Media and broadcasting in the digital age
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Key issue
Across the media and broadcasting sectors, digital technologies are disrupting traditional business models and transforming content production, distribution and consumption.

Some key issues for the new Parliament include: the rise of global competitors into the Australian screen and media industry and the impact of this on competition; the state of quality journalism in Australia as trends towards the consumption of online news increases; and whether funding incentives and other support mechanisms for the screen sector are responsive to the current transformations occurring in the industry.

Introduction
Addressing the effects of globalisation and technological disruption on the media and broadcasting environment has been a longstanding concern of Australian governments.

Such issues prompted the Gillard Government in 2011, for example, to undertake the Convergence Review, which found:

Many elements of the current regulatory regime are outdated or unnecessary and other rules are becoming ineffective with the rapid changes in the communications landscape.

The Review’s recommendations included replacing a number of media control rules, including the ‘2 out of 3’ rule (the ‘cross-media ownership rule’), with a ‘minimum number of owners rule’ and a public interest test. While this specific measure was not part of the media reform package delivered by the Labor Government in 2013, the Convergence Review report is part of an ongoing debate about media regulation in Australia. This debate is connected to changes in the media and broadcasting sectors, including the rise of multinational platform service providers, such as Netflix and Facebook, and new forms of media consumption as audience viewing and reading habits rapidly alter.

Media regulation in Australia
The Broadcasting Services Act 1992 (BSA Act) sets out the bulk of the regulatory environment for the traditional television and radio broadcasting industry in Australia, and also contains provisions for regulating parts of the internet industry. It confers a range of functions and powers on the Australian Communications and Media Authority (ACMA) to regulate and monitor the broadcasting industry, including digital television broadcasting.

Most regulation of television and radio broadcasters in Australia occurs as licence conditions under the BSA Act. A series of standard conditions are set out in the Act for each licence type. ACMA works with industry to develop co-regulatory codes of practice for the free-to-air (FTA) commercial and community television and radio sectors and for the subscription television and radio industry.
The national broadcasters—primarily the ABC and SBS—have their own charters and other obligations in respective Acts that regulate conditions of their broadcasting. However, both broadcasters are still authorised to broadcast as the ‘national broadcasting services’ under the BSA Act as regulated by the ACMA.

Print news media (and associated online activities) have self‑regulatory standards of practice. The Australian Press Council ‘is the principal body with responsibility for responding to complaints about Australian newspapers, magazines and associated digital outlets’, although there are other industry regulators, such as the Independent Media Council, which has a code of conduct for print and online print media publishers. Print media and their online outlets may also adopt their own codes of conduct.

The Office of the eSafety Commissioner (eSafety Office) is supported and empowered under the Enhancing Online Safety Act 2015 (Online Safety Act) and schedules 5 and 7 of the BSA Act. The schedules constitute the Online Content Scheme, which draws on principles in the National Classification Code to regulate prohibited online content.

Under the Online Safety Act, the eSafety Office also sets out obligations surrounding cyberbullying and image‑based harm. Other areas of law enforcement also intersect with the eSafety Office’s remit, including the Australian Cybercrime Online Reporting Network, which provides a mechanism to report online crimes and abuse to law enforcement, including prohibited online content and cyberbullying.

However, internet platforms, such as Facebook and YouTube, do not currently require any type of licence and, hence, are almost entirely unregulated under the BSA Act.

Recent media reform

As part of its Broadcast and Content Reform Package, the Turnbull Government in 2017 introduced the Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017. (The Bill became law in October 2017.) It was the third time such a Bill had been introduced by the Turnbull Government to amend media regulations. The most high‑profile change was repealing the 2 out of 3 rule.

The 2 out of 3 rule stated: ‘A person cannot control more than two of the regulated media platforms (commercial television, commercial radio and associated newspapers) in any commercial radio licence area.’

The Government argued that the current laws ‘unfairly restrict Australian‑based broadcast or publishing companies from optimising the scale and scope of their operations and from accessing resources, capital and management expertise available to other media operators.’ It proposed that the reforms would support ‘the viability of … local [media] organisations as they face increasing competition in a rapidly changing digital landscape.’

When the Broadcasting Legislation Amendment (Media Reform) Bill 2016 was first introduced, many media industry leaders were advocating for media law reform. Fairfax Media stated in 2015 and 2016 that a number of factors, including the market penetration of internet platforms and shifts in the distribution and consumption of news and other content, had rendered certain ownership restrictions in the BSA Act redundant.
One of the key criticisms of the pre-existing media laws had to do with the perception that Australia did not have a level playing field in terms of the freedom foreign entrants into the Australian media market had compared with local content providers. Nine Entertainment suggested in 2016 that the current regulatory framework did not apply equally to all media players and that in order ensure the Australian media sector remained competitive a range of reform measures would be needed.

The proposal to repeal the 2 out of 3 rule was controversial. The ALP acknowledged ‘the competitive pressures faced by Australian media in the face of digitisation and convergence’, and the Greens said that ‘media regulations drafted in the pre-internet age have not kept up with the pace of technological innovation or changing habits of content consumption and creation by the public’. However, both parties argued that Australia has one of the most condensed media markets by global standards. As such, the 2 out of 3 rule ‘needs to be preserved to help to limit further concentration’. The ALP also considered that a diversity of information and viewpoints in the media is more likely to be achieved when there is less concentration of ownership.

**The Nine/Fairfax merger**

In July 2018, Nine Entertainment and Fairfax Media merged. This merger was described as a major shake-up of the Australian media market. Journalists, media commentators, Minister for Communications and the Arts, Mitch Fifield, and Shadow Minister for Communications, Michelle Rowland, saw the merger as a result of the repeal of the 2 out of 3 rule. It was also argued by Rowland and some media academics that the merger was an example of how the repeal of this rule is leading to a more concentrated media market. At the same time, the case was also made that in order for Australian news producers to remain viable in the changed media landscape they have to adapt to technological change and construct a new business model.

CEO of Nine Entertainment, Hugh Marks, said that the Nine/Fairfax merger would create ‘a unique, all-platform media business’. Both companies jointly stated that the merger would ‘create Australia’s largest integrated media player’ with content distributed across all the major platforms.

In November 2018, the Australian Competition & Consumer Commission (ACCC) announced that it would not oppose the merger between Nine and Fairfax. It said it was unlikely that the merger would ‘substantially lessen competition in any market in breach of the Competition and Consumer Act’. The ACCC also stated that the growth in new sources of news and information meant that the merged entity would continue to face competition from a number of alternative news providers.

Nonetheless, it acknowledged that the merger raised complex issues and that it would likely reduce competition and the amount of companies focusing specifically on Australian news. It also said it understood concerns that the merger would reduce investment in quality journalism.

**The impact of the Internet on quality journalism**

In the context of the Leveson inquiry into the British press in the wake of the News of the World scandal, there were calls for a general inquiry into the Australian newspaper industry. Minister for Broadband, Communications and the Digital Economy, Stephen Conroy, announced in September 2011 that an independent media inquiry would be established to:
ensure regulatory processes and industry structures are sufficiently strong to support the continuation of a healthy and independent media that is able to fulfil its essential democratic purpose, and to operate in the public interest.

The inquiry was asked to investigate a range of matters, including the impact of technological disruption on the business model that has financially supported the amount of resources traditional media organisations have put into news and quality journalism.

The Report of the Independent Inquiry into the Media and Media regulation (the Finkelstein Inquiry) found that the newspaper industry was trying to adjust to the digital environment but was facing a number of significant challenges. Insofar as these challenges affected the sector’s ability to monetise content, there was the danger that support for investigative and public interest journalism would be reduced. The inquiry received some submissions that broadly suggested that the rise of digital technologies had affected the level of investment by major media companies in quality journalism. However, it concluded that it was not presented with evidence showing that there had been a significant reduction in public interest journalism in Australia (notwithstanding the fact that ‘measuring shifts in the quality of journalistic output’ can be difficult).

The Senate Select Committee on the Future of Public Interest Journalism investigated the impact of social media internet services, search engines and online aggregators on public interest journalism. The inquiry did not identify a single definition of public interest journalism, but did find that ‘there are certain behaviours, institutions and principles’ commonly associated with such journalism, including that it is professional, ethical, and independent, and seeks to make governments and other powerful actors accountable to the public.

The inquiry received evidence suggesting that in response to changing business conditions many traditional media companies have restructured their operations in a way that has, broadly speaking, had a negative impact on their capacity to produce public interest journalism. This is despite the fact there was evidence pointing to recent growth in parts of the traditional media sector, including in regards to ‘online subscription rates for some traditional mastheads’. At the same time, the Committee received evidence of positive changes in the media and news sector. For example, the lower barriers to entry have facilitated the emergence of new entrants into the market, and some of these new media outlets have the capacity to enrich the media landscape by adding significant depth to aspects of reporting. In this sense, media plurality can be seen as beneficial to the public interest.

Since December 2017, the ACCC has been undertaking the Digital Platforms inquiry to consider the impact of platform service providers on competition in the Australian media market as well as ‘on the level of choice and quality of news and journalistic content to consumers’.

Released in December 2018, the ACCC’s preliminary report says that as ‘advertisers follow audiences who have migrated online to access news and other content’, traditional commercial media businesses in Australia, particularly print/online media businesses, have faced major financial challenges. While, generally, this has limited the amount of investment in print/online media journalism, it is less clear what the impact has been on quality journalism in particular.

Nonetheless, the ACCC says it is concerned about different factors that might be reducing resourcing in quality journalism, including the effects of cuts to employment in the traditional media sector (for both commercial and national media), and new
incentives related to optimising content for digital delivery. These incentives may draw some media businesses away from types of coverage that significantly contribute to the public interest.

Related to this last point, the ACCC discusses the fact that transnational companies such as Google and Facebook play a central role in controlling exposure to, and consumption of, the kinds of news and journalism that does, or does not, contribute to the public interest in Australia. For this reason, the ACCC is interested in exploring ‘issues with the role of digital platforms in determining what news and information is accessed by Australians, how this information is provided, and its range and reliability’. Access to quality news is as important as its production.

Transformations in the screen sector

The Future of Public Interest Journalism inquiry was one of a number of parliamentary inquiries established in 2017 to investigate the Australian screen and media industries. Others included the Inquiry into the Australian film and television industry, the Australian and Children’s Screen Content Review, and the Australian content on broadcast, radio and streaming services inquiry. All of these inquiries considered how the Internet has had an impact on the media and/or entertainment sectors, with the fracturing of the mass audience and changing consumer behaviours in regards to accessing, selecting and using content being major themes.

Many submitters to the Australian and Children’s Screen Content Review, the report of which is yet to be released, felt that the amount of content available, and the range of devices and platforms for distribution, continues to expand. Audiences can now search a variety of online video libraries and channels, and stream selected films and television programs on demand.

It was emphasised in many submissions that this is dramatically different from the traditional model of television broadcasting.

It was also frequently submitted that the kind of content that viewers consume has also altered because viewers increasingly gravitate toward genres of content that suit the new digital platforms they use and the ways that they watch (such as ‘binge-watching’). From the submissions, it would appear that a combination of factors is affecting this behaviour, including technological change and the globalised market place where companies, such as Netflix, increasingly compete with local broadcasters and distributors for audience attention.

The Australian and Children’s Screen Content Review Consultation Paper states that because ‘digital technologies are transforming the way Australian content is watched, experienced and discovered’, it is important to evaluate the existing funding incentives and regulation used to ‘support the creation and delivery of Australian content’ to see if new policy settings are required.

Tax incentives for screen production

The House of Representatives Standing Committee on Communications and the Arts was asked to inquire into ‘factors contributing to the growth and sustainability of the Australian film and television industry’. The Committee’s Report on the Inquiry into the Australian Film and Television Industry (December 2017) listed 13 recommendations relating to tax incentives for screen production, Australian content quotas, and other issues in Australia’s screen industry.

Most government action recently has occurred in regards to tax incentives. Currently, there are a range of tax incentives for screen production: the Location Offset, the Producer Offset, the Post, Digital and Visual Effects (PDV) Offset and the new
Location Incentive, which the Government introduced in the 2018–19 Budget. Collectively, these offsets are known as the Australian Screen Production Incentive.

One of the key recommendations in the Australian film and television industry report was to raise the Location Offset from 16.5 per cent to 30 per cent for both television and film. Currently, the Location Offset is a refundable tax rebate calculated on Qualifying Australian Production Expenditure (QAPE) for film and television projects filmed in Australia with an Australian spend of over $15 million. Various recommendations have been made over many years to increase the Location Offset to 30 per cent, ranging from the industry-government partnership Ausfilm in 2011 to a March 2018 report commissioned by the Australian Screen Association to identify and quantify the various impacts of film tax incentives in Australia. In its 2017 report, the House of Representatives Standing Committee concluded that 16.5 per cent was no longer competitive with other countries, such as the UK, parts of Canada, and New Zealand.

In 2018, the Government introduced the Location Incentive to complement the existing Location Offset—this effectively increased the Location Offset rate from 16.5 per cent to 30 per cent. The new measure is primarily aimed at large-budget international productions that film in Australia. In April 2019, the Government announced that it would be extending the PDV and Location offsets to television series and mini-series distributed through online platforms such as Stan, Ten All-Access, Netflix and Amazon Prime.

**Future challenges**

The rise of global digital platforms and services has resulted in shifts in the production, distribution and consumption of media content. Along with these technological changes, new business models and commercial strategies have evolved in the broadcasting and publishing sectors. In this highly dynamic and unpredictable environment, one key challenge for governments and industry will be working out what tools best support Australian content producers and distributors. Another important issue is the transformations happening to the news media industry. These changes are having an impact on the type and range of news citizens access and may also be affecting the level of investment in quality journalism in Australia.

**Further reading**

Senate Environment and Communications Reference Committee, *Economic and cultural value of Australian content on broadcast, radio and streaming services*, The Senate, Canberra, 2019.
