

## A loophole and a Trojan horse

Once again the prospect of commercialising the ABC is on the agenda. It seems that the ABC's Managing Director, Mark Scott, may try to exploit a legal loophole that will enable the ABC to run advertisements on its web sites. In a separate option consideration may be given to introducing a Trojan horse that will undermine the ABC's traditional editorial values.

**The loophole** is there because when the ABC Act was written, in 1983, the internet as we know it did not exist. The Act prohibits the ABC from running advertisements on radio and television, but does not mention the internet. Labor's shadow communications minister, Stephen Conroy, has said that "We will not accept advertising on any part of the ABC, and we would amend the Act to make it unlawful". But with the Coalition still in office there is nothing to prevent the ABC running advertisements on its website. Once this has happened, it is hard to undo.

There are several reasons to be concerned about advertising on the ABC website:

- Advertisers can buy favourable coverage and favourable opinion. They can also discourage unfavourable coverage. This has been well documented in the Australian Broadcasting Authority's "Cash for Comment" inquiry and in the Australian Broadcasting Tribunal's "Soap Suds Inquiry".
- Commercial broadcasters sell audiences to advertisers. Some audiences (e.g. those with a high disposable income) are worth more to advertisers than others. Stations are reluctant to make programs for listeners and viewers to fall into the "wrong" category. Commercial broadcasters treat audiences as consumers, not as citizens.
- There is a sameness, a lack of diversity, in commercial broadcasts. Professor Glen Withers says this is a feature of economic behaviour known as the Principle of Minimum Differentiation.

*The reason for this is that stations based on advertising revenue will seek to maximize their audience (and thereby their revenue). Stations will therefore duplicate program types as long as the audience share obtained is greater than that from other programs. Hence a number of stations may compete by sharing a market for one type of program (such as crime dramas) and still do better in audience numbers than by providing programs of other types (such as arts and culture). In economics this point is an application of the Principle of Minimum Differentiation, a principle also capable of explaining such associated phenomenon as why bank branches may cluster together, why airline schedules may be parallel, and why political parties may have convergent policy platforms.*

- With greater concentration of ownership in the commercial media, with advertisers now influencing the SBS, choices shrink still further. The need for a commercial free ABC is greater than ever.

**The Trojan horse** is the growing influence of ABC Commercial and the proposal to sell ABC content through the website. While little is known of the detail, or the exact status, of this proposal, Margaret Simons, writing in Crikey, believes that the ABC is looking at charging for downloads and podcasts of ABC content, particularly from the ABC archives.

She continues "This is quite different from taking advertising. It is commercialisation, but places the ABC at the behest of its audience, which is where it should be, rather than at the behest of big advertisers".

Simons is quite right when she says that this is quite different to taking advertising. She is also right when she says that this involves a relationship between the ABC and individual members of the audience, and not with big (or even small) advertisers. However there are a number of potential dangers with such a development.

There is a real danger that a different set of editorial values will invade the ABC. These different

values were endorsed by the ABC Board as part of the decision not to publish the book *Jonestown*, and articulated by the ABC's Acting Managing Director, Murray Green.

Despite having invested a large sum of money in *Jonestown*, a book by award winning ABC journalist Chris Masters, the ABC Board decided not to publish the book on the basis that Jones, the subject of the book, might sue for defamation. This was despite the advice from both the ABC Legal Department, and from external and independent senior counsel, that the publication was defensible. ABC Enterprises (now renamed ABC Commercial) said goodbye to its investment in the book, and released Masters from his contract.

Masters held the copyright in the book, and when the ABC declined to publish it he offered it to commercial publishers. A number made offers, and Masters eventually signed a contract with Allan and Unwin. The book was published in October 2006 and as of 5 April 2007 Alan Jones has not commenced any legal action. It would appear that Allen and Unwin, and Chris Masters, have made a good commercial deal while the ABC ended up in the red.

There were allegations that the ABC Board refused to publish the book because they believed that Alan Jones was a political friend of the federal government. This was denied by the ABC board.

Articulating the view of the Board, Acting Managing Director Murray Green wrote, in a letter to ABC staff:

*ABC Enterprises is quite different in its means of operation from the publicly funded content in the rest of the ABC. For an Enterprises project to be viable there has to be reasonable certainty that it is commercially profitable...ABC journalism and other content on radio, television and online is evaluated quite differently* (Full text of the letter <http://www.abc.net.au/mediawatch/transcripts/ep22mg.pdf>)

Indeed it is. The ABC's Editorial Policies, recently revised by Managing Director Mark Scott and the ABC Board, make no mention of such a "reasonable certainty". To the contrary, the Editorial Policies, as they apply to news and current affairs, where Masters worked, appear to explicitly exclude commercial considerations, and state:

*Be impartial. Editorial judgements are based on news values, not for example on political, commercial or sectional interests or personal views.*

We have two different standards here. Will they work happily side by side in the same organization, or will the more cautious "reasonable certainty that it is commercially profitable" standard come to dominate?

When ABC Enterprises (now ABC Commercial) began its influence was relatively benign. There were a few ABC shops which promoted ABC programs and made a small profit. Many people welcomed this.

But the commercial side of the ABC has kept growing, and the tail is now trying to wag the dog. An interesting example was Keith Bales, and ex-Disney executive imported by Jonathan Shier, who allegedly tried to get the head of Children's TV sacked because he saw her as standing in the way of increasing sales of ABC products to kids. He was also concerned that she would oppose commercial deals between the ABC and snack food companies, who wanted to capture the attention of children.

According to figures compiled by the Parliamentary Library the ABC has shown a dramatic increase in funding from non Commonwealth sources. In 1970-1 funds from non Commonwealth sources represented 7% of the total ABC budget. By 2005-6 funding from non Commonwealth sources had risen to 33%.

This is not to argue that all commerce is somehow unclean or corrupting, but rather that the ABC should be an alternative to the commercial media, and not just more of the same.

Quite apart from the danger of a timid "reasonable certainty" test replacing the public interest based "news values" test the proposal to charge for web content has the potential to undermine the ABC's key role in contributing to public debate.

Universal availability has long been an essential part of the public broadcaster's role. A recent UNESCO study [Public Service Broadcasting: a best practices sourcebook](#), identified universal availability as one of the essential qualities of a public service broadcaster:

*Universality: Public broadcasting must be accessible to every citizen throughout the country. This is a deeply egalitarian and democratic goal to the extent that it puts all citizens on the same footing, whatever their social status or income. It forces the public broadcaster to address the entire population and seek to be "used" by the largest possible number.*

As new technologies threaten to fragment audiences the ABC is a key factor in maintaining a public sphere where citizens can converse with one another. In the words of the ABC Charter the ABC is obliged to broadcast "programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community"

Plans to charge for downloads of transcripts and podcasts have the potential to undermine the principle of universal availability. Supporters of the plan may point to the existing ABC shops. What is the problem, they may say, with selling DVD's of nature documentaries, or classic comedies, that have already been broadcast on free TV?

It is likely that in the initial stages the downloads from the website will be confined to archival material. Charges are likely to be low in the beginning. Many people may find such a service attractive to start with.

But as government funding continues to shrink, the ABC may be tempted to create "premium content" that is only available if you pay. If the ABC starts to fragment its audience in this way, creating first and second class listeners and viewers, it runs a grave risk.

*Darce Cassidy  
April, 2007*