



**REVIEW OF THE REGULATION OF CONTENT DELIVERED OVER MOBILE
COMMUNICATIONS DEVICES**

**SUBMISSION TO THE DEPARTMENT OF COMMUNICATIONS INFORMATION
TECHNOLOGY AND THE ARTS**

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Executive Summary

Access to minimum levels of Australian content by Australian audiences is a fundamental tenet of our television and broadcasting environment. Television has been the most significant form of mass communication since its introduction in Australia in 1956. It is society's most important provider of information on matters of public interest. It contributes to community cohesion and plays a direct role in the development of a vibrant sense of national identity, providing an outlet to reflect the diversity of cultural expression within Australia.

The AFC is of the view, that as television and cultural content distribution evolves and changes, the importance of access by Australians to Australian content potentially becomes more complex but should remain a fundamental goal.

Mobile communications devices are increasingly being used to deliver content to consumers. The AFC strongly believes that Australians receiving content through such devices should have a choice to view Australian content, as they have through traditional media. The AFC recommends that the Australian Broadcasting Authority (ABA) and the merged authority, the Australian Communications and Media Authority (ACMA) monitor content on mobile communications devices – with data released annually – to track their development as important new content delivery platforms and monitor levels of Australian content. The area of mobile communications content delivery should then be reviewed in no later than three years.

In the event that the market delivers inadequate levels of Australian content, the government should intervene to ensure Australians have access to Australian content on these emerging audiovisual services. This may be delivered through direct or indirect funding models, regulation or a combination of these policies. The AFC currently does not take a position on whether such regulations are currently appropriate, required or necessary. It is the AFC's intention to suggest that regulation for Australian content on such services is simply possible and may or may not become an issue for discussion in the future. The AFC will take a broad perspective on what the AFC considers possible or desirable as new services develop.

Introduction

The Australian Film Commission (AFC) is a statutory authority which aims to enrich Australia's cultural identity by fostering an internationally competitive audiovisual industry, developing and preserving a national collection of sound and moving images, and making Australia's audiovisual heritage available to all Australians.

The AFC is Australia's premier research and policy body for the film and television production industry.

The AFC welcomes the opportunity to provide comment on the regulation of content delivered over mobile communications devices.

While the AFC understands that the current review generally focuses on the regulation of adult content available over mobile devices, the review also canvasses the potential for mobile content more generally to fall within the purview of the Broadcasting Services Act. With this in mind, the AFC feels that the current review provides the opportunity to raise a number of issues related to content via mobile telephony that the AFC has been considering and engaging with over the previous year.

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Australia US Free Trade Agreement (AUSFTA)

Prior to the signing of the AUSFTA, the AFC undertook extensive research into options for regulating and supporting Australian content on new services. As a part of this work, titled *Flexible Vision: A snapshot of emerging audiovisual technologies and services, and options for supporting Australian content*,¹ 2.5g and 3g cellular mobile services were examined. The focus of this research was upon the potential for new technologies to be a significant carrier of content and possible means of regulating Australian content if necessary.

Under Annex II of the AUSFTA, Australia retains the power to regulate (subject to certain conditions and limits) subscription television, multichannelling and interactive audio and/or video services for Australian content purposes. The reservation on interactive audio and/or video services states:

Measures to ensure that, upon a finding by the Government of Australia that Australian audiovisual content or genres thereof is not readily available to Australian consumers, access to such programming on interactive audio and/or video services is not unreasonably denied to Australian consumers. Any measures addressing such a situation will be implemented through a transparent process permitting participation by any affected parties, be based on objective criteria, be the minimum necessary, be no more trade restrictive

¹ This can be found at http://www.afc.gov.au/downloads/policies/flexible_vision_final.pdf

than necessary, not be unreasonably burdensome, and be applied only to a service provided by an enterprise that carries on business activities in Australia in relation to the supply of that service.

Mobile telephony services could conceivably be classed as an interactive audio and/or video service with its various elements of interactivity, audio and video within 2.5G, 3G or higher generational capacities.

The emergence of mobile phones as content delivery platforms

The AFC's above-mentioned research examined the likely future status of 2.5G and 3G cellular mobile services in Australia and internationally. The full section is attached at Appendix A.

Mobile phones were used by an estimated 1.34 billion people worldwide in 2003 (up from approximately 91 million in 1995, and 1.158 billion in 2002), or 53.49% of total telephone subscribers.² In Australia, more households have mobile telephone connections than they do traditional fixed phones. In late 2003 the Australian Communications Authority (ACA) estimated that Australia's 14.3 million mobile users sent approximately 4 billion text messages in the 2002-2003 financial year.³ The mobile phone is now well established in the lives of consumers, not only for voice calls but for a range of education, commerce, entertainment, leisure, social and cultural uses.⁴

2.5 generation mobile phones now offer the capacity to send audio, pictures, and short videos (with MMS, for instance). Third-generation (3G) mobile phones offer enhanced capacity to send and receive video. 3G rollout has been delayed by inflated prices paid for licences, especially in Europe. As of May 2004, Hutchison claimed 1.73 million subscribers worldwide.⁵ Hutchinson have offered 3G in Australia since April 2003, announcing in August 2004 they will share their infrastructure with Telstra. In August 2004, Hutchison claimed 291,000 3G customers.⁶ Singtel Optus and Vodafone also announced in August 2004 that they will introduce and share 3G network infrastructure.

The Mobinet 2004 study⁷ reported that while Australia's internet enabled phones (IEP) penetration rate is 36 per cent (below the global average of 47 per cent) MMS use by Australian camera phone owners was 50 percent. The report estimated the 'market for mobile data services beyond SMS and MMS is likely to be around A\$50 million (US\$36 million) a year today, rising to above A\$300 million in the next two years'.⁸

While SMS, and increasingly MMS, is now very much part of Australian everyday life and culture, and is important for user-generated content, it is now a crucial

² International Telecommunications Union (ITU), 'Mobile Cellular, subscribers per 100 people,' *World Telecommunication Indicators*, 10 May 2004 <<http://www.itu.int/ITU-D/ict/statistics/>>.

³ *Telecommunications Performance Report 2002-2003*. December. ACA, Melbourne. <http://www.aca.gov.au/aca_home/publications/reports/reports/performance/2002-03/report.htm>.

⁴ Paul Levinson, *Cellphone: The Story of the World's Most Mobile Medium and How It Has Transformed Everything!*, Palgrave Macmillan, 2004; Rich Ling, *The Mobile Connection: The Cell Phone's Impact on Society*, Morgan Kaufmann, 2004.

⁵ Ouida Taaffe, 'Sharing the 3G strain: Hutchison 3G Australia and Telstra set up 3G access infrastructure JV', *ITU Telecom04 On-line news service*, 4 August 2004, <<http://www.itudaily.com/new/home.asp?articleid=4080401>>.

⁶ '2004 First Half Year Results', 18 August 2004, Hutchison, <<http://hutchison.com.au>>

⁷ For further information on the Mobinet study, see <<http://www.atkearney.com/main.taf?p=5,4,1,100>>.

⁸ 'Australia lags in Internet, camera cell phone use: survey', *Asia Pulse*, 19 July 2004.

distribution channel for a growing range of cultural content, entertainment and information.

Ringtones has been an enormously successful service in its own right, with significant revenues for the music and recording industries as evidenced in charts for the most popular ringtones. Wallpapers have also been important, as too have games. What is most pertinent for the present review is the emerging significance of mobiles as a delivery vehicle for television, film, and other audiovisual content. Unexpectedly mobile communications devices have become an important and lucrative path for interactivity in television, offering voting (*Big Brother*, *Australian Idol*), text strap-lines (music video program Channel V), and video downloads, among other services.

A lucrative premium rate SMS/MMS mobile content industry has rapidly grown in Australia from late 2002 onwards. A six-month trial of short-number SMS/MMS services was permitted by the ACA in 2003, which formally allowed these services to be offered on a new 19x short-number range from May 2004.⁹ This new industry involves partnerships among different participants. There are carriers, most notably Telstra, Optus, Hutchinson, and Vodafone, as well as service-based competitors such as Virgin. There are premium rate service providers such as Legion Interactive or Infocall, who buy and re-sell content from providers overseas and in Australia, as well as, in some cases, creating content in-house.¹⁰ Broadcasters, advertisers, and cultural producers are also emerging as important players in this aspect of the mobile services industry.

What is emerging in Australia and elsewhere in 2004 is steady consumer take-up of 3G mobile handsets and services, with superior video transmission and viewing capabilities. Overall takeup of 3G is relatively small compared to overall ownership of mobiles, television, or Internet access.

There have been further initiatives taken by mobile providers to partner with television broadcasters to offer content.

Australian examples of mobile phone content

In Australia, Optus Zoo – Australia's first mobile telephone television service has been running close to a year and according to some reports has up to 800,000 subscribers¹¹. The service re-transmits and streams ABC, SBS and CNN. Video downloads will also be available, including Channel 10 Sports Tonight, American Associated Press Television News (APTN) international news, Australian Associated Press (AAP) and Channel Seven finance news updates, and 1–2 minute update news bulletins from channels 7 and 10. Since its launch it has continued to add additional services including:

- a music service: by MTV featuring music downloads, preview-length clips, charts information, news, gig guides, reviews and video interviews with artists; and,
- a movie service: by Urban Cinefile featuring reviews and trailers.

⁹ Gerard Goggin and Christina Spurgeon, 'Communications Policy at a Premium: SMS/MMS and the Politics of Convergence,' Proceedings of the 2004 Communications Research Forum, Old Parliament House, Canberra <http://www.dcita.gov.au/crf/forum_program.html>.

¹⁰ Examples of these services can be seen in entries for the annual Mobile Marketing Association awards, <www.mmaawards.com>.

¹¹ Mike Barton, "Mobiles let customers call the tune," *Sydney Morning Herald*, September 4, 2004 <http://smh.com.au/articles/2004/09/03/1093939146347.html?from=storylhs>

The AFC also understands that Optus has available an “Arcade” channel which allows customers to connect directly from their mobile phone to third party content providers.

Telstra has recently announced it will introduce the popular Japanese i-Mode service in December 2004, with content including material from Disney and Ted Turner’s networks.

Australian animation company Blue Rocket Productions, which produces children’s cartoons and has received funding through the Australian Film Commission’s Broadband Production Initiative, has signed a number of distribution deals with international mobile content and distribution companies. In 2003 Blue Rocket partnered with European animation mobile content specialist RSP to provide high quality animated mobile phone content to global mobile network operators and DMPS providers including the UK’s O₂. In June of this year Blue Rocket signed with FoneStarz Media to supply a range of premium 3G and MMS content based on their cartoon series and other animated cartoons created specifically for the mobile. In September through their connection with FoneStarz, Blue Rocket will distribute their work through the European-based T-mobile specifically for Oktoberfest celebrations.

Vodafone Live! Australia has also featured a text only soap opera named TXT Life on their 2.5G service.

International examples of mobile phone content

Internationally, there are a growing number of broadcasters and producers working with telecommunications companies.

Building on their success in integrating television broadcasting, audience interaction, marketing, and advertising across television, Internet, and mobile platforms, production company Endemol – the Dutch-based producer of *Big Brother* – launched an innovative ‘photo’-soap in the Netherlands in late 2003. Stills of the soap *Jong Zuid* were sent to mobiles as the plot developed, and ‘behind the scenes’ programming aired on television. The mobile soap won an award for media innovation at the Ammas Dutch media awards.¹² In Spain in June 2004, Endemol in association with its parent company Telefonica Moviles España, began offering a mobile phone soap, delivered by MMS. Called ‘FanTESStic’, the soap follows the story of Tess, a DJ in Ibiza.

*Clients who subscribe to the soap will receive three weekly episodes. Each episode will include a multimedia message including pictures, text and music. The style of the series mixes human characters with comic-book images. On occasion the soap’s characters will ask the viewer for advice, making the audience an integral part of the plot’s development.*¹³

¹² ‘Soap cleans up’, *Media And Marketing Europe*, 30 June 2004.

¹³ ‘Spain’s Telefonica to offer soap operas via cell phone’, *EFE News service*, 24 June 2004.



Figure 1: Scenes from 'Fantestic'¹⁴

The soap will now be launched in the UK in September 2004 by Endemol UK and MMS provider Opera Telecom.¹⁵ The strip runs over a sixteen-week period, via MMS sent every weekday costing £1.50 for the week's episodes.

In Korea in March 2004, SK Telecom launched a satellite that will beam DVD-quality video to a mobile using digital multimedia broadcasting technology. The service is said to provide access to 39 channels of movies, news, and information at a fixed monthly fee of \$10 to \$12.¹⁶ AT&T and NBC in the US offered video clips of 2004 Olympics for subscribers.¹⁷ In June 2004, Shanghai Media Group (SMG) signed a strategic framework agreement with China Mobile Shanghai and China Mobile Jiangsu at the Shanghai TV Festival, to offer video and television on demand to 3G users. Programs will be offered from 11 channels, but especially from Dragon TV.¹⁸

In the US, Sprint PCS's 'Mobitv' package offers live television from 20 stations, including C-net, MSN BC, ABC News, and the Discovery channel.¹⁹

Early evidence of the importance of mobile communications devices for Australian cultural producers, audiences, and industries can be seen in the emerging work of filmmakers and artists. There is now a dedicated Zoie Cellular Film Festival to be held every December, which celebrates independent works from around the world via mobile devices.²⁰ A Chinese novelist has announced a novel written exclusively for mobile users, to be received by SMS.²¹ Internationally there is a growing body of work by artists using mobile phones.²²

News Corp has also begun to experiment in drama content for mobiles with News Corp senior vice-president content and marketing, Lucy Hood, presenting a series

¹⁴ From < <http://www.we-make-money-not-art.com/archives/002150.php>>.

¹⁵ Tony Hallett, 'Big Brother creator brings soap opera to mobiles', *Silicon.com*, 3 September 2004; see <<http://fantestic.endemoluk.com/>>.

¹⁶ Moon Ihlwan, 'Korean sensation: "I'll pick up the check — with my cell phone"', *Business Week*, 21 June 2004.

¹⁷ Jim Finkle, 'TV, cable networks, cell-phone providers aim to bring Olympics to viewers', *Knight Ridder/Tribune Business News*, 12 August 2004.

¹⁸ "Internet TV brings opportunity,' *China Economic Net*, 16 June 2004, http://en.ce.cn/National/Science/200406/16/t20040616_1082571.shtml

¹⁹ <<http://mobitv.com/index.html>> For an early user perspective, see Mark Langberg, 'TV comes to the mobile phone', *Age It*, 12 March 2004.

²⁰ <<http://www.zoiefilms.com/cellularcinema.html>>

²¹ 'Chinese author plans world's first short-messaging novel', *Agence France-Presse*, 12 July 2004.

²² Lisa Gye, 'Mobile Art', paper delivered to the Distributed Difference Conference Day at the Biennale of Electronic Arts, Perth Cultural Centre, Friday 10th September.

titled *Hotel Franklin* at Cannes. Clips of the Fox series *The Simpsons* and *Who wants to be a millionaire?* have also been licensed to be delivered via mobile phones.

One of the difficulties faced in offering cultural content over mobiles, especially moving image, has been the quality of the viewing experience due to the size and limitations of handset and the bandwidth of transmission. There is recent experience of communications, cultural and entertainment industry coordination to systematically address problems of compatibility, standards, and implementation to make television over mobile devices a reality. In Europe, British wireless carrier O₂ and television broadcast technology company NTL (NTLI) announced they would start a consumer trial in Oxford, England in early 2005, using multimedia handsets made by Nokia.²³ In addition an alliance of major mobile phone makers, including Nokia, NEC (NIPNY), Motorola (MOT), Siemens and Sony Ericsson announced they would cooperate to build a standard allowing television to be watched on several types of devices.²⁴ This device/trial includes a Digital TV tuner chipset, therefore extending the functionality of the phone to that of a receiver.

2 and 3G mobile phones can have many different layers of services:

- Voice via GSM or CDMA
- Data via GPRS (an internet protocol via wireless radio signal)
- FM Radio receiver
- Future Digital TV receiver

Policy implications

It is clear that mobile communications devices are becoming important carriers for the distribution and consumption of cultural content. We are witnessing the complex convergence of mobiles, wireless, other media platforms and established media industries, giving rise to some clear policy issues:

- Ensuring continued *open access* to mobile platforms by telecommunications carriers and service providers, content service providers, and cultural producers. Access and availability of cultural content on free-to-air and subscription television is a familiar debate. Such questions are only now beginning to be raised internationally regarding mobile communications devices;
- Ensuring access to a diverse range of cultural and linguistic content, including Australian content, on new mobile communication platforms, especially as mobiles become established as important sites of cultural consumption and citizenship.

To date, there has been very little policy debate regarding the implications of content delivered via mobile devices. Only very recently, for instance, have consumer issues been discussed, and the debate has tended to focus on issues of regulating inappropriate or undesirable content. The mobile network operators, content portals and the Internet industry via the Internet Industry association are currently formulating a code of practice to address issues relating to content on mobiles. There is a need for an integrated approach to be taken across traditional telecommunications matters — in the purview of the Australian Competition and Consumer Commission and ACA — and broadcasting and cultural matters —

²³ Lalia Weir, 'Cell Phone TV is coming', 10 September 2004, *Wired News*,

²⁴ Weir, 'Cell Phone TV is coming'.

regulated by the ABA, Office of Film and Literature Classification (OFLC), with interest from cultural agencies.

An important first step to understanding the content issues raised with mobiles is for government regulatory agencies to conduct research into, and monitoring of, mobile services to understand:

- the sorts of content and services they offer;
- the value chains, business models, and industry structures underlying the services;
- who produces the content;
- what levels of Australian content are being offered;
- what the audiences are for this content, how they consume it, and how this relates to their consumption of content via other media devices;
- given the nature of the mobile content services, which regulatory models canvassed by the AFC in *Flexible Vision* would be most effective, if deemed necessary.

The AFC recommends that the ABA and the merged authority, the ACMA, monitor local content on mobile communications devices in order to track their development as important new content delivery platforms and the levels of Australian content available.

The AFC's research pointed to a number of possible ways of regulating content delivery over mobile communications devices in order to support Australian content. These are set out more fully in Appendix B taken from *Flexible Vision*, which includes:

- transmission quotas;
- expenditure quotas;
- positioning and promotion of Australian content; and
- 'must carry' and Australian content access regimes.

Depending upon the form of regulation, the channel provider or service provider could conceivably be the subject of regulation and in the case where content is accessed through third party content providers (via for example Optus Arcade), alternative forms of regulation such as positioning and promotion can be utilised.

Further to this, models of direct or indirect funding may be available, involving increased funding to cultural agencies and collections. One option would involve the formation of a fund for the production of Australian content specifically designed. This could be funded from direct Commonwealth government funding, indirect funding through levies and taxes or a combination of both.

Relationship of mobile communications devices to the Broadcasting Services Act (BSA)

There is extensive debate around the definition of mobile communications services, particularly as to whether they should fall within the BSA under s.17 "subscription narrowcasting services"²⁵ or s.16 "subscription broadcasting services."²⁶

²⁵ *Subscription narrowcasting services are broadcasting services:*
(a) whose reception is limited:
(i) by being targeted to special interest groups; or

The AFC notes that the Minister for Communications, Information Technology and the Arts issued a determination in September of 2000 stating that the following class of services do not fall within the definition of a broadcasting service:

“a service that makes available television programs or radio programs using the Internet, other than a service that delivers television programs and radio programs using the broadcasting services bands.”

The AFC understands that audiovisual content is currently delivered via Internet technology protocols. However the content of bundled television services are, for all intents and purposes, broadcast television. For the most part, mobile communications service providers take straight feeds from existing services. Television is accessed in real time in the same way as current digital television services or subscription television services. Television services are also accessed via a suite of services that includes the Internet. Mobile communications service providers add value to these services by commissioning content to be screened exclusively on their bundled television services.

It is the AFC’s understanding that it is possible to have mobile communications devices fitted with a television tuner receiving straight free-to-air feeds. Further, a DVBH standard (Digital Video Broadcasting Handheld) is being developed as the standard for future mobile television service delivery.

If a television service distributed via a mobile communications device is deemed to be “using the Internet” then it would not fall within the purview of broadcasting for the purposes of the BSA. While the determination provides a substantial degree of certainty to the Internet industry, as it is subject to parliamentary scrutiny as a disallowable instrument (for the purposes of section 46A of the *Acts Interpretation Act 1901*.) The issue may be revisited at anytime.

If the determination is reviewed, television services via mobile communications devices could fall within the purview of the BSA under s.17 “subscription narrowcasting services” as a broadcasting service whose reception is limited for “some reason” (for example, limited to mobile phone users) or s.16 “subscription broadcasting services,” intended to appeal to the general public and made available on payment of subscription fees.

It is argued that using a mobile phone to receive subscribed content is similar in substance to a set top receiver – both act as proprietary conduits to receiving content

(ii) by being intended only for limited locations, for example, arenas or business premises; or
(iii) by being provided during a limited period or to cover a special event; or
(iv) because they provide programs of limited appeal; or
(v) for some other reason; and

(b) that are made available only on payment of subscription fees (whether periodical or otherwise); and

(c) that comply with any determinations or clarifications under section 19 in relation to subscription narrowcasting services.

²⁶ *Subscription broadcasting services are broadcasting services that:*

(a) provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and

(b) are made available to the general public but only on payment of subscription fees (whether periodical or otherwise); and

(c) comply with any determinations or clarifications under section 19 in relation to subscription broadcasting services.

If a service falls within either definition, mobile television services could be regulated for Australian content purposes – consistent with the terms of the AUSFTA. As described above they could also conceivably fall within “interactive audio and/or video services” under the AUSFTA.

Conclusion

The current review provides an opportunity to gaze into the future of the audiovisual environment and the services that may be on offer. While current services are assessed against current technology, new services need to be assessed in light of their development path. Any policy decisions made regarding new audiovisual services should also focus on the content of these services as well as on technology and the means of delivery.

This review also provides the occasion to restate the fundamental importance of Australian content in the audiovisual environment. Australian content must be a focus from the outset, not an afterthought once the service is established in a framework that might preclude regulation. Definitions of broadcasting versus Internet streaming in the current BSA should not obstruct or obscure the principle that Australian content must have a significant presence on any new major audiovisual service, now restrict the debate on how best to achieve this.

The AFC recommends that mobile phone content be monitored by the ABA/ACMA – with data released annually – to determine whether adequate levels of Australian content are provided. This should then be reviewed in no later than three years time. The AFC believes that it is appropriate that the ABA/ACMA monitor these services for their growth and potential as future significant carriers of information, communications and entertainment. The government should be prepared to intervene if necessary to ensure Australians have access to Australian content on emerging audiovisual services, including mobile communications devices using the full range of policy interventions available to it including potential regulation. The AFC currently does not take a position on whether such regulations are currently appropriate, required or necessary. It is the AFC’s intention to suggest that regulation for Australian content on such services is simply possible and may or may not become an issue for discussion in the future. The AFC will take a broad perspective on what the AFC considers possible or desirable as new services develop.

Appendix A Extract from: AFC, Flexible Vision: A snapshot of emerging audiovisual technologies and services, and options for supporting Australian content, November 2003

2.5G and 3G cellular mobile services

Definition: 2.5 and 3rd generation (2.5G and 3G) cellular mobile services are the next generation of phone networks recently introduced into the market in Australia and many overseas countries. Compared to 2G phones, which mainly provide telephony and basic text services, 2.5G and 3G phones will have a considerably greater bandwidth available for multimedia purposes. 2.5G and 3G users can send large files (which could contain video, text and audio) from phone to phone, surf the Internet, and receive streaming video and audio services (ie broadcast type services). In many ways, the capabilities of a 3G phone approach that of broadband Internet access.

Consequences for current content delivery: Many predict that this next generation of multimedia-capable cellular service will provide a rich array of 'personalised' content to users. However, the very nature of the product (portable and personal) means that most of the 'high value' content applications are also likely to be very location-specific (eg local weather, local maps, nearest chemist, local news update etc.). Given this type of content will be the main focus, by its very nature the content should be largely locally produced.

Mobile phones are also increasingly being used as a 'back-channel' for interactive television. When consumers send a text message to promoters like TV stations it is usually billed to them at a higher price, and the broadcasters share in the revenue generated from the messages sent.

Current and future status

International: 3G phone networks are being progressively launched in most advanced economies. Like Australia, the market is still immature and 'killer applications' have yet to be found. Mobile phones have been used successfully as an interactive back channel in reality television series such *Big Brother*.

A 4G trial was held in Japan recently which enabled video of similar quality to high-definition television to be transmitted and received,²⁷ while a new prototype 3G phone incorporating a digital terrestrial tuner has been developed by NEC in Japan.²⁸

A standard has been developed for mobile digital television, with Finland trialling the DVB-H (digital video broadcasting: handhelds) mobile digital terrestrial television standard in 2005.²⁹ It is expected that subscribers will have access to eight channels.

Australian firm IPR Systems has developed the Open Digital Rights Language (ODRL) version 1.1. This has been adopted by Nokia, Samsung and Sony-Ericsson, operators including Vodafone, as well as by the open-standards-setting body the Open Mobile Alliance, as the standard to safeguard copyrighted content distributed over 3G networks.³⁰ ODRL allows content creators to determine how their material is used, including how many times it can be consumed, for how long it can be consumed before it expires, and how many times it can be forwarded, if at all.

²⁷ Australian Communications Authority, *ACA Futures Panel Quarterly Report*, July 2003, http://www.aca.gov.au/aca_home/about_aca/futures_panel/July-03_report.pdf, accessed 12 November, 2003

²⁸ 'New 3G cell phone feature digital TV', *Screen Digest*, August 2003

²⁹ 'Standard developed for digital TV on mobiles', *Screen Digest*, October 2003, p. 317

³⁰ Nathan Cochrane 'Sydney firm to protect 3G content', *Sydney Morning Herald*, April 15 2003, <http://www.smh.com.au/articles/2003/04/14/1050172523035.html>, accessed 12 November, 2003

Research group Datamonitor predicts the market for content over mobile phones will increase to US\$38 billion in three years.³¹

Australia: Hutchinson Australia recently launched a 3G network covering the major capital cities. Optus, Telstra and Vodafone have launched 2.5G services and reserve the right (subject to demand) to roll-out 3G. Subscriber numbers for 3G are currently below 100,000. There is great conjecture as to whether 3G services will appeal to users. They are considerably more expensive than 2G services and it is still questionable whether the mobile phone will be used for advanced multimedia purposes.

Optus launched Australia's first mobile phone television service, known as Optus Zoo, in November 2003.³² The service will re-transmit and stream ABC, SBS and CNN. Video downloads will also be available, including Channel 10 Sports Tonight, American Associated Press Television News (APTN) international news, Australian Associated Press (AAP) and Channel Seven finance news updates, and 1–2 minute update news bulletins from channels 7 and 10.³³

Mobile phones have been used as an interactive back channel in several Australian reality TV series including *Big Brother 3*, *Australian Idol* and *Fat Cow Motel*. Spending on mobile phone ring tones is currently at \$20 million.³⁴

Current Australian regulation

No regulations (beyond censorship) cover Internet content on mobile cellular phones.

Potential Australian regulation

If 3G phones are to be used to receive streaming media (say a television service), then the Australian content on these services should be captured by similar regulations for radio, free-to-air TV or pay TV. Options might include:

- transmission quotas (on-demand services);
- expenditure quotas;
- positioning and promotion of Australian content;
- 'must carry' and Australian content access regimes.

See *Summary of regulatory options*, Appendix B.

³¹ *ibid.*

³² 'Optus makes TV mobile', Optus Media Release, November 2003 http://www.optus.com.au/Vign/ViewMgmt/display/0,2627,1031_34652-3_31346--View_303,FF.html, accessed 12 November, 2003; 'Optus launches 1st mobile phone-TV offering', *Media Day*, November 11, 2003, Issue Number 1609

³³ *ibid.*

³⁴ Sue Lowe, 'Ringtones soar to tune of \$20m', *Sydney Morning Herald*, 30 August 2003

Appendix B Extract from: AFC, Flexible Vision: A snapshot of emerging audiovisual technologies and services, and options for supporting Australian content, November 2003

Summary of regulatory options

...

Governments will need to maintain maximum flexibility as it is impossible to know today what technologies will emerge or become widely used. Several of the technologies under consideration would at first glance pose difficulties for regulators. However, given the nature of most of the content under consideration here, the nature of the likely infrastructure or service providers and the size and nature of the content producers, these issues should not be insurmountable. It is reasonable to assume that companies in the supply chain for these services, with a capacity to control their delivery, will be resident in Australia, carry on other business activities in Australia or require Australian licences to conduct their businesses. Therefore, it is likely that they will be within the jurisdiction of, or caught by, Australian regulation.

Existing Australian content regimes focus on audiovisual material and emphasise Australian drama, children's programming and documentaries. In the online environment new or different social and cultural policy objectives may be required which governments may seek to meet by regulation.

Content obligations

In the same way that Australian content standards apply to broadcast and subscription television they could be applied to other platforms and to developments in traditional media. This is true of expenditure quotas and transmission quotas.

An expenditure quota could be applied to any medium that acquires content. An equivalent to a percentage of expenditure on all or subsets of content could be required to be spent on new Australian content. For example, where a mobile phone company acquires short-format programming it could be required to spend a percentage of the price paid on new Australian content.

The creators of content may also seek to promote that content using short-format programming (music videos, promotion of feature films). Governments could require that a percentage of the actual or attributable value of access to bandwidth be spent on new Australian content.

Where expenditure occurs on a pay-per-view basis (ie the service provider only pays for content which is actually viewed) the percentage levied for local content could be tied to the number of users.

Expenditure quotas could result in actual expenditure by the service provider or contributed to a content fund.

A transmission quota could be applied to any service which has a broadcast stream. For example, any service which offers interactive television services could be required to ensure that a percentage of those services be created in Australia or be attached to an Australian-made program.

If the government wished to encourage the development of an Australian interactive television industry it could require that a percentage of Australian programming must contain interactive elements or that a percentage of program expenditure must be

directed to development of interactive services. This coupled with the existing Australian content requirements for broadcast television could see the creation of a significant amount of interactive television.

Interactive advertising and online transactions utilising streaming video will become increasingly popular. This will include t-commerce, which is commerce using an interactive television. A scheme similar to the current advertising quota could be introduced, at least in relation to 'walled garden' services (a 'walled garden' refers to a browsing environment that controls the information and websites the user is able to access).³⁵

Similarly, a transmission quota could be applied to high-definition television (HDTV) or any other digital transmission standard. A percentage of HDTV content could be required to be Australian or new Australian content. There could also be subquotas relating to prime time HDTV or children's programming etc. When digital radio is introduced any additional content, such as data or visual images which accompany the service, could also be subject to a transmission quota.

On-demand services, whether online or over a digital television platform, create different problems. However, it would be possible to require providers of these services to ensure that a certain percentage of the content available on their platforms is Australian.

Similarly the sale or rental of videos or DVDs could be subject to regulation requiring a certain amount of Australian content to be available. In the United States there has been a considerable growth by businesses such as NetFlix which combines online access and DVD rental. Services such as these could also be subject to various forms of content regulation.

The government may make different rules for different types of content, giving greater weighting to feature films or series drama than to other less expensive content. In seeking to have Australian content disseminated as widely as possible the government may make rules to encourage the re-use or re-purposing of Australian content.

Another scheme suggested is that obligations can be linked to 'eye balls'. A broadcaster's children's quota could be met if the ratings demonstrated that a particular number of children watched a certain amount of programming. This system would work particularly well in an on-demand or online environment where the number of users of content can be easily determined. A service attracting more users or viewers to Australian content could more easily discharge its obligations.

A hybrid scheme might allow a service provider to meet its obligation if it attracted enough of an audience to Australian content or, if it did not, by contributing to a content fund.

Content access regimes

Content access regimes would require platform owners to grant access to the creators of Australian content. There are several variants.

³⁵ Internet.com *Webopedia* at http://www.webopedia.com/TERM/W/walled_garden.html; accessed 30 Oct. 2003

One is a 'must carry' rule where the government requires that certain content be made available on a particular platform, for example, digital subscription TV platforms carrying the national broadcasters, or all of the broadcast networks.

Another variation would see the government requiring platform owners to allocate a certain amount of capacity within their systems to creators of Australian content without specifying who those creators are. Existing US cable operators in many jurisdictions are required to carry public interest channels, with a government authority having the power to adjudicate if a channel meets the criteria.

Finally, the government might choose to create a weightings scheme for access seekers and give creators of Australian content an advantage in seeking access to scarce bandwidth.

If the government decided to extend the definition of the universal service obligation (USO) to access to broadband services it might adopt one or more of these methods to ensure that recipients of USO services could obtain access to Australian content.

Promotion and positioning

In an environment where the number of choices is very large, it is one thing to get content onto a platform, another entirely for users to be able to find it. With electronic program guides, Barker channels, portals, navigational systems and a proliferation of advertising and cross promotion (including using push technology), it is increasingly hard to know exactly what content is available.

Governments might seek to remedy this by requiring Australian content to be available in certain places within a suite of services or promoted or advertised in particular ways.

Channels carrying Australian content or to which an Australian content standard applies may be required to be placed within a certain range close to the beginning of a multi-channel service.

In an online or on-demand service there may be a requirement that a certain amount of Australian content should be accessible immediately from the first entry point to the service. Alternatively, a certain amount of Australian content must be accessible within a limited number of clicks or page turns.

In any of these services there could be a requirement that a certain amount of Australian content be made available as part of the basic or entry price service. There could also be obligations to ensure that Australian content was prominently advertised on the platform and elsewhere, at least as prominently as other forms of premium content.