Volatile times in Oz Media

The Australian media industries are in a period of accelerating digital transition and renewed ownership concentration. First newspapers, and recently the Abbott government ABC cuts, especially in rural and regional Australia, but now commercial TV is bearing the brunt of these forces of convergent media consolidation, and the networks are scrambling to reposition themselves for an unavoidable hit from Internet Protocol TV (IPTV). This restructuring is occurring at a time when the advertising spend and splintering audience engagement with network TV has been on the wane for some years.

Netflix is to start their Australian subscription service in March 2015, and local industry defensive strategies and mergers are emerging in response. According to Mumbrella, Netflix already has an estimated 200,000 Australians using Virtual Private Networks (VPNs) signed up (http://mumbrella.com.au/two-stats-netflix-scare-foxtel-quickflix-237960). They have appointed their PR (Pulse PR), local advertising (Droga5) and social marketing (We are Social) teams, so the fanfare is imminent. This major US media industry disrupter was described in a piece in The New Yorker earlier this year in these terms: “During peak hours, Netflix accounts for more than thirty per cent of all Internet down-streaming traffic in North America, nearly twice that of YouTube, its closest competitor. The Netflix Web site describes the company as ‘the world’s leading Internet television network’” (The New Yorker, ‘Outside the Box’, 3 February 2014 http://www.newyorker.com/magazine/2014/02/03/outside-the-box-2).

Nine and Fairfax Media have announced ‘Stan’, the branding tag for their new $100 million streaming content offering. The subscription video service hopes to steal at least some of the thunder from Netflix’s fabulously successful movies and TV on-demand service. And they might have some luck: according to Business Spectator (http://www.businessspectator.com.au/news/2014/11/5/technology/nine-fairfax-unveil-stan), they’ve told the market they have first-run rights for the prequel to Breaking Bad, which has the catchy title ‘Better Call Saul’.

Writing about the joint venture in The Conversation, I suggested these developments were situated in the longue durée of TV’s gradual decline in the face of these internet-enabled modes of content distribution (http://theconversation.com/nine-and-fairfax-media-streaming-towards-a-full-tango-30862). In the US, the on-demand internet video distribution sector has seen the rise of big brands such as Netflix, Amazon Instant, Hulu, Google Fiber, Apple TV. Locally, we’ve got Quickflix, Foxtel’s Presto, their new service Boxsets, and Telstra’s Fetch TV. Everyone has YouTube. The Ten and Seven Networks are reported to be in talks with Foxtel regarding joining the Presto service. At the same time, the public broadcasters have joined forces with the commercial networks to finally introduce Freeviewplus, available using HBBTV (or Hybrid Broadcast Broadband TV, an international IPTV standards initiative https://www.hbbtv.org), assuming audiences have access to the right hardware. The long-term success of this on-demand service is not guaranteed though, given it is afterall a catch-up service which uses the same network content, but made available at a non-scheduled time.
The only reason Communications Minister Turnbull doesn’t fully deregulate cross-media rules, and remove any restrictions on these kinds of multi-platform mergers, is that there’s a lack of consensus among the media proprietors. The Australian public interest in having a diversity of media voices is the least of his concerns, even if he could get his way.

Network Ten in Play

Meanwhile, a succession of reports has revealed that Network Ten, who have appointed financial advisers Citi to sift out the best offers, is up for sale. Ten is a target because it has posted consecutive losses of $168 million in 2013-14, and $284 million in 2012-2013, and is seen by many to be in an uncontrollable death wobble. Potential buyers would need deep pockets to buy hit programming, including buying the FTA rights to major sports.

These consolidation developments seem to be following an international trend of US cable giants buying free-to-air television, as seen in the UK’s Channel 5 being bought by the owner of MTV, Viacom, and a strategic stake in the main British commercial network, ITV, by the James Malone controlled Liberty Global. These kinds of mergers allow content providers to access a free-to-air licence, and thus distribution arrangements at zero or low cost.

Discovery Communications, Foxtel, Time Warner and US private equity firm Hellman & Friedman have all been named as potential suitors. Fairfax Media reported in ‘Equity giant joins race for Ten’ (SMH, 10 November) that ‘News of Hellman & Friedman’s interest comes five days after it emerged that US cable television giant Discovery Communications was weighing up a joint bid for Ten with local pay TV monopoly Foxtel’.

No strangers to the Australian media scene, Hellman & Friedman’s chairman, Brian Powers represented the Tourang consortium which tried to rescue Fairfax from receivership back in 1990 (who later became Kerry Packer’s Consolidated Press Holding’s CEO). News Corp’s The Australian (Media and Marketing) reported on the same day that ‘Ten talks to Foxtel but no deal yet’. They noted that ‘Any deal with Ten would need to win the support of three savvy shareholders who have guaranteed a $200 million loan to the network: News Corp co-chairman Lachlan Murdoch, Crown Resorts chairman James Packer and WIN corporation owner Bruce Gordon’. With Gina Rinehart, these investors control about 40% of the network. On the same day as these reports Fairfax Media’s Australian Financial Review splashed on the front page with ‘Time Warner’s Ten play’. They interpreted the $680 million offer as ‘another sign big American media companies are turning to Australia for growth’. The story claimed that in a letter to Ten’s advisor, Citi, Time Warner said any bid ‘would be made by Time’s cable division, Turner Broadcasting System’. It’s interesting to note that back in July this year Time Warner was itself a target of the ever predatory News Corp, who offered a reported $85 billion, which TW rejected.

The latest news, as reported in Fairfax Media, is that ‘Murdoch confirms Foxtel may buy a slice of Network Ten’ (SMH, Business Day, 15-16 November) in partnership with Discovery Communications, the owner of the hugely successful Discovery Channel. As required by the cross-media laws, News would be limited to a non-controlling share of 14.9% of Network Ten (because of Lachlan Murdoch’s ownership of radio chain Nova Entertainment). Yet over and above plurality limits, even this level of share holding would attract scrutiny of the competition regulator. ACCC head Rod Simms has told Fairfax Media “We would have concerns if Foxtel sought to own a free-to-air station because that could substantially lessen competition in the viewing market” (SMH, Business Day, ‘Ten looking beyond metro TV for income’, 20 October). If the Abbott Government can persuade the various media stakeholders to get behind the removal of cross-media rules, 2015 could see a major shake down in traditional media ownership.

Report from the Trenches: NBN Blues

All of this disruptive IPTV distribution assumes a fast broadband infrastructure to send it over. But the future of Australia’s erstwhile, world-leading, innovative NBN, is now somewhat murky with Fibre-To-The-Premises (FTTP) becoming a distant memory. According to Technology Spectator, much will depend on having a renegotiated deal between the NBN and Telstra (‘Telstra-NBN deal a Christmas gift for the Coalition’, Adhikari, 24 October). The deal, currently valued at $11.2 billion, is reported to hinge on ownership of the copper networks, and the rollout of the Fibre-To-The-Node (FTTN) – both will be decisions with long-term consequences. But the short-term goal of a million premises connected to the NBN under the Coalition’s ‘multi-technology’ plan is a moving target.

NBN Co chief executive Bill Morrow says the NBN rollout performance is on track: ‘These results reflect the improvements we are making in construction, product development and the end user experience. They represent solid progress towards our FY15 targets of 1 million serviceable homes and 480,000 end user’ (Technology Spectator, 24 October).

Watch this space.
Data Retention and Counter-Terrorism Laws

Law enforcement and national securities have always been able to access the communication metadata with the appropriate court order. However, the Abbott government’s Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 goes much further and requires Internet Service Providers (ISPs) to retain details of Australians’ internet use for two years.

The Australian Financial Review, in ‘Telecos demand “devil in detail” on data bill’ http://www.afr.com /p/technology/telcos_demand_more_details_on_data_U7Uw6rlnzZShQsSPWy4AO (31 October), reported that telecommunications companies had requested more clarity ‘after content pirates, terrorists and paedophiles were all named as targets of metadata collection under data protection laws’.

ISPs including iiNet and Optus have warned the government that the mandatory collection of this data may cost them more than $200 million. The devilish details raised include concerns regarding the position of Over-The-Top applications such as Skype and WhatsApp, and whether their communication data would also be collected. It’s been suggested that the growth of the ‘Internet of Things’ and machine-to-machine (M2M) internet communications is another vast possible source of data that could be collected. These could cover transactions from EFTPOS and vending machines, in-car and other transport systems which store personal data. Many have called for public consultations in relation to kinds of personal data the proposed laws would capture. Attorney-General Brandis has commented in the media that storing the data offshore would be possible under the proposal.

These ill-defined metadata collection laws are source of great concern for privacy and civil liberties advocates. No doubt wishing to avoid the kind of backlash seen in earlier attempted amendments to 18C of the Racial Discrimination Act 1975, the government pushed the data retention Bill off to the Parliamentary Joint Committee on Intelligence and Security for an inquiry.

And amendments to counter-terrorism laws may result in journalists being jailed for doing their jobs. Section 35(P) of the National Security Legislation Amendment Act (No. 1) 2014 could see anyone ‘disclosing information’ regarding a ‘designated special intelligence operation’ go to jail for up to 10 years (AFR, ‘Brandis’ word not enough’, 31 October). Not surprisingly, media organisations are pointing to the way this may well interfere with journalists simply reporting news in the public interest. A response by Brandis to the effect that, as a safeguard, the DPP would be required to gain the consent of the AG, has not been greeted with any confidence. He says that the provisions are aimed at whistleblowers such as Edward Snowden, but he seems to conveniently forget that the media are a necessary part of public interest disclosures.

The Parliamentary Joint Committee on Intelligence and Security, in their report tabled on 14 September ‘Advisory Report on the National Security Legislation Amendment Bill (No. 1) 2014’, made a recommendation to include certain exemptions to section 35P in relation to the disclosure of information but these did not cover the activities of journalists (Rec. 11). However, the committee recommended: ‘The National Security Legislation Amendment Bill (No. 1) 2014 be amended or, if not possible, the Explanatory Memorandum of the Bill be clarified, to confirm that the Commonwealth Director of Public Prosecution must take into account the public interest, including the public interest in publication, before initiating a prosecution for the disclosure of a special intelligence operation’ (Rec. 12). They also recommended that the criminal law mental element of ‘recklessness’ be added when considering intention in relation to the offence (Rec. 13). Whether these recommended amendments are sufficient to prevent journalists from being jailed remains to be seen. Both Houses of Parliament passed the law on 1 October 2014.