

TE PŪTAHI PAOHO

BROADCASTING AND NEW DIGITAL MEDIA: FUTURE OF CONTENT REGULATION

A TREATY PARTNERSHIP APPROACH TO THE NEW DIGITAL ENVIRONMENT

1. Te Putahi Paoho submits that the Crown has an obligation to facilitate unrestricted access by Maori to all forms of electronic media, on the basis that Māori and the Crown have a common goal of addressing many decades of the exclusion and disparity from control of resources that allow at least the same access as the Crown and non-Maori.
2. It is clear that there is now a proliferation of overseas media network owners and operators in Aotearoa, and an overwhelming amount of overseas content is now available to New Zealand households, including Maori households, in the new digital environment. This is an inevitable trend of Globalisation that will grow exponentially in the new digital environment. This trend presents significant risks and challenges to indigenous cultures throughout the world. However it also presents opportunities to consolidate the essence of cultures in a environment where cultural 'identity' gains a new value on the basis that it highlights the key points of difference between the world's many people's who are 'on-line' as part of the global digital network.

Proposal for a Joint Crown Maori Stock-take and Study

3. In this context, Te Putahi Paoho believes that the Crown and Māori should agree to undertake in 2008-2009 a 'joint stock-take' and study of the main types of content, their distribution methods and the likely impact of these on the linguistic and cultural environment of Aotearoa over the coming decades. The study should also seek to make broad recommendations on measures that might be adopted by the Crown and Maori to ensure the emerging digital landscape does not diminish, but rather enhances the capability of the Crown and Maori to promote and protect te reo me ona tikanga Maori, in a manner that remains consistent with the principles of the Treaty of Waitangi.
4. Such a process should be well resourced, and include up-to-date research on the effects of the changing media landscape on the survival of the Māori language, Māori culture, and the

full development of Māori as an equal and official language, to English in Aotearoa. It should also canvas the views of iwi, and Māori from all sectors and age groups.

COMMENT ON THE QUESTIONS RAISED BY THE MINISTRY OF CULTURE AND HERITAGE

5. Te Putahi Paoho's comments are made from the perspective that the questions posed in the Ministry of Culture and Heritage discussion documents relate primarily to what content should be regulated in the 'new' digital environment - depending on the method of distribution for that content (i.e. free-to-air television, pay television, radio, internet casting, mobile streaming etc)
6. Te Putahi Paho's view is that any rationale answer to this question revolves around what is possible and practical to regulate and enforce according to the method of distribution. For example it is possible and practical to enforce content being broadcast via free-to-air and pay TV, radio and mobile streaming because the businesses that operate these media operate in the New Zealand jurisdiction, under the constraints of controlled and regulated distribution networks and therefore the means for monitoring and enforcement can be effectively implemented.
7. It is far more difficult and less practical however, to control and regulate the material coming down the internet. Measures such as publicly subsidised filters and education programmes about internet use, are likely to present more effective means of allowing the end user of internet content to regulate the type of content being accessed on the basis of any accepted principles for standards of content in Aotearoa.
8. Beyond these general views, there are three major questions that are particularly relevant to the interests of Te Putahi Paoho. The other questions outlined in the Ministry's consultation paper are interesting for stakeholders more widely and will no doubt raise wide-ranging debate by other groups, but with the compressed timeframes, Te Putahi Paoho has chosen to focus on the subset of questions below.

What principles might be applied to any regulation of content in a digital environment?

9. The standards for broadcasting in New Zealand, as provided in the Broadcasting Act 1989, include:
 - The observance of good taste and decency
 - The maintenance of law and order
 - The privacy of the individual

- The principle that when issues of public importance are discussed, reasonable efforts are made to present significant points of view (i.e. balanced reporting).
10. The key concerns or principles for standards of content that are common internationally include:
- The protection of children
 - The portrayal of violence
 - Accuracy in reporting
 - The protection of privacy
 - The fair treatment of people who are the subject of programmes
11. These are all admirable principles for standards of content and the government should be commended for continuing to support them.
12. However there are other principles that are relevant to our situation and society in Aotearoa. Consideration should be given to other regulatory frameworks and accepted obligations of the Crown and Government. Examples include some of the protections intended by the Human Rights and Trademarks legislation and the policy and legislative frameworks that seek to protect the Maori language and Culture.
13. Te Putahi Paoho considers that, in addition to the principles outlined above, standards should seek to ensure that broadcast content:
- Does not discriminate on the basis of race or ethnicity;
 - Does not discriminate on the basis of gender, and in particular provide protections for woman;
 - Does not cause offence to any culture or ethnic group
 - Provides protections for the Maori language and culture (on the basis that Maori are Tangata Whenua and the Treaty of Waitangi obligations of the Crown to protect te reo Maori)
14. **A full scan of current Government policies, legislation and regulations that might provide further insight to the protections** that should be sought in any framework of regulation of content in the new digital environment, would be useful as part of the Ministry's current review.

Should the content of publicly owned broadcasters be regulated differently from the content of private sector broadcasters, given that they have special mandates to deliver certain types of programming and maintain certain standards of quality with this programming?

15. The government provides funds for public broadcasters to operate. If the Government, on behalf of its citizens accepts the principles for standards of content outlined above, then the public broadcasters are the key mechanisms by which the government should establish and maintain these standards. The public broadcasters should model good standards against these principles and remain the primary reference point for other broadcasters and audiences, in relation to the principles for standards of content.

Should there continue to be a state agency available in New Zealand to operate content regulation?

16. In order for the Crown to maintain standards on the basis of the key principles outlined above – it must have an agency or agencies to monitor and enforce those standards, particularly for methods of distribution that are free-to-air, and where users have little control over the content distributed to them.

SPECTRUM ALLOCATION

17. That as digital media increase rapidly in number and presence, and analogue services reduce, the Crown must advance the Māori position in relation to spectrum and frequencies in a manner consistent with that upheld by the Waitangi Tribunal. The Waitangi Tribunal found in its reports on claims in 1990 and 1999, that Maori are guaranteed rights of ownership ahead of the Crown and other recreational or commercial users in relation to the spectrum, and should be allowed to freely pursue the opportunities that this offers¹.

18. Against this background, Te Putahi Paho submits that the Crown should ensure that the Maori Television Services should retain ownership of the reserved Māori UHF frequencies in

¹ ‘We conclude that if the Crown’s obligations under the Treaty principles relating to partnership, rangatiratanga, fiduciary duty, active protection, mutual benefit and development are to be effectively fulfilled for the language and culture of Māori, as well as for their social and economic well-being, it will be necessary for the Crown to facilitate the fuller involvement of Māori in the telecommunications industry through the ownership and management of spectrum frequencies. P49 *The Radio Spectrum Management and Development Final Report 1999*, Waitangi Tribunal.

perpetuity, and hold all management rights over their use. This applies whether frequencies are used by MTS for its own programmes, other joint ventures, or for 'in kind' arrangements such as those currently in place with SKY2,.

19. Te Putahi Paho also submits that the frequencies providing low quality broadcast capability currently offered to iwi FM radio stations (provision was found in the 'guard band' in the early 1990's when the best frequencies were auctioned) should be the first to be replaced, by giving iwi and iwi broadcasters first option to take up frequencies in the 100-108 MHz band, or elsewhere when new digital frequencies become available for radio broadcasting.
20. Te Putahi Paoho is pleased to note progress by the Maori Television Service with respect to digital technology, and supports in principle the concept of a second channel that only broadcasts high quality Māori language content. Te Putahi Paoho is concerned however, that the capital and operational financial resources available for the second Māori language channel are in no way comparable to those available for the main Māori Television Service, and will be taking this matter up with the Crown.

A final point of clarification

21. On page 21 of the Ministry's discussion document *Digital Broadcasting: Review of Regulation Vol One* it is stated that *"MTS owns a management right allocated by the Crown in the UHF-TV band but does not currently use it. For technical reasons related to reception in an adjacent licence, an arrangement was negotiated whereby MTS could use one of Sky's licence sets and secure 100% transmission coverage across New Zealand."*
22. Te Putahi Paoho considers that this statement offers an implicit criticism of the Māori Television Service and presents SKY TV as a major benefactor of the service, and without providing the relevant context relating to industry player who were, at the time, 'squatting' on the reserved Māori frequencies.
23. In 2003, the UHF Maori reserved network of frequencies were being utilised without licences by SKY Television (to broadcast CNN network programming) and by SONY Playstation.
24. It is within this context that SKY agreed with the Maori Television Service to broadcast on unused SKY frequencies and transmitters at reduced cost when, on the condition that SKY could continue to broadcast the CNN programmes.

² SKY Network Television NZ Ltd currently has an arrangement with MTS which allows SKY to broadcast on Māori TV reserved frequencies, with MTS going out on a SKY network, background outlined above.