel's Presto, their new service Boxsets, and Telstra's Fetch TV, and your favourite VPN accessed networks like US Netflix or Hulu.

But I think the 'change is necessary' argument is a red herring because: (1) commercial TV is seriously on the wane anyway, and these changes will have no significant impact overall; and (2) commercial TV has its own Freeviewplus IPTV service and it should compete with the other providers on the merits of that service.

The 75 percent rule is from the broadcast era, so there's a valid argument that it is no longer working the way it was meant to – but that's a separate argument from the policy principle about media pluralism that underpins the rule – which remains incredibly important in all democratic nations.

Removing the 'two-out-of-three' rule is part of an ideological agenda about deregulation – similar to those we hear in the university sector. It's about an ideology of 'the market' – but let's get real – markets fail and unequal outcomes will result. There will be winners and losers. In the case of media, it's all about the big media owners getting bigger. In education, meanwhile, students will get lumbered with even more ridiculous HECs debts and then not be able to get into the housing market.

Rupert Murdoch has spoken out against the proposed changes. He chimed into the twittersphere:



Rupert Murdoch ✓
@rupertmurdoch



Aust! Turnbull's plans to scrap certain rules suit buddies at Nine. Can't oppose dumping all regs but not this. Nice to see how MT plays.

4:03 AM - 16 Mar 2015

83 RETWEETS 36 FAVORITES



Why would he in particular feel threatened by changes in the law? As readers of AMM would know, Murdoch's modus operandi is an open book: he's a high level political player and a ruthless advocate for News Corp's interests. He uses his media outlets (and Twitter too these days) to needle polities all around the world when he doesn't get, metaphorically speaking, to watch what he wants to on telly. His media interests in the free-to-air debate relate mostly to Foxtel and the anti-siphoning rules. The anti-siphoning rules keep the most popular sport codes available on free-to-air for the majority of Australians. Murdoch has been trying for years to get that stuff onto Foxtel. But to date, Australian politicians have recognised political hara-kiri when they see it, but that may all be changing as cheaper \$9-\$10 per month IPTV content packages roll out. The lobbying continues unabated with the heads of Foxtel (Richard Freudenstein) and ASTRA (Tony Sheppard) and the commercial TV networks' CEOs all having meetings with the PM, who clearly recognizes the implications of making the wrong move with Murdoch.

What alternatives are there to simply scrapping the 'two-out-of-three' and 'reach' rules? Firstly, they could implement the recommendations of previous reviews! Millions of taxpayer dollars were spent on the Convergence Review and the Finkelstein inquiries. Their reports were thrown in the bin. What a waste of resources! Australia desperately needs media ownership rules that are fit for the 21st century, and specifically designed for the world of online news, Facebook and Google.

Secondly, the government could reassess the 31 December deadline for community television. Community television is an important part of the localism and diversity mix in Australia. It's been an important part of the industry's training in the past. Alternatives such as dual platform free-to-air plus online would be sensible, even if that's for a transition period with a sunset clause (Jared Lynch, 'Plea to put community TV closure on hold', *SMH*, Business, 27 April)

Sex, nudity and swearing after 7.30 pm

A decision is awaited on a new code that for the Commercial Television industry that would see the networks in a position to broadcast M and MA classified sex, nudity and swearing, and alcohol ads, after 7.30 pm. Some changes to the AV 'adult violence' category are proposed to bring them in line with the broader MA category.

The argument made to support the need for the changes is 'the new media landscape'. As unrestricted content is available at these times on various platforms including pay TV and the Internet, the industry lobby group, Free TV say they need a level playing field. Perhaps this is all a bit too after the horse has bolted. The code is waiting to be approved by the industry regulator, the ACMA.

Piracy crackdown

Following the success of the applicants in *Dallas Buyers Club LLC v iiNet Limited*, Australians who illegally shared movies by P2P methods may be sued by their Hollywood rights holders.

On 7 April, the Federal Court's Justice Perram, ordered several Australian ISPs (iiNet, ISPs Dodo, Internode, Amnet Broadband, Adam Internet and Wideband Networks) to hand over the identity of 4700 Australian internet account holders who had shared the film, Dallas Buyers Club. A similar ruling has already occurred in the US, where the practice of 'speculative invoicing' has meant that individuals have been threatened with legal action and liable for damages of up to \$US150,000 (\$196,656) in court unless settlement fees of up to \$US7000 (\$9171) were paid. However, Justice Perram to his credit, said that such an approach could not be used in Australia and ordered that he see any such letters of demand (so that he could vet them), before they were sent out to alleged downloaders.

The decision may be appealed, but it is a clear indication that new anti-piracy laws (the Copyright Amendment (Online Infringement) Bill 2015, is yet to be passed that aims to block downloading sites), and related mandatory data retention laws directed at ISPs and Telecommunications companies that would supply vital evidence, have moved the debate on downloading along. The decision updates the previous High Court decision won by iiNet some years ago now, which prevented individual downloaders from being sued.

However, access to ISP customers is not going to be an easy matter for rights holders. A new code ('the Copyright Notice Scheme Code') prepared by the Communications Alliance, that is yet to be registered with the ACMA, requires ISPs to cooperate with rights holders, and to 'work to deter the practice of online copyright infringement and inform consumers about available and lawful content alternatives'. The code provides that ISPs accept reports that identify the IP addresses of consumers have allegedly shared movies online. The ISP is then required to send a notice to the alleged infringer, together with a link to other educational materials, to advise them of copyright laws in relation to downloading movies.

The code further advises that:

“ Any Account Holder who receives three notices within a 12 month period will have the option to seek an independent review conducted by an independent Adjudication Panel. Where an Account Holder has received three notices within a 12-month period, ISPs will, on the request of a Rights Holder, facilitate an expedited preliminary discovery process to assist the Rights Holder to enforce its copyright (as described in Chapter 3 of the Code). This process can be initiated by a Rights Holder whose allegation prompted an Education, Warning or Final Notice’
(http://www.commsalliance.com.au/__data/assets/pdf_file/0005/47570/DR-C653-2015.pdf). ”

It's interesting to note that the listed Australian film production company Village Roadshow has said it will work with the major telecommunications companies and other film studios to try and make the new code work. They argue that the emphasis should be on educational processes, rather than rights holders tracking people down and suing them. In this sense, it's clearly a more sophisticated take on the past PR campaign from the industry, which likened downloading to stealing cars.

However, it remains to be seen how successful this whole 'three strikes' approach will be, given the past history, especially in the US, of consumer backlash against copyright holders from attempts to sue individuals. The arrival of consumer-friendly business models as seen in the IPTV providers discussed above, and the take up rate of those new on-demand services, may also play into how effective these laws will be in the longer terms, not to mention their general acceptance in the community.

Mandatory Data Retention Laws passed

The passage of Australia's 'Mandatory Data Retention laws', in the form of the Abbott government's *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* goes much further than the usual case-by-case warrants by law enforcement agencies, and requires Internet Service Providers (ISPs) and telecommunications companies to retain details of Australians' telephone and internet use for a minimum of two years. These laws, quite rightly, have been very controversial and many see them as a strong threat to journalism in the public interest.

These new metadata collection laws are source of great concern for privacy and civil liberties advocates as well. AMM readers may recall that in the last edition, I mentioned that no doubt wishing to limit the backlash, the government pushed the data retention bill off to the Parliamentary Joint Committee on Intelligence and Security for an inquiry in late 2014. In their report released in February 2015, this bipartisan committee of Labor and Coalition MPs gave the green light to the new laws, subject to 39 recommendations concerning increased oversight, privacy protection, safeguards for journalists, and clarification of the data set to be captured and retained.

But the journalists' union in Australia, the Media, Entertainment and Arts Alliance, condemned the Parliamentary Joint Committee's recommendation to support the passage of the *Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014* without any provision for the protection of journalists and their sources. Chief Executive Officer, Paul Murphy observed that:

“ These laws are the greatest assault on press freedom in Australia in peace time. Together, the three tranches represent a sustained attempt by government to control information. In the process, these laws attack freedom of expression, the right to privacy, the right to access information and press freedom’ (MEAA, 2014 *Secrecy and Surveillance: The Report into the State of Press Freedom in Australia in 2014*. Sydney: MEAA. <https://new.meaa.org/news/state-of-press-freedom-in-2014-secrecy-and-surveillance/>). ”

The Parliamentary Joint Committee on Intelligence and Security recommended that a separate committee should report in mid 2015 after considering the application of the new laws to journalists. Initially, the Labor opposition party and a coalition of media organisations, called for a complete carve out in the application of the data retention laws for the media and journalists. The Labor Party then sided with the Government to get the legislation passed, and agreed to an amendment which would only require agencies to obtain a warrant before they could get access to journalists’ sources. As part of the negotiated warrant mechanism being set up, the new law requires that a public interest advocate will be appointed to argue against access to journalists’ data, while a judge will decide on whether the disclosure of the data is in the public interest. Commentators have noted that obtaining a warrant to access journalists’ data is unlikely to be a very difficult task for law enforcement agencies. So it would appear, therefore, to be a reasonable argument to make that the requirement to get a warrant couldn’t be viewed as an adequate safeguard to protect journalists from revealing the identity of their sources in the interest of press freedom.

About the author

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