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CHILDREN'S CONTENT REGULATION AND THE 'OBESITY EPIDEMIC'

Abstract

Some 30 years ago, Australia introduced the Children's Television Standards (CTS) with the twin goals of providing children with high-quality local programs and offering some protection from the perceived harms of television. The most recent review of the CTS occurred in the context of a decade of increasing international concern at rising levels of overweight and obesity, especially in very young children. Overlapping regulatory jurisdictions and co-regulatory frameworks complicate the process of addressing pressing issues of child health, while rapid changes to the media ecology have both extended the amount of programming for children and increased the economic challenges for producers. Our article begins with an overview of the conceptual shifts in priorities articulated in the CTS over time. Using the 2007–09 Review of the CTS as a case study, it then examines the role of research and stakeholder discourses in the CTS review process and critiques the effectiveness of existing regulatory regimes, both in providing access to dedicated children's content and in addressing the problem of escalating obesity levels in the population.

Increasingly, Australian media content and marketing communication more generally have been linked by public health researchers to an alarming rise in childhood obesity. One question raised by this growing anxiety is the ability of existing Australian regulation to deal with the scope of this so-called 'obesity epidemic'. In the last two to three years, a raft of reviews of media policy settings and other areas of regulation have attempted to deal with key public concerns about protecting children's health and well-being, together with their rights to dedicated screen media content. These reviews are couched within an economic context framed by increasing costs to terrestrial broadcasters market fragmentation, digitisation and multi-channelling. In 2009, the Australian Communications and Media Authority (ACMA) delivered its final report and revised Children's Television Standards (CTS) after a two-year process of consultation and review; the federal government allocated budget resources to fund the Australian Broadcasting Corporation's new digital children's channel, ABC3, to provide commercial-free, dedicated children's programming; and the three commercial free-to-air broadcasters launched the first of their newly permitted digital multi-channel services, including Nine's GO!, targeting a 'youth' demographic (14–39 years). Provision of content for children and youth is clearly at a high point. However, the limited remit of the ACMA hinders its ability to address fully controversial issues that cross other regulatory jurisdictions and multiple media platforms.

Despite an unexpected surge in TV advertising revenue in July 2010, the consensus view is that the free-to-air television business model is under threat. This view informed a much-criticised decision on the part of the Department of Broadband, Communications and the Digital Economy (DBCDE) to rebate a third of commercial television broadcaster

licence fees. During 2010, concern for the economic viability of the television broadcasters, often framed in terms of protecting Australian content, continued to dominate outcomes of reviews of proposed reform. In this policy environment, it is not surprising that both the CTS review and the government's response to the final report of the National Preventative Health Taskforce (Australian Government 2010) both reject any increases in limitations on advertising of energy-dense and nutrition-poor (EDNP) foods during times when children constitute a large part of the viewing audience.¹

Historically, the regulation of harmful influences and rights to Australian-produced, dedicated content within the children's television environment has been shaped in two ways. First, Australian policy has created institutions that foster a cultural and public service ethos in children's content provision. The Australian Children's Television Foundation (ACTF), for example, has functioned as a developer of dedicated children's production within an increasingly funding-starved global ecology. The Australian Broadcasting Corporation (ABC), while producing very little content in house since the early 1980s, has continued to broadcast children's and educational programming in an advertising-free environment. Significantly, this public-broadcaster 'safe-haven', now extended as a destination by the inception of ABC3, is celebrated as one prong of the government's response to the perceived threat of EDNP food advertising. In turn, this public service ethos has influenced public discourse and expectations such that the wider community, and even many elements within commercial stakeholder organisations, now support provision of dedicated children's content. The second regulatory support lies in the imposition of quotas on commercial licensees, mandating the provision of children's and Australian content. Various industry codes of practice that contribute to a co-regulatory partnership with government address issues of harms associated with the broadcast of television content. One question raised by increasing anxiety over rising rates of childhood obesity is whether the existing frameworks are robust enough to deal with pressing issues concerning children's health.

The major regulatory document over the last three decades has been the Children's Television Standards. The CTS have evolved from primarily a cultural policy to one more conscious of community concerns about issues of child health, culminating in the research and discourse surrounding the 2009 review conducted by the Australian Communications and Media Authority (ACMA). The CTS Review Issues Paper (ACMA, 2007a) raised policy amendments for consideration, such as a 'Tradable Obligations' scheme, that point to a reduced role for the CTS in the shaping of children's content provision across new television channels. This policy suggestion was reintroduced by a Department of Broadband, Communications and the Digital Economy review announced in late December 2009, and framed in the context of digital switchover regulation (see DBCDE, 2010). In addition, in considering further limitations of 'junk' food advertising in both dedicated children's programming bands and more extended time periods, the 2007 Issues Paper (ACMA, 2007a) and subsequent reports marshalled research that traversed other regulatory jurisdictions (such as health and food policy). Given the complexity of the obesity problem, and the challenges posed to regulators, this article argues that the continued reliance on the CTS and the ACMA more generally as a 'Nanny Regulator' – bearing the brunt of public expectations about child protection and well-being – needs to be rethought. In primarily framing its discussion around the wider problem of childhood obesity and the marketing of so-called 'junk' food and beverage products, our discussion will scrutinise the relevance of the CTS in a twenty-first century media environment.

A brief history of the Children's Television Standards

The Children's Television Standards were the unlikely offspring of an inquiry into industry self-regulation, during an era characterised by increasing reluctance on the part of regulators to act in opposition to the interests of commercial broadcasters (Hawke, 1995; Flew, 2006). The Australian Broadcasting Tribunal's 1978 Self-Regulation Inquiry introduced

a 'C' classification for children's programs, as well as establishing a Children's Program Committee (CPC), whose brief included the formulation of standards relating to children's television productions. In essence, the Standards proposed reforms aimed at increasing the amount of dedicated, Australian-produced children's programming screened on free-to-air commercial television. Predictably, such reforms were hotly contested by industry stakeholders, on economic grounds (De Chiera 1980; Edgar 1984). The initial codification of the CTS in 1984 followed sustained public consultation, and was influenced by the disciplinary expertise of academics and child welfare professionals. The discourse of the CTS emphasised issues of children's cognitive development, and mobilised public-interest arguments for service to children. These rationales were also dominant in the 1987 review of the CTS (ABT, 1991: 281).

Mandated Australian children's programming was – and arguably remains – the keystone of the CTS. The 'discovery' of the children's market (McNeal, 1999; Kenway and Bullen, 2001) and the exponential rise of marketing communications directed to children (Jones, 2007; Schor, 2004) was yet to cause concern for child advocates. In her 2006 memoir, Dame Patricia Edgar notes that since there were 'no programs, programming itself was an area where change could succeed', suggesting that the industry members on the Children's Programming Committee more jealously policed any guidelines restricting their advertising revenue base (Edgar, 2006: 71). The initial definition of a 'C' program reflected this cultural agenda: one that 'contributes to the social, emotional or intellectual development of children' and 'is appropriate for Australian children, not assuming too much of the culture, dialect or environment of some other country' (ABT, 1991: 312).

The 1984 CTS were, however, not restricted to issues of programming. Criteria delimiting the screening of advertisements during C time were also set. Such criteria were dominated by three concerns: (1) the separation of advertising and program material; (2) perceived truth in advertising; and (3) child welfare and safety. Harm-minimisation clauses focused primarily on preventing children from being misled or deceived by advertisements, and protecting them from unsafe toys and games. Health and nutrition were not addressed specifically.

The first major review of the CTS of 1984 commenced in February 1987, and resulted in an updated CTS taking effect from January 1990. This review attracted a high level of public interest and featured the first indications of serious concern about food and beverage advertisements during dedicated children's television shows. Submissions to the inquiry from organisations such as the Department of Community Services and Health, as well as from concerned individuals, drew attention to the general issue of nutrition and its impact on child health. The subsequent document included a new directive (CTS 19.6) to the effect that 'an advertisement for a food product may not contain any misleading or incorrect information about the nutritional value of that product' (ABT, 1989: 28). More recent work in cultural and consumer studies, of course, emphasises 'branding' and associated 'affect' as the mechanism driving consumer choice, rather than 'factual' presentation of a product's merits.

The 2007–09 CTS Review

The most recent review of the CTS occurred in the context of a decade of increasing international concern on the part of paediatricians and health economists at rising levels of overweight and obesity, especially in very young children – the so-called obesity 'epidemic' (US Department of Health and Human Services, 2001; National Preventative Health Taskforce, 2009: 9). Pressure was mounted on regulators in other jurisdictions to introduce legislation reducing children's exposure to food promotion, particularly television advertising. In 2004, OFCOM, the United Kingdom's 'super' regulator, published its own research on childhood obesity and food promotion.² Evidence from this research resulted in policy changes to partially restrict television advertising of 'junk' food in children's

viewing periods, though this limitation fell short of the total ban prior to the 9.00 p.m. 'watershed' sought by the Food Standards Agency (FSA) and other health advocates.

When the CTS Review was announced in March 2007, the research agendas of various Australian state and federal Health Departments had already turned to the concept of preventative health. While still in opposition, in August 2007 the Australian Labor Party (ALP) signalled that if elected it intended to make health promotion a key strategy for reducing the fiscal and infrastructural burdens on Australia's health system (Rudd and Roxon, 2007). One of three major inquiries into the health system commissioned by the Rudd government, the National Preventative Health Taskforce, amassed research and outlined a comprehensive strategy in its discussion papers and report, *Australia: The Healthiest Country by 2020*, including numerous recommendations focusing particularly on obesity, and on tobacco and alcohol use (National Preventative Health Taskforce, 2008, 2009; Commonwealth of Australia, 2009, 2010). The concept of intervention was clearly on the public policy agenda.

Notwithstanding the 2007 election commitments to health and education, priorities for the Department of Health and Ageing (DOHA) exist in competition with agendas and initiatives under the aegis of other regulatory jurisdictions. It has widely been accepted that audiences are fragmenting and traditional strategies for business profitability in the free-to-air sector are under threat, as reflected in advertising revenue forecasts for different media sectors.³ As many submissions to the CTS and the DBCDE's Multichannel (Content and Access) reviews contend, the challenge for the ACMA and the DBCDE is to find 'the right policy mix for the rapidly developing digital media environment'. Most in the content aggregation business are keenly aware that, until usage patterns across a range of new and projected delivery platforms and services stabilise, certainty about the ability to monetise will not emerge. Less debated in media policy circles is the fact that such fragmentation means that marketers are already targeting much of their spend (and their campaigns to promote consumer behaviours) across media not protected by standards such as the CTS.

Research and the CTS review process

ACMA released its Issues Paper in June 2007 (ACMA, 2007a), together with a trio of research sources thus discursively prioritised as background evidence. These were: the Children's Television Production Project (Aisbett, 2007), a small-scale qualitative research project evaluating the economic supports of children's television production; the Children's Viewing Patterns on Commercial, Free-to-air and Subscription Television (ACMA, 2007b), an analysis of ratings data for 2001, 2005 and 2006; and the Brand Review of the literature on influences of Television Advertising to Children (Brand, 2007). All of these were either in-house analyses, or commissioned and published by ACMA itself under the final editorial control of its Strategic Research section. The first two address the cultural objectives of the CTS as identified in the Explanatory Memorandum accompanying the *Broadcasting Services Act 1992*, 'to provide for children to be specifically catered for in programming, including Australian programming'. The third report addresses the additional objective 'to provide for the protection of children from possible harmful effects of television' (ACMA, 2007a: section 1.1.1). Cultural identity and diversity criteria largely rest on the foundation of provision of Australian content, while the protection from harmful effects centres around the threat posed by food advertising.

Australian media policy scholars such as Terry Flew have argued that supervisory authorities are subject to what Robert Horwitz calls 'regulatory capture' (Horwitz, 1989, cited in Flew, 2006: 289) – that is, that regulating agencies in time come to systematically favour the private interests of the bodies they regulate over questions of the public interest. Arguably, both ACMA and sections within the independent production industry have come to associate the continuance of the children's production sector and the availability of

locally produced children's programming with the interests of the free-to-air commercial broadcasters. This is problematic for ACMA's second cultural objective – protecting children from food marketing – since the revenue base of the broadcasters is dependent on such advertising.

ACMA is often seemingly placed in the position of a 'nanny regulator', charged with protecting children's physical and mental well-being on issues such as childhood obesity, which clearly fall under the co-jurisdiction of other institutions, including the various Trade and Trade Practices Departments, and Health Departments, at both federal and state levels. Furthermore, it must do this in a governance climate where its ability to act strategically is hindered by long-standing neo-liberal ideologies and practices. As the Issues Paper explains:

ACMA's role is to work with industry to manage an effective regulatory environment that promotes self-regulation, efficiency and competition within the industry; is supportive of technological advancement; and enables industry to meet the needs of the community. (ACMA, 2007a: section 1.1.4)

'Command and control' regulatory interventions, such as a ban on EDNP food advertising, are an unlikely result of such a whole-of-government approach. Clearly coded here is an implicit acceptance of the necessity of financial consideration towards the commercial free-to-air broadcasters as they gear up for digital multichannelling.

The Issues Paper overtly recognises that the power of the CTS to provide visible, accessible and affordable Australian children's content is unlikely to survive in the era of digital plenitude. It more coyly skirts the issue of the economic logic that links promotion of EDNP foods to children to that very affordability. The Issues Paper references, and gives policy prominence to, advertising industry Codes of Practice, such as that of the Australian Association of National Advertisers (AANA), which mandate that marketing communications to children should not 'promote an inactive lifestyle or unhealthy eating or drinking habits' (AANA, 2008), while implying a distributed responsibility for regulatory action:

The advertising provisions of the CTS operate within a multi-layered framework of food and beverage regulation that includes government regulation, co-regulation with industry and voluntary industry codes. This broader framework covers advertising and marketing of foods and beverages across a range of media, as well as product packaging and labeling. (ACMA, 2007a: section 9)

Children's Television Production Project

The Children's Television Production Project (Aisbett, 2007) canvasses the economics of children's television production in Australia, particularly the role of the CTS in ensuring the viability of the local independent production industry, with drama producers especially viewing the production quotas mandated by the CTS as the main support for their industry. The Children's Television Production Project also provides an ecology of the industry, c.2007, tracing the intersections of regulation, government and non-government funding regimes, together with international market ecologies that impact on available funding for, and content of, 'Australian' children's media production. Examination of the report's findings as a whole is outside the scope of this article. However, the study's situation of the marketing communication industries within this children's media ecology has a bearing on the argument presented here.

As with the *Children's Viewing Patterns on Commercial, Free-to-air and Subscription Television* report (ACMA, 2007b), the Children's Television Production Project addresses the question of the diminishing audience for free-to-air children's television (putatively fled to the ABC, subscription television and the internet). It probes further whether

it remains economically viable for advertisers to target children during the ghettoised C periods nominated by broadcasters (generally between 4.00 and 5.00 p.m.). The prime-time audience is larger (including more children) and this timeslot is therefore more lucrative in terms of the advertising revenue it attracts for broadcasters. Neither the children's television producers nor the network executives interviewed by the researchers advocated any lifting of the volume of advertising during C programs, largely due to a supreme lack of advertiser interest. Aisbett cites views of some free-to-air television executives to the effect that subscription children's channels 'had an unfair advantage over commercial networks because they do not have to comply with advertising restrictions' (2007: 30). However, she concludes that the extent to which this advertiser disinclination results from the requirements of the CTS, which prohibit certain kinds of marketing practices (such as host or program character endorsement), is unclear.

Producers of P (preschool) programs interviewed were more ready to call for increased sponsorship and relaxing of the rules concerning merchandising to children during dedicated C and P periods. Preschool programs are often sold to networks for very low licence fees because returns to producers are driven by merchandising, DVD sales and live concerts (Aisbett, 2007: 20). Some of the producers interviewed suggested that the strict application of CTS 22 (2005) – which prohibits promotion of a product or service by a program's character during or immediately adjacent to a C or P program – reduced the revenue stream from spin-off merchandising (Aisbett, 2007: 30). Nevertheless, children's (and adults') loyalty to television program characters (or celebrities) forms a crucial part of the cross-promotional circuit known within the advertising industry as '360 degree marketing'. The *Food Marketing to Children in Australia study* commissioned by the Cancer Council contends that:

Food marketing to children occurs in a variety of guises across different forms of media, including TV, internet, magazines, in-school marketing, sponsorship, product placement and point of sale promotions. (Centre for Health Initiatives, 2007: 6)

We cite a symptomatic case study from the Cancer Council report, not to suggest that all advertising is necessarily a bad thing but to examine the extent to which TV-centric regulation fails to 'catch up' with campaigns that traverse media platforms. Many of these campaigns use long-standing strategies for the child market – promotions employing cartoon program characters, premium offers and the co-option of children's game play as 'invisible' advertising. The Kelloggs children's cereal brands case study detailed in the Cancer Council report maps the intersection of TV program properties with other forms of media and marketing. Each of the children's cereal brands has its own long-standing cartoon character (e.g. Coco the monkey for Coco Pops). However, during the research period, the Nickelodeon program character Spongebob Squarepants was also used to promote the Kelloggs muesli bar range. Children's cereal boxes historically have included marketing promotions such as give-aways and competitions. Contemporary packaging now directs children to the product website where game solutions can be found, together with other games and interactive material that invite users of the site to register, and to provide contact details such as email addresses, which can then facilitate direct company-to-user communication (Centre for Health Initiatives, 2007: 16–19). Popular children's magazines (print) are linked to subscription television channels such as Nickelodeon and Disney, and these not only heavily promote EDNP foods (Centre for Health Initiatives, 2007; Schor, 2004; Kelly et al., 2007) but are also central to the cross-promotional strategy. Many of these media fall within ACMA's regulatory remit (e.g. free-to-air and subscription TV and the internet), but print, games and films do not. The application of 360 degree food marketing to children (and adults)⁴ renders the power of limited television-based regulation of advertising such as the CTS problematic, if not totally ineffective.

Television advertising to children

ACMA has been reluctant to commission research pertaining to media that it does not regulate (such as print). The terms of reference of the Brand Review limit its scope to television advertising, thus also limiting its usefulness as an evidence base to inform national cross-platform policy. The research questions in the Brand Review that are most pertinent to the CTS include developmental issues around children's understanding of persuasive intent (RQ1), repetition effects (RQ2), effects of character- and celebrity-based marketing (RQ3) and response to premium offers, such as the McDonald's 'Happy Meal'/toy combination (RQ4). Two additional research briefs pertinent to the CTS target the evidence base on the effects of advertising on behaviours such as 'pester power' (RQ5) and the relationship between children's advertising exposure and their food and beverage preferences (RQ6). It is fair to say that this is a piece of solid research, but one that needs to be read in its entirety: the executive summary gives a somewhat confusing impression of its findings. Somewhat warily, ACMA's Preface distances the regulator-publisher from the review's findings (Brand, 2007: 3). On the key question of whether advertising influences food requests, Brand and colleagues conclude that there is a 'fairly clear associative link between advertising and pester power' (2007: 30), and that:

Empirical research shows correlations but not causal relationships between children's exposure to advertising and ... preferences as indicated by requests (but not necessarily consumption) of advertised foods. (2007: 42)

This is a carefully qualified conclusion: consumption (eating) behaviour is not tracked in most of the reviewed studies (apart from a few key experiments), although it should be stressed that there are many studies in the marketing and trade literatures, and in the Brand review itself, showing increased short-term consumption (purchase) of foods following marketing campaigns, especially cross-media promotions. However, this conclusion is symptomatic of a crucial difference between the analytic frames employed by media regulatory discourse and by that of epidemiology and public health. The latter rely on significant and consistent findings of correlation (association) to identify 'risk factors' for disease that might be subject to interventions, while industry advocates and regulators find anything less than 'causation' to be an unsound basis for intervention in industry structures.⁵

Responses to the Issues Paper of June 2007

These oppositional paradigms are deployed in many of the submissions in response to the Issues Paper of 2007. The commercial broadcasters and content aggregators share a common set of positions with the bodies representing the advertising industries. Many of these positions – such as a focus on media literacy and promotion of exercise and healthy lifestyles – rather than limits on advertising also form central strands of self-regulatory codes, such as that of the Australian Association of National Advertisers (AANA). Nickelodeon Australia, for example, stresses its support of DOHA's "'Go for 2+5"' campaign, designed to promote the consumption of 2 serves of fruit and +5 serves of vegetables each day', as well as the AANA's 'Eat Well, Play Well, Live Well' initiative, arguing that 'the campaign represented the industry's commitment and observance to the AANA Code for Advertising to Children' (Southron, 2007: 2).⁶ Both broadcaster and advertising bodies ally around the issues of broadcaster profitability and the robustness of existing self-regulatory codes to address the ethical concerns around 'responsible' advertising to children. Also crucial to this paradigm is the position that the causal link between advertising and childhood *obesity* (rather than advertising and food *preferences*) is not supported by research:

The ACMA issues paper references the extensive research that has been done in relation to the causes of obesity and acknowledges there is a wide range of lifestyle, heredity, social and cultural factors that contribute to the problem [and that] no direct link has been established between advertising and obesity. (AFA, 2007: 12)

Conversely, the many early submissions from research organisations advocating a ban on food and beverage marketing during dedicated children's programs give significant weight to the evidence of a link between advertising and childhood obesity predicated on the *mechanism* or pathway of consumption behaviours. For example, the Australasian Society for the Study of Obesity references the 'compelling evidence of an "association" between food advertising and behaviours contributing to childhood obesity', while the World Health Organisation Collaborating Centre for Obesity Prevention goes further, contending that literature reviews, such as that of Brand, miss the enormous volume of proprietary research that provides a causal link between the 'marketing of obesogenic foods and beverages to sales of those products' (2007: 4).

Producer and content creative associations' submissions took a less consistent position on advertising, generally being more focused on the role of the CTS quotas or the range of genres supported by existing regulation. The Media Entertainment Arts Alliance (MEAA) (2007: 8) was critical of self-regulation of advertising, suggesting that a more restricted advertising regime such as the one imposed in the United Kingdom would be of little economic consequence to broadcasters, while the Screen Producers Association of Australia and Australian Writers' Guild (2007: 6) restricted their interest to the position that '[a]dvertising and the CTS quota requirements must be considered in isolation from each other'. The Australian Children's Television Foundation (ACTF) – whose submission is primarily invested in the campaign for a dedicated digital children's channel – acknowledged that the submissions of other interested parties were founded on specialist expertise in the areas of childhood health and nutrition, and the impact of advertising upon children. However, the ACTF distanced itself from the controversy surrounding food promotion. Instead, it argued that above all ACMA must 'ensure that the debate over advertising to children does not impact in any way on the quality, local children's programs that run between the ad breaks'.

Whose economics?

When ACMA released its draft updated CTS in August 2008, those calling for restrictions reacted with predictable dismay at the complete absence of any amendment to Part 3 of the standards with respect to the advertisement of foodstuffs and beverages. The Australian Medical Association (AMA), for example, argued that ACMA had based its decision on an 'overly narrow conception of what is "harmful"', focusing too closely on the absence of any definitive correlation between advertising and obesity when the association between 'children's food preferences, knowledge and behaviour' was of greater significance. Just as predictably, those representing the advertising and food and beverage industries registered their overwhelming agreement with the draft decision not to impose further restrictions. Nonetheless, such organisations at the same time sought to demonstrate their awareness of the high level of community concern surrounding this issue. In a clearly pre-emptive move (Jones, 2007), both the Australian Food and Grocery Council and the Australian Quick Service Restaurant Industry formulated their own responsible marketing initiatives, which ACMA undertook to monitor over the immediate post-CTS amendment period.

Perhaps the strangest addition to the evidence base brought into the controversial debate at this point was the regulator's own economic modelling study, *The Economic Impact of Restrictions on Television Food and Beverage Advertising* (ACMA, 2008). Unlike the Australian Bureau of Statistics or Treasury, economic modelling is not generally an in-house responsibility of ACMA. Bringing additional research to the table along with its release of the draft CTS demonstrates ACMA's sensitivity to the concern of peak medical bodies around this issue.

ACMA's Economic Impact Study balances the cost of lost advertising revenue on commercial free-to-air broadcasters against the annual cost of obesity sourced from Access Economics. This latter figure subsequently proved to be considerably higher than the estimate used in ACMA's modelling (National Preventative Health Taskforce, 2009). More interesting, however, is the audience measure for the influence of advertising. In simple

terms, ACMA uses the concept of audience ‘share’ – that is, it measures the impact of any advertisement by the small number of children (figures generally in the tens or low hundreds of thousands) likely to be in the audience for a certain number of repetitions of the commercial. On the other hand, a competing theoretical model prepared by a team of health economists (Haby et al., 2006; Magnus et al., 2009) assessing cost-effective obesity interventions uses the idea of ‘reach’, a concept that assumes all Australian children (2.4 million) watch television at some stage and are likely to be influenced by advertising. All such studies are simply predictions, and all contain margins of error. However, given that promotional strategies (for a certain Happy Meal toy combo, or the recent McDonald’s ‘Angus’ burger campaign) often involve cross-media saturation for a limited period of time, the concept of ‘reach’ would seem to be a better theoretical model. More critically, the economic priorities – impact of lost annual revenue on broadcasters in the ACMA study, versus the impact of obesity related disease over a child’s life course in the ‘Assessing Cost Effectiveness in Obesity’ studies – bring the highly polarised values mobilised in this debate into sharp focus.

Many of the 2007 and 2008 submissions to the CTS review drew attention to ACMA’s lack of expertise in the jurisdiction and science of health. Negotiation (even handballing) of responsibilities between portfolios is traced in both the Final Report of the CTS review and DOHA’s response to the issue of preventative health (DOHA, 2010). Noting the tabling of the House of Representatives Standing Committee on Health and Ageing report on obesity, ACMA stresses the mutual commitment of both government departments to self-regulatory measures as the preferred first stage of intervention:

In relation to advertising, the Committee supported the argument that marketing unhealthy products to children should be restricted and/or decreased. However, it considered that industry self-regulation may prove to be successful through the reduction of advertisements for unhealthy food products on television during children’s prime viewing times. (ACMA, 2009a: 8)

The CTS 2009 and beyond: Converging solutions?

Predictably, the CTS 2009 are little altered from those of 2005, with ACMA deciding not to impose any ‘additional requirements on industry in relation to food and beverage advertising’, or any changes to the quotas for children’s programming. The new Standards slightly restrict the number of popular characters or personalities that can be used to endorse or promote commercial products or services. Oddly enough, the submissions to the review generated a strange consensus. While most agreed that the CTS had failed to address adequately either the mandate to protect content production and access in the new media environment or the obesity epidemic, there was general agreement that the Standards should be retained in the interim for whatever limited protection they might provide.

Tradeable obligations and (public service) children’s channels

However, it is worth revisiting those areas of policy innovation that the CTS Review raised, or at least forwarded. Proposals such as ‘tradable obligations’ and dedicated children’s channels and ‘blocks’ intersect with other cultural policy objectives, and have been deployed in more recent policy documents in the context of preventative child health. As argued above, the primary rationale for the CTS is to ensure that policy settings continue to impose some kind of obligation on commercial broadcasters to provide dedicated (largely Australian) children’s content in the multi-channel environment. Institutions representing the production industries, the public broadcasters and the production development agencies (including Screen Australia and the Australian Children’s Television Foundation) converge in their interests around this cultural policy objective.

Research in international markets showed that aggregating children's content into channels or blocks was the most successful strategy for ensuring audience accessibility, and thus broadcaster viability, in the digital multi-channel landscape (Steemers, 2010; ACMA, 2007a: section 14; Buckland and Dalton, 2008). The success of a commercial children's channel model (largely minus Australian quota requirements) had been demonstrated by pay TV. ASTRA's submission to the CTS review contends, for example, that the relative takeup percentage of subscription television among families with children is high, indicating that the children's channels were a subscription driver for pay TV providers. Conversely, commercial free-to-air licensees maintain an interest in ensuring that children's and Australian content requirements are not extended to their digital multi-channels. The interim reform proposed by ACMA took the form of the proposal for a Tradable Obligations scheme.

This idea was proposed as early as 2002, in the context of the Australian Content Standard Review. The scheme would allow a commercial broadcast licensee to enter into a formal arrangement to trade a portion, or all, of its compulsory children's programming quota to another licensee (or, in its first articulation, to the ABC). ACMA contended that it would 'allow industry increased flexibility in the way it complies with content obligations' and facilitate more 'innovative approaches to programming and scheduling' that might address accessibility issues for children (ACMA, 2007a). Clearly foreshadowed here is the idea of a dedicated children's channel or a 'branded' children's bloc on a commercial broadcaster. An undertaking to establish the ACTF/ABC digital children's channel, were the Howard government re-elected, had been given by Senator Helen Coonan, the then Communications Minister, in 2007. ACMA regretfully surrendered the tradable obligations scheme as an outcome of the CTS review, although it resurfaced in December 2009 in the DBCDE's Content and Access Review. Following on from the establishment of ABC3, there was a general consensus among the small number of submissions (including reservations from the ABC itself) that if such a scheme were introduced, the broadcaster in effect being paid by the commercial licensees to relieve them of their obligation to show children's programs should ideally *not* be the national broadcaster (DBCDE, 2010).

Nevertheless, the establishment of ABC3 is one interim policy intervention that appears to be doing double duty as a stop-gap measure for both DOHA (obesity prevention) and DBCDE (content and access). The new funding to the ABC reversed several years of decline under the previous Coalition government, and allowed ABC Children's to quickly become a major commissioner of new Australian content, as well as a destination for what ABC and ACTF executives defined as 'legacy' television, produced as a result of the 30-year bounty of the CTS (Buckland and Dalton, 2008).

More recently, DOHA's response to the National Preventative Health Taskforce's recommendation (5.1) to 'phase out the marketing of EDNP food and beverage products on free-to-air and pay TV before 9.00 p.m. within four years', as well as the use of certain kinds of marketing across *all* media sources, also cites the government's commitment to the ABC children's channel as a *preventative health* initiative, 'giving parents a commercial free choice for their children' (DOHA, 2010: 46). Ironically, the solution proposed alongside 'voluntary industry initiatives' such as the Advertiser Codes of Practice promoted in the CTS review is public service media. ABC3 broadcasts up until the 9.00 p.m. watershed originally proposed by both obesity researchers and public health activists.

Conclusion

Increased government funding for public broadcasting may be a welcome policy settlement for many. In his 2009 address to SPAA, Kim Dalton, ABC Director of Television, also suggested (among other things) direct funding for Australian content in the face of any increasingly fragmented and unregulated digital future (Dalton, 2009). Obesity scientists and public health economists will be less convinced by a policy intervention that places

the responsibility back on the shoulders of the individual – the majority of the television audience, after all, view commercial media most of the time, and are unlikely to restrict themselves to ABC3 until 9.00 p.m.

The analysis provided in this paper demonstrates that, 30 years on, the CTS and voluntary commercial industry initiatives are unable to provide access to dedicated content at a time when significant numbers of children are part of the viewing audience. Nor are they able, in the absence of a whole-of-government approach to regulating the constitution and promotion of food to children and adults alike, able to address the problem of escalating obesity levels in the population. The National Preventative Health Taskforce, for example, argues for a ‘population-wide focus’:

A wide range of forces, some outside the control of individuals and families, interact to shape patterns of overweight and obesity. The magnitude of this problem warrants a stronger population-level response. (2009: 12)

The Taskforce advocated a ‘staged trialling of a package of interventions’, based on the World Health Organisation-recommended actions. Three of these would require multi-jurisdictional ‘command and control’ legislation from government: (1) *legislation* to reform the contents of food products; (2) *limit the marketing* of food and beverages to children; (3) *enact fiscal policies* (tax) to encourage healthy food consumption (2009: 14). One of these top-down regulatory measures would naturally fall to ACMA to administer. However, as this article has argued, other strategies for addressing the ‘obesity epidemic’ lie beyond the jurisdiction and scope of the ‘Nanny Regulator’.

Notes

- ¹ Junk food products are often referred to as EDNP (energy dense, nutrition poor) or HFHS (high fat, high sugar) food and drink in the health and regulatory literatures, although there is considerable debate as to what products qualify for inclusion under these labels.
- ² Responding to rival systematic reviews of research on effects of food promotion on childhood obesity, one on behalf of the United Kingdom’s Food Standards Agency (FSA) – an independent government watchdog department set up by an Act of Parliament in 2000 to oversee public health and consumer interests in relation to food – and a second prepared for a food industry group, OFCOM contracted Professor Sonia Livingstone of the London School of Economics to adjudicate. Livingstone, a renowned social psychologist, as well as a cultural and education theorist, has acquired international credibility for her ability to negotiate the balancing act between the ‘risk’ (effects) and ‘resilience’ (agential consumer) schools of thought concerning children’s media behaviour.
- ³ According to Price Waterhouse Coopers’ *Global Entertainment and Media Outlook 2009–13* (cited in ASTRA, 2009), the predicted compound annual growth in advertising revenue for the commercial terrestrial networks was 2.3 per cent, with 7.5 per cent and 12.2 per cent predicted for subscription television and internet respectively. Ironically, the advertising revenue figures released in late July 2010 witnessed at least a temporary windfall for the free-to-air sector (Dyer, 2010).
- ⁴ The argument that young children are more vulnerable to the effects of advertising than older children and adults underpins much regulatory and industry discourse; however, this is disputed by researchers such as Livingstone and Helsper (2004, 2006), who find that all age groups are affected equally by advertising, although each market segment is differentially targeted in promotional communication.
- ⁵ While it is a methodological orthodoxy that correlation does not equal causation, especially in cross-sectional studies, some associations are more likely than others – for example, a correlation between the time teenagers spend watching television and academic achievement (measured by school test scores) may be explained either by a supposition that more TV viewing makes students less capable/motivated *or* that less capable or unmotivated students choose to watch

TV rather than studying. However, the idea that preference, or a tendency to pester parents, for certain food products makes a child more likely to watch advertisements is far less plausible.

- ⁶ For a history and critique of the strategic deployment of advertiser Codes of Practice and Ethics, see Jones (2007).

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