

## **DIGITAL BROADCASTING: REVIEW OF REGULATION OVERALL SUMMARY OF RESPONSES**

This document provides a summary analysis of the responses received on the discussion papers *Digital Broadcasting: Review of Regulation (Volumes 1 and 2)* and *Broadcasting and New Digital Media: Future of Content Regulation* (both published in January 2008). The papers can be accessed at the Ministry for Culture and Heritage website: [www.mch.govt.nz](http://www.mch.govt.nz).

The summary draws on the wide range of opinions received in the discussion papers, and aims to give a 'flavour' of the key themes arising from the public consultation. It is not intended as a substitute for the individual submissions and the detail of individual submissions will be taken into account during the policy development phase of the review. Submissions are publicly available on the above website (except in one instance where the respondent declined to make their submission available).

The first part of this document summarises responses under the sections of the discussion paper, *Digital Broadcasting: Review of Regulation* as follows:

- Introduction
- Section A) Regulatory spectrum: Cross-value chain issues
- Section B) Content Issues
- Section C) Distribution Issues
- Section D) Network Issues
- General / other comments

The second part of this document summarises responses under the question headings of the consultation paper, *Broadcasting and New Digital Media: Future of Content Regulation*.

## **INTRODUCTION**

### **Overview**

The majority of respondents agreed with the nine objectives and five principles set out for the review, either in their entirety or with the majority of the objectives and principles.

Most of the respondents agreed that the diversity scenario, as summarised in the discussion paper (Vol. 2, p.6). is a desirable state for New Zealand to work towards. Some submitters commented on the tension between economic/market and public broadcasting objectives in relation to the objectives and principles of the review. A small number of submitters considered the diversity scenario to be an “idealistic” or “unrealistic” state, requiring “considerable” or “extensive” regulatory intervention. The greatest threat to diversity was seen to be “lack of competition in relevant markets and diversity in provision (platform, content and services)”. There was some disagreement as to whether “lack of clarity and consistency in regulation and policies” and “lack of local content – in terms of range, quantity and quality” were threats to diversity.

On the issue of change to the regulatory regime, two thirds of respondents argued that change was necessary. Of the one third who supported maintenance of the status quo, a number noted that minor amendments were needed to update certain aspects of the current arrangements.

### **Response by question**

#### ***Question 1.1***

*Do you agree with the objectives and principles set out for the review? Please give reasons for any proposed additions or amendments to the principles and objectives.*

The majority of respondents agreed with the nine objectives and five principles set out for the review; either in their entirety, or with the majority of the objectives and principles.

A number noted that some of the principles and objectives were mutually exclusive, particularly those relating to economic (market) and socio-cultural (public broadcasting or public value) objectives. This view was shared by groups including telcos, academics, individuals, broadcasters, and funding agencies.

Internet and internet carrier organisations were particularly concerned about the principle relating to the consistent application of standards, noting the difficulty of taking into account the technical characteristics of different content delivery platforms.

Organisations with a particular interest in one area tended to acknowledge the objective or principle that was closest to their own interests. For example, those concerned about content creators' and content owners' rights welcomed the objective relating to the protection of property rights.

There was no explicit disagreement with the objectives and principles as a group, apart from comments on the conflicting nature of some of the objectives and principles, a preference for some to be given more weight than others, and suggestions that the objectives might be difficult to attain.

### **Question 2.1**

*Do you agree that the diversity scenario summarised above is a desirable state for New Zealand to work towards achieving?*

Most of the respondents to this question agreed that the diversity scenario as outlined in the discussion paper (Vol. 2, p.6) is a desirable state for New Zealand to work towards.

Some, including internet organisations, observed that the scenario matched their current role or vision, and they were therefore already contributing to the diversity scenario as outlined.

Another set of submitters noted the tension between economic/market and public broadcasting objectives noting, for example, that the scenario is "at odds with New Zealand's small market size", and that "market fluctuations potentially leave public broadcasting and local content provision vulnerable".

A small number of submitters, including private broadcasters and print media associations, were concerned that the diversity scenario was "idealistic" and "unrealistic" and would require "considerable" or "extensive" regulatory intervention.

A comment was made that public interests need to be more cognisant of the fact that groups such as Māori struggle in the market i.e. it is not a level playing field.

### **Question 2.2**

*Do you agree with the threats and issues identified in the above table? Please identify any threats or issues with which you do not agree, and provide reasons.*

A number of submitters across a range of groups, including production companies, infrastructure providers, and broadcasters, expressed unqualified agreement with the threats and issues identified in the table.

Slightly fewer submitters, from groups including private broadcasters and sports organisations, expressed unqualified disagreement. Some argued that the threats identified in the paper do not exist and that there is no problem that needs fixing.

The threats most often disagreed with were: Threat 1, Lack of clarity and consistency in regulation and policies (and related issues); and Threat 4, Lack of local content – in terms of range, quantity and quality (and related issues). Specific reasons varied, and a number of submitters sought to express what they thought the solution to the threats might be, rather than providing reasons.

### **Question 2.3**

*Are there any further threats and issues for considerations that you believe have not been identified?*

A number of further threats and issues were identified. Those raised by more than one submitter, were:

- Lack of funding certainty for broadcasting (to funding agencies via an annual appropriation) constrains planning
- Changes to regulatory environment or government intervention will impact on investment and infrastructure and digital services
- The environment is changing very quickly and there is a risk that inappropriate or over-regulation will be applied
- The scope of review is not clear with regard to internet content - internet content and traditional broadcasting are very different
- The relationship of programme scheduling to ratings / revenue
- A threat to independence of the media.

### **Question 2.4**

*Which of the threats and issues (identified in the table or in your response to question 2.3) do you consider to be the top three priorities for action?*

Responses to this section were not numerous. Some respondents felt that they had made their preferences clear in earlier questions; others noted the inter-relationship between many of the threats and issues.

The top threats identified by those who responded, were:

- 2) Lack of competition in relevant markets and diversity in provision (platform, content and services)
- 1) Lack of clarity and consistency in regulation and policies
- 4) Lack of local content – in terms of range, quantity and quality

Fewer submitters nominated their top three issues, which focused on:

- 9) Acquisition and sale of property rights (anti-siphoning)
- 2) Changes to media ownership
- 7) Changes to public service broadcasting objectives, structure, approach, and/or funding (e.g. increased contestability)

There was no obvious pattern amongst respondents selecting these issues and threats as their top priorities.

### **Question 3.1**

*Should New Zealand maintain the status quo in all respects? If so, why? If not, what are the priority areas for change?*

One-third of respondents agreed that the status quo should be maintained. A number of these also noted that minor amendments still needed to be made to update certain aspects of the current arrangements. Priorities for change differed according to the respondents' point of view. The issues raised tended to be elaborated under other sections of the discussion document.

### **Question 3.2**

*If some change is necessary, should this generally be at the level of (a) updating existing arrangements, (b) restructuring the regime in line with market developments, or (c) reforming the regime? Please give reasons for your views.*

Very few submitters opted to select one of the three options. Those who chose option A (update) included funding agencies, private or non-commercial broadcasters, and individuals. Those who chose option B (restructure) included Crown entities, sports organisations, and network providers. A clear caveat was given, however, that restructuring should only occur in response to genuine market developments. Those who chose option C (reform) were, in general, Māori organisations who saw it as the only way of undertaking a strategic approach to the future environment. A few further submitters preferred a mix of two options: A and B, or B and C.

## **SECTION A) - REGULATORY SPECTRUM: CROSS-VALUE CHAIN ISSUES**

### **Overview**

Concerning options for revised institutional arrangements, most submitters supported some level of change, with a clear majority supporting creation of a converged regulator.

There was general consensus that a single regulator should not have both economic and cultural responsibilities. A few suggestions were made on the possible responsibilities of a single or converged regulator, and on the expansion of the roles of the Broadcasting Standards Authority and the Telecommunications Commissioner should the status quo be maintained.

On the question of the relationship between a single regulator and the Commerce Commission only a few responses addressed the primacy issue, and opinion was divided on this. Most submitters acknowledged that an overlap would be inevitable if a single regulator were established. Regarding options relating to market definitions, most submitters supported restructuring or reform.

Broadly speaking, media companies were against media ownership rules of any kind, while a number of consumers (but not all) were in favour of these.

The importance of developing media literacy was acknowledged. A number of respondents maintained that a wider definition of media literacy is needed (to include internet safety). Account needs to be taken of existing programmes and the role of the education system, parents, media and internet service providers in any future developments.

### **Response by question**

#### ***Question 4.1***

*Should New Zealand consider one of the three options for revised institutional arrangements (reflecting different levels of change along the regulatory spectrum)? If so, which one, and why?*

There was a very high level of response to this question. While there were no clear groupings of stakeholders supporting any particular option, three of the four Maori organisations that responded to this question supported restructuring or reform (approaches B or C). Most submitters were in favour of some degree of change.

There was roughly twice as much support for restructuring, or the creation of a converged regulator (approach B), as for updating existing arrangements (approach A) or for maintaining the status quo. Few submitters supported reform

(approach C). A small number of respondents (mostly national industry bodies) supported some kind of self-regulation. Others stated that more thought needed to be given to the reasons for change, to ensure that the direction taken is appropriate.

A number of submitters supported measures being taken to update existing arrangements (e.g. to ensure a fairer playing field). Others maintained that existing structures are sufficient to deliver the policy requirements and that checks and balances are already in place. Several commented on the importance of certainty for industry and investors, especially when telecommunications companies are in the middle of significant change.

Those favouring approach B emphasised the need for change, and suggested that restructuring is the only technically and politically feasible option. It was proposed that a converged regulator is more suited to a small country and that measures could be put in place to resolve any conflicts. Restructuring was seen as providing a smoother transition from existing structures, providing greater co-ordination of regulatory tasks without losing existing centres of expertise or submerging roles, and as minimising compliance and participation costs (especially for new entrants).

Most submitters were opposed to creation of a single regulator. A number of submitters pointed to potential conflict between: cultural and economic mandates, content and distribution roles, or public service broadcasting (PSB) and non-PSB roles. A couple of submitters noted that large, overarching regulators can be too bureaucratic. One submitter pointed out that because content is part of the value chain does not imply that there should be a single regulator, and that telecommunications companies have other aspects of their role in common with other network business. Another noted that new industry models are still emerging and the benefits of regulation are unproven abroad. Several pointed out that industry self-regulation is more appropriate for content issues (i.e. by broadcaster, or on the internet at the internet service provider level). One submitter pointed out that traditional broadcasting regulatory models were not applicable to the internet.

#### **Question 4.2**

*Which of the above roles would fit appropriately within the responsibilities of converged regulators? Of a single regulator?*

A good number of respondents addressed this question, however most commented on what should *not* be included in the role of a converged or a single regulator. In relation to a single regulator, it was suggested that advertising, media literacy, competition matters (e.g. access to content/networks, investment), and spectrum management should not be part of the role. Under a converged regulator, it was suggested that online as opposed to other broadcast

content, and responsibility for both PSB (Public Service Broadcasting) and non-PSB matters should not be included. It was also noted that content and market regulation should not be combined under either scenario.

A smaller number of submitters made suggestions on what should be included in the converged regulator role, including: online (as well as other broadcast) content, media literacy, spectrum management, cross-platform content standards, promotion of competition, public good benchmarks, monitoring methodology and auditing, oversight of industry self-regulation, regulatory and platform access matters, cross-sector audiovisual issues, managing media diversity/ protection of PSB, maintaining plurality, and monitoring the impact of mergers/structural change. Some submitters suggested that the division of roles should be based on the outcomes sought or the rules required.

### **Question 4.3**

*Would it be appropriate for a single regulator to have both economic (e.g. competition) and cultural (e.g. standards) responsibilities?*

There were a similar number of responses to this as to the previous question. Submitters were overwhelmingly opposed to a single regulator having both economic and cultural responsibilities, on the grounds that the issues and objectives relating to these are fundamentally different. One Crown entity pointed out that while in some other jurisdictions a single regulator has both roles, there are advantages in retaining a clear institutional focus on economic regulation in order to promote competition and that the regulator needs a clear independence rather than a mixed brief.

One telco supported the proposal, pointing out that increasingly competition issues in telecommunications may need to take into account an informed understanding of relevant content delivery issues. One TV broadcaster had no issue if there were provision for appeal and a level playing field were retained.

### **Question 4.4**

*If Approach A were adopted in preference to a converged or single regulator, should an extended Broadcasting Standards Authority and Telecommunications Commissioner have any additional roles and responsibilities? Should the Commissioner, for example, include regular market reviews as input to competition determinations made by the Commerce Commission?*

Responses to this question were light and most submitters simply reiterated their position on institutional change stated in question 4.1. Some submitters provided generalised responses.

A few submitters supported the examples provided e.g. implementation of regular market reviews. A network provider pointed out that such reviews would be contrary to Commerce Act determinations. A Crown entity saw an expanded role for the Telecommunications Commissioner concerning spectrum allocation which was seen as increasingly important in promoting competition, particularly with the approach of analogue switch-off (ASO). One individual considered the Telecommunications Commissioner should have the power to impose meaningful penalties in relation to agreed network access. The same individual proposed that the Broadcasting Standards Authority be expanded to become a Contents Standards Authority administering a hierarchy of codes from free-to-air (most restrictive) to pay to view. A network provider considered that expansion of the role of the Broadcasting Standards Authority needed careful consideration, in view of successful self-regulation of the internet elsewhere, but agreed that clear delineation of its remit in relation to pay and free-to-air TV was required.

#### **Question 4.5**

*How could the relationship between a single regulator and the Commerce Commission best be defined and managed? For example, should the regulator have primacy and then 'refer' issues to the Commerce Commission? Would the two be required to work together on all competition matters? Or, would they each be free to investigate potential issues / breaches as they saw fit?*

A number of submitters addressed this question. Some argued that the issue of primacy between a single regulator (i.e. a regulator with an ex-post competition role) and the Commission could be avoided by careful delineation of roles: by including Commission representation within the single regulator, or by allowing the sharing of confidential data.

Submitters who considered the primacy issue were divided, with several submitters advocating that the single regulator have primacy, one arguing for primacy but without specifying which should have it, and a couple preferring that each entity be able to investigate competition matters as it saw fit.

#### **Question 4.6**

*Some overlap of responsibilities does exist in other countries, such as the US and the UK. Should such overlap be contemplated if a single regulator were established? If so, how might it be made workable?*

Fewer submitters answered this question. Most considered that if a single regulator were established, some overlap would be inevitable. Ideas for managing such overlap included interdisciplinary teams, some form of joint committee representing both entities, and a clear definition of roles. One submitter suggested that, given New Zealand's size, no formalisation of the entities' interaction in areas of overlap would be necessary.

#### **Question 4.7**

*Which of the options for dealing with market definitions should be considered in New Zealand? Please give reasons for your views.*

Two submitters preferred approach A (update), three submitters preferred approach B (restructure), and three submitters preferred Approach C (reform). Another submitter pointed out that any of the options could be appropriate, and there could be movement from one to another over time.

#### **Question 4.8**

*Should changes to media ownership (including cross-platform or foreign investment) rules be considered to ensure plurality of news / key genre provision?*

There was a strong response to this question. At least four media players and two other submitters argued against foreign ownership restrictions citing, in particular, the risk they could pose to investment in New Zealand's broadcasting industry. One submitter argued for a more nuanced view, suggesting that foreign investment can be good or bad, depending on what it relates to (e.g. foreign investment in infrastructure can be helpful).

A small number of other submitters mostly media players, argued against cross-media ownership restrictions. A couple of submitters appeared to argue in favour of such restrictions; while one submitter suggested that cross-media restrictions would not be enough, and that they should be accompanied by other measures designed to ensure diversity of operational function.

Many submissions raised the issue of intra-media ownership rules, one citing newspapers (the purchase of the Dominion by the Evening Post), and others citing television broadcasting (such as SKY's purchase of free-to-air Prime). With the exception of one submission, all who raised the issue of intra-media ownership directly were in favour of restrictions, although for some this might not necessarily involve divestiture but merely 'must-offer' rules (e.g. forcing Sky to offer Prime on Freeview). Others did not raise the issue specifically but made broad statements that could be construed to be hostile to such restrictions.

#### **Question 4.9**

*Should New Zealand establish a national, co-ordinated media literacy programme? If so, what form should it take, and who should be responsible for its implementation?*

There was also a strong response to this question, with a general consensus on the need to develop a definition of media literacy in the digital environment. A number of submissions identified a need to redefine media literacy e.g. to include internet safety, intellectual property rights, and the ability to use/create/share digital content.

A number of submitters contended that media literacy was the responsibility of the education system. Attention was drawn by a number of submitters to successful existing programmes run by NetSafe and Mediascape. A few submitters suggested that media literacy could fall within the role of the Broadcasting Standards Authority, NZ On Air, or a government regulator. A few pointed out that regulation was not required as it is in the market's interests to promote media literacy, and examples of responsible industry self-regulation were cited.

#### ***Question 4.10***

*To what extent would it be appropriate for a media literacy programme to address issues of internet safety?*

Definitional issues were again raised. Several submitters pointed out that the review definition is out of date, and internet safety is already included in media literacy programmes. Suggestions were made that the following be included in internet safety programmes: risks in using illegal services, viruses and spyware, cybercrime, text bullying, and pornography. Internet safety was seen variously as the responsibility of the education system, parents, the media, or government – or all of these. The role of Netsafe was endorsed by several submitters, including two internet providers.

## **SECTION B) - CONTENT ISSUES**

### **Overview**

Respondents were evenly split on the desirability of amalgamating the existing content standards functions of the Broadcasting Standards Authority, the Advertising Standards Authority, and the Office of Film and Literature Classification, and the Press Council in relation to 'broadcasting-like' content.

Almost without exception, respondents agreed that funding bodies need further mechanisms than those currently available to achieve the outcomes of diversity, maximum visibility, and accessibility of funded programmes. Responses on options for ensuring diversity and visibility of local content, were relatively evenly split between those favouring approaches A) (update), B) (restructure), or C) (reform). Few responses supported the status quo. There was an array of responses on the funding implications of any changes.

The majority of respondents believed that a greater focus on public service broadcasters would not be a more effective means of ensuring the continued accessibility of public service broadcasting content. There was a relatively even split amongst respondents who favoured maintaining the status quo or one of the suggested options for change: A (update), B (restructure) or C (reform).

Respondents were divided on the desirability of establishing an independent body to measure and monitor the quality and diversity of public service broadcasting,

By far the majority of respondents considered that 'must carry' regulations should be imposed on pay-TV providers to require them to show publicly-funded content.

Concerning advertising regulation, there was a strong preference for the status quo, with self-regulation to continue to be overseen by the Advertising Standards Authority.

### **Response by question**

#### ***Question 5.1***

*To what extent would it be appropriate for administration of the separate content standards functions of the Broadcasting Standards Authority, the Advertising Standards Authority, the Office of Film and Literature Classification and the Press Council, as they relate to broadcasting-like content, to be amalgamated within a single body?*

Respondents were almost evenly split for and against this option. Arguments provided in favour of amalgamation were that they are 'like' bodies, with similar 'moral guardian' roles, that it would be pragmatic for administration purposes, and that it would support consistency of standards.

Respondents opposed to amalgamation were generally supportive of self-regulation, particularly with regard to the functions of the Advertising Standards Authority, and tended to cite the difficulties associated with regulating internet content.

### **Question 5.2**

*Which of the above options for change do you consider would best ensure diversity and visibility of local content in a digital age? Please give reasons for your views.*

Concerning options for ensuring diversity and visibility of local content, there was a relatively even split amongst respondents who favoured the nominated approaches A (update), B (restructure), or C (reform). Several respondents favoured a mix of options - mostly a cross between restructure and reform. There were few responses supporting the status quo.

Specific suggestions for updating the system included:

- greater contestability and increased funding
- the availability of more content on Freeview
- changes to NZ On Air's contract requirements (more flexibility, scheduling)
- making TVNZ's Charter funding contestable to all
- providing funding for new platforms – especially the internet - but not to the detriment of traditional broadcasting
- overseas partnerships

Specific suggestions for reform of the system included:

- implementation of a quota system (several respondents disagreed with the introduction of quotas)
- creation of longer-term funding certainty (e.g. 4-5 yrs) for funding bodies and broadcasters
- having one funding Ministry only
- having one funding body (agency) only
- making an attempt to separate bodies' funding/monitoring roles

### **Question 5.3**

*Do funding bodies require any mechanisms (e.g. incentive-based or obligation-based) not currently available to them to promote diversity, maximum visibility and accessibility of funded programmes?*

Almost without exception, respondents agreed that funding bodies do need further mechanisms to achieve the outcomes listed above. The most frequent specific proposals were for TVNZ's direct funding to be removed, and for changes to be made to NZ On Air's funding contracts. There was a range of responses on the funding implications of any changes and on the question of the provision of incentives for private investors.

#### **Question 5.4**

*To what extent would the blurring of boundaries between different segments of the audio-visual sector justify changes to the current structure of funding bodies (e.g. to avoid the risk of gaps or duplication)? If a converged funding body were established, what might its role be?*

There was virtually no support for establishment of a converged funding body in response to a blurring of boundaries between different segments of the audio-visual sector.

Broadcasters and funding bodies noted that the three current funding bodies NZ On Air, Te Māngai Pāho and New Zealand Film Commission each have their own distinct objectives with dedicated funding to achieve these. Two respondents considered that the key issue is not who *provides* the funding, but who *receives* it (i.e. who is eligible). Another noted that funding should be platform-neutral. One respondent believed that the recent extension of NZ On Air's remit to include both regional broadcasters and new media platforms (through the Broadcasting Amendment Bill 2007) will address many of the issues raised in this section of the discussion paper. Another respondent noted a gap in documentary funding.

#### **Question 5.5**

*What would be the implications of the changes you support for the amount of funding required? How could a significant commitment to private investment in local and other content of public value also be encouraged?*

There was a multitude of views on both parts of the question. Several respondents noted that the question dealt with two very different issues.

In relation to the first part of the question the following points were made:

- There would be efficiencies in removing direct public funding (reducing possibilities for double-dipping)
- TVNZ's Charter funding should be distributed by NZ On Air and any FTA broadcasters eligible to contest it
- It is desirable to have new funding for local content
- TVNZ should receive more public funding to enable it to give full effect to the Charter

- Funding should be made available to any producer making content for delivery by any distributor reaching a significant audience
- E-direct funding should be increased as contestable funding can not be truly independent of government
- Funding should be increased and made multi-year
- Increased clarity in overall goals will limit waste and confusion

Concerning private investment:

- NZ On Air's policy should allow programmes-makers access to overseas co-production funding
- This will depend on health of overall business environment
- Grants/offsets should not be introduced at the expense of content funding
- Domestic-produced content should aim to have international market potential
- Better terms of trade are needed and a producer offset scheme similar to Australia's
- Increase revenue share for producers to enable production companies to attract more offshore finance
- Increase content funding to be more attractive to overseas co-productions and markets
- There should be a higher ratio of public-private funding

### **Question 5.6**

*Which of the options for supporting and promoting public service broadcasting in a digital age do you support, and why?*

There was a relatively even split among those respondents who favoured maintaining the status quo, or one of options A (update), B (restructure) or C (reform). Some of those who favoured the status quo suggested that there be even *less* regulatory/government intervention/investment.

Where updating (approach A) was favoured, this related to the review of funding levels. Those in favour of restructuring (approach B) pointed to a need for incentives; a need for less reliance on commercial revenue; a need to develop an alternative definition of public sector broadcasting; and a lack of need for an independent body to separate policy and funding delivery. Those who favoured reform (approach C) supported direct funding, or contestable funding.

### **Question 5.7**

*Would a greater focus on the role of public broadcasters be a more effective means of ensuring the continued accessibility of public service content than spreading resources and content across numerous providers? If so, how might this be achieved?*

The majority of respondents on this question were very clear that they considered a greater focus on public service broadcasters would not be a more effective means of ensuring the continued accessibility of public service broadcasting content. The only respondents to state unqualified agreement were large public service broadcasters.

Production industry associations gave qualified agreement, suggesting that some spread of resources will always be necessary, without becoming too dispersed. They also proposed ring-fencing funds and requiring free-to-air operators to carry a percentage of first-run specialty programmes. Private broadcasters noted that they were still committed to providing local content. Several submitters (including other private broadcasters) claimed that New Zealand does not have any 'true' public service broadcasters. One funding body noted that the focus needs to be on funding public broadcasting *outcomes*, not public service broadcasters. Mechanisms to achieve greater effectiveness included greater public programme funding, and having universally accessible points of public service broadcasting reception.

### **Question 5.8**

*If an independent body were commissioned, what mechanisms might be needed to measure and monitor the quality and diversity of public service broadcasting in the digital age?*

Respondents were divided on this issue. Some were in favour of an independent body while others believed firmly that the current mechanisms, such as annual reporting and Select Committee review, are adequate. Two submitters believed that the governing board of the independent body should reflect a range of audience diversity and professional roles.

Suggestions for mechanisms to measure and monitor public service broadcasting quality included:

- Consideration of international experience
- More effective use of the data available from digital audience measurement
- Engagement with Treaty partner
- Use of quantitative Charter measurements
- Holding periodic and independent reviews of funding levels e.g. 5-yearly)
- Conducting market reviews of the whole industry's performance and outcomes
- Stronger quality controls concerning the use of Māori language and cultural content
- Consideration of NZ On Air's report on different international approaches to measuring broadcasting quality
- Incentives for broadcasters to deliver outcomes that are realistic with regard to funding levels, and that are fair and reliable.

### **Question 5.9**

*As viewing patterns change with the proliferation of platforms, and access is often conditional (pay per view or subscription), what expectations should there be for the delivery of publicly-funded content through pay platforms?*

Of the respondents who answered this question all but two digital television platform providers (one publicly and one privately funded) believed 'must-carry' regulations should be imposed to make pay-TV providers show publicly-funded content. The most common grounds for this were equity/fairness, public interest, and affordability. One academic proposed that making digital public service broadcasting channels available through SKY (existing digital platform), would ensure the widest possible audience.

Some of the submitters supported must-carry regulations only if:

- it was a mutually agreed and beneficial arrangement, and the broadcaster was not disadvantaged (public broadcasters);
- compensation was given to the pay provider/rights-holder (industry associations);
- these only applied where channels have a significant level of publicly-funded programming (private broadcaster);

### **Question 5.10**

*Which of the above options for dealing with advertising issues in a digital age do you support? Please give reasons for your views.*

The majority of submitters favoured continuation of the status quo i.e. a self-regulated environment. Strong support was expressed for the Advertising Standards Authority (ASA), in terms of its effectiveness, flexibility and responsiveness, and maintenance of the Codes.

Four submitters selected option A (review the 'Sunday' advertising ban (option A)). A query was raised about the reference in Option C to specific rules on areas of public interest (e.g. children's toys, alcohol, tobacco, pharmaceuticals), the majority of which are already covered by ASA Codes. The focus on non-broadcast platforms in a review of digital broadcasting was also queried.

## **SECTION C) - DISTRIBUTION ISSUES**

### **Overview**

Most interest in this section focused on the question relating to the availability of premium content and services which drew at least twice as many responses as the other questions, and many of the responses were very detailed. Views on this issue were polarised, as were positions on quotas and anti-siphoning rules. Suggestions for anti-siphoning in regard to sports focused on repeat screenings on other networks and marketable à la carte packages. Those who supported terms of trade generally focused on must-carry rules.

Access to content for disadvantaged viewers attracted a spread of responses across the regulatory approaches, as well as specifically focusing on captioning requirements on broadcasters. There was more agreement on the need to extend funded captioning across all delivery platforms, and on the need for funding and/or requirements for audio-described programmes.

Support for initiatives to increase consumer understanding of New Zealand's copyright framework, and for maintaining an up-to-date copyright regime, was a theme of the submissions on copyright. The options for restructure and reform were favoured here.

There was a spread of views on orphan work from general support for a regime of some kind, to restructure and reform. The majority of submissions saw greater public benefit in having orphan works available, than in protecting the rights of authors who cannot be found.

### **Response by question**

#### ***Question 6.1***

*Which of the above options for ensuring the accessibility of content for disadvantaged audiences do you support? Please give reasons for your views.*

There were a number of responses to this question with equal numbers of respondents supporting options A (update) and C (reform), with a slightly smaller number supporting B (restructure).

Supporters of Option A highlighted the need for captioning and audio-description, and for available on-line content. Supporters of Option B identified a need to prioritise platforms and core programmes; and a need to investigate how new digital media enables subtitles, sign-language sub-screens, electronic Braille-pad subtitling, and audio-description. One respondent advocated the use of captioning for all television programmes and advertising.

Option C respondents were split between those seeking a systematic approach to ensure equitable access for disadvantaged viewers; and those focusing solely on the need for electronic programme guide (EPG) regulations (one commenting that all TV sets should be required to carry teletext encoders).

### **Question 6.2**

*If funded captioning of programmes was extended, should this cover all delivery platforms, or are some considered priorities?*

There were few responses to this question. Most respondents supported captioning on all delivery platforms, with one suggesting it be applied to all major free-to-air platforms. A smaller number favoured prioritisation. One respondent suggested that the provision of captioning should be a condition of funding support for local and public service broadcasting content, where this is cost effective.

### **Question 6.3**

*Should the option of introducing requirements on broadcasters and platform operators to provide some captioning be considered as an alternative, or in addition, to funding?*

There were few responses to this question. Some submitters supported the introduction of requirements, while others recommended that further assessment take place concerning issues such as variations in platform technology and cost.

### **Question 6.4**

*Should funding and / or requirements be introduced to provide audio-described programmes for the blind or sight-impaired? If so, what would be the implications, in terms of technology and cost?*

Again, there were relatively few responses to this question. Most supported funding requirements where, or as they become, cost-effective and perhaps as a condition for government funding support. Another respondent suggested that there be a requirement for some basic provisions, and for those broadcasters who do not meet these provisions to make a financial contribution to those who do. One respondent maintained that audio-description was cost-prohibitive.

### **Question 6.5**

*Which of the options for ensuring the availability of certain types of content and services across platforms do you support? Please give reasons for your views.*

There were a large number of responses to this question, with at least twice as many as for other questions on Distribution. Clearly divergent positions were taken by supporters of the status quo or option A (update), and those supporting options B (restructure) or C (reform).

Those who favoured the status quo or option A considered that there was no evidence that anti-competitive behaviour is growing, with one respondent believing that competition law is adequate to deal with it, and another denying any groundswell of complaint about lack of access to sports. Status quo supporters argued that options B or C would result in pay-TV operators losing on their investment in sporting codes, that anti-siphoning regulations would affect property and IP rights, and that market forces should be left to operate. One respondent noted a global trend toward less anti-siphoning regulation.

Supporters of options B and C maintained that there was considerable evidence of anti-competitive behaviour and excessive gatekeeping. Option B supporters were in favour of viewers having free-to-air access to premium content, with one respondent also wanting Freeview on the SKY platform. At the same time caution was expressed about over-penalising pay-TV. Option C supporters focused on the social responsibilities of broadcasters to ensure free-to-air access to premium content (there was some overlap here with Option B views) including cultural and Māori content; or to ensure access to platforms, distribution networks, and electronic programme guides.

### **Question 6.6**

*If brokered terms of trade were developed, what should be their scope? What criteria might be relevant?*

A larger number of respondents favoured terms of trade, some wanted 'must-carry' rules on SKY for carriage of Freeview, or all free-to-air channels on pay-TV; or that, conversely, Freeview must offer its channels to SKY. It was noted that criteria should prevent vertically integrated players abusing their dominance while not inhibiting such players' return on investments.

A small number of respondents did not want brokered terms of trade as they felt there was no evidence of abuse. They commented that broadcasters and sports bodies alike should be able to exploit their content packages, and that there is no clear policy objective for change.

### **Question 6.7**

*If broadcasters or platform providers were required to carry a minimum percentage / amount of certain service types of genres, what services or genres should be prioritised? How would such a requirement be workable in a multi-channel environment?*

There were a number of responses to this question, with about equal numbers expressing views for and against quotas.

Supporters of public broadcasting quotas considered that priority should be given to events of New Zealand interest or participation; high-end, high-risk local content genres (such as drama, documentaries, children's programmes, comedy, news and current affairs); and Māori language.

Those opposed to quotas maintained that they had never been effective in New Zealand, that they drive the wrong behaviours, interfere with achieving diversity in content, and are becoming outdated in a time-shifting internet world.

### **Question 6.8**

*If some form of anti-siphoning were introduced, how might this be limited in the New Zealand environment? How might the effect on sports bodies be mitigated?*

There was somewhat more interest in this question. A slightly higher number of these responses supported some form of anti-siphoning, reiterating that SKY's advantage is unfair and not in the long-term interest of sport, and pointing out the importance of events of national cultural significance being on free-to-air television.

Some respondents reiterated their opposition to anti-siphoning regulations, citing irrelevance, market distortion, or possible damage to the development of sporting codes

Suggestions for limiting siphoning included: the provision of free-to-air events at all times; pay-TV screenings repeated on one or all networks soon after; sport broken down into marketable, à la carte packages with limits on purchase (e.g. time limit, no automatic renewal, distribution criteria); and government freeing up TVNZ's dividend so it can compete.

One respondent noted overseas precedents for making pay-TV give up exclusive rights to sports. One suggested compensating sport bodies for lost revenue while another disagreed, noting that this was merely a normal trading issue.

### **Question 6.9**

*Which of the options for dealing with consumer understanding of the copyright framework do you support? Please give reasons for your views.*

A number of submitters responded to this question. Support for a particular position were almost evenly split between restructuring (approach B) and reform (approach C), with a few submitters supporting a conjoint B and C approach.

A theme evident in the submissions was support for initiatives aimed at increasing consumer understanding of New Zealand's copyright framework to be implemented. There was general consensus about the need to maintain an up-to-date copyright regime in light of advancing technology.

**Question 6.10**

*In addition to criminal penalties, do you favour a stronger role for the state in promoting media literacy as a means of promoting internet safety? What other interventions would be practical, given the overseas origin of much of the material in question?*

A good number of submitters responded to this question. Most favoured a stronger role for the state in promoting media literacy as a means of promoting internet safety. Nearly one third of respondents supported increased funding support by the state for existing internet safety education initiatives, particularly the work of NetSafe. Other interventions supported included industry self-regulation and education initiatives, and the use of technology to promote security and safety.

**Question 6.11**

*Which of the options for dealing with "orphan works" do you support? Please give reasons for your views.*

There were slightly more responses than to the previous question. Just under half of the respondents answered in general terms and did not elect a particular approach although most of these responses supported the introduction of some kind of orphan rights regime. Of those who did elect an approach, the numbers were fairly evenly split between approaches A (update), B (restructure), and C (reform).

The majority of respondents considered that the public benefit of having orphan works available outweighed the public benefit in protecting the rights of authors who cannot be found. Some submitters indicated there would be no detrimental impacts on authors who subsequently came forward to identify their works once they had been published. Several submissions supported the introduction of a 'reasonable search' defence, although it would be difficult to establish a clear and objective test along these lines.

**Question 6.12**

*Would the establishment of a collection agency as an aspect of the regime be workable in New Zealand?*

Relatively few submissions were received in response to this question. Just over half supported the creation of a collection agency in respect of orphan works. The dominant reason given was that unused pre-existing content provides no revenue to the copyright holder, who incurs no cost or benefit by keeping it unused, protected by copyright law. Submitters who supported the establishment of an orphan rights collection agency noted that it would open up a new revenue stream for creators who might otherwise not receive economic benefit from their creations.

Respondents who did not support creation of a collection agency tended not to elaborate on their reasons for this.

## **SECTION D) - NETWORK ISSUES**

### **Overview**

The majority of respondents were in favour reform to establish an open access regime. Some reasons given were that this would provide for the greatest public good, prevent unfair market advantage, and avoid unnecessary duplication of infrastructure.

The majority of submitters were also in favour of the introduction of 'must-carry' provisions, with the proposed platforms ranging from Freeview alone, to all pay, cable and satellite platforms. The majority of respondents considered that 'must list' provisions should be in addition to 'must carry' provisions. A variety of views were expressed on the 'must pay' option.

Respondents were in general agreement that interoperable technical standards would be desirable, but no clear picture emerged as to how this might be achieved.

The question of the allocation of spectrum drew a broad range of responses. There was a degree of support for the allocation of spectrum for public service broadcasting and Māori broadcasting.

The role of regulation in encouraging investment was a major theme and attracted quite a large number of responses, with an even split between those in favour of further regulation and those against it.

There were relatively few responses regarding placement of a 'build' obligation on media platforms to ensure a minimum rollout; and few responses to the question regarding establishment of a media pool to ensure broad geographic service availability of networks.

### **Response by question**

#### ***Question 7.1***

*Which of the above options for ensuring fair access for service providers to digital platforms do you support? Please give reasons for your views.*

This question attracted a high number of responses. Over half the respondents supported approach C (reform) i.e. establishment of an open access regime. A number of these specifically mentioned 'must-carry' with a few including 'must pay' (at a fair and reasonable price). Reasons included promoting the greatest public good, preventing unfair market advantage, and preventing unnecessary duplication of infrastructure.

One submitter suggested that access be subject to the jurisdiction of the Commerce Commission / Telecommunications Commissioner. A small number of submitters supported the status quo, maintaining that television should not be hampered by increased regulation, while the internet is self-regulated. A submission opposing reform noted that SKY already carries other channels under commercial agreements, and that regulation would undermine private companies' investment.

### **Question 7.2**

*If an open access regime was introduced to ensure fair access for service providers to digital platforms, what would be its scope? What sort of criteria should apply?*

There was slightly lower number of responses to this question. Those who supported the idea of an open access regime proposed that decisions need to be transparent, fair and equitable. It was noted that the main aim should be to ensure continued visibility of public service broadcasting content across different platforms, and that this could be achieved by prominent positioning on the electronic programme guide (EPG). It was noted that it is also important to preserve the internet's openness.

Some submitters advocated the establishment of an independent body (outside the responsibility of the Broadcasting Standards Authority and Censorship Office) to monitor quality delivery and financial responsibility. An internet service provider/network provider argued that the scope of such a body should be limited to 'bottleneck' functions, and then only after rigorous cost-benefit analysis.

### **Question 7.3**

*If "must-carry" provisions were introduced, to which platforms would the obligations to carry services apply (e.g. all pay, cable, satellite, IPTV)? What services should qualify for must-carry status (e.g. public service broadcasters, regional channels)?*

As for question 7.1, there were a high number of responses to this question. The majority of submitters were in favour of 'must carry' being applied not only to Freeview, but to all pay, cable and satellite platforms.

One respondent proposed that the carrier should first have to serve five percent of households nationwide, or have been operating for three years. It was suggested that qualifying channels include all free-to-air channels (or free-to-air channels with a certain percentage of public service broadcasting programming), all national channels, or simply those screening local content. The practical difficulty of the limited availability of spectrum and bandwidth was also noted.

Those opposed to the introduction of 'must carry' provisions believed that further analysis was required, and that there was a need for a guiding set of principles.

#### **Question 7.4**

*Should "must pay" obligations be introduced, either in addition to, or instead of, "must-carry"? If so, how might this work? Which services would it apply to? Would the Canadian version of "must pay" be appropriate to New Zealand?*

There were a quite a large number of responses to this question. On the 'must pay' question a variety of views were expressed, on what some described as a vexed issue.

In relation to internet-based services, a respondent raised the question as to whether a service merely providing a link to a service that was actually accessed through another operator should incur costs. A few of the submitters considered that 'must pay' would not work in New Zealand, with one pointing out that it would hamper development of new distribution models.

A number of respondents agreed with the Canadian model of a generic levy (administered by NZ On Air, for example) being applied to all commercial broadcasters. It was suggested that this could help pay for quality local and/or public service broadcasting content. Another submitter pointed out that a levy would disadvantage pay-per-view operators in New Zealand.

#### **Question 7.5**

*If a "must list" requirement for electronic programme guides were introduced, should this be in addition to or as an alternative to "must-carry"? How would such a requirement work in a multi-platform and multi-channel environment?*

The level of response to this question was similar to the previous one, with the majority of respondents proposing that 'must list' provisions should be in addition to 'must carry'. However, one submitter considered that 'must list' should be independent of 'must carry' provisions; and that there should be a 'must list' requirement for electronic programme guide providers to include public service broadcasting free of charge.

Some of the views expressed on the electronic programme guide were that prominence should be given to listing and promotion of public service broadcasting and other local content for easy viewer access; that allocation of numbers should be the responsibility of a totally independent authority to avoid conflict of interest; and that in principle, electronic programme guide regulation should require the listing of all channels accessible through the same platform as well as the core public channels in 'pole position'. This was seen as problematic with competitors listing one another's schedules, and the difficulty of monitoring

was also noted. A small number opposed the 'must list' option and another thought further review was required.

### **Question 7.6**

*Which of the options for ensuring minimal agreed technical standards do you support? Please give reasons for your views*

Relatively few submitters answered this question. There was broad agreement that interoperable technical standards are, a positive development, but no clear picture emerged as to how these might be achieved. Industry collaboration backed by last resort legislative power was mooted as a possibility.

### **Question 7.7**

*Would the interests of audiences and industry be best served by industry-wide adoption of agreed technical standards?*

A number of submitters responded to this question. Respondents were largely in favour of common (interoperable) standards. A few objections were based on the premise of free choice.

### **Question 7.8**

*Is government encouragement sufficient to ensure industry-wide agreement is reached in New Zealand? If not, what other measures might be warranted?*

This question overlaps to some extent with the responses to Question 7.6 above. Again, common interoperable standards were seen to be positive but there was a mixed reception to the necessity for government intervention.

### **Question 7.9**

*What principles and priorities do you consider should guide the development of a post-analogue switch-off spectrum allocation framework?*

This question attracted a moderately high response, and a range of opinions. There were a few advocates for unconditional access to spectrum, post analogue switch-off (ASO). Their main theme was market-based, technologically neutral access. A number of incumbent broadcasters supported a continuation of the current spectrum allocation system, with two proposing a continuation of current rights beyond ASO ("preferably for 20 years"). On the other hand, there was reasonably strong support for allocating spectrum for public service and Māori broadcasting (with an argument from Māori organisations favouring perpetual rights for Māori). This was underpinned by strong arguments from four respondents against commercial allocation of

spectrum. No particular pattern emerged from the remaining responses, many of which showed a strong degree of commercial self-interest.

#### **Question 7.10**

*If any new regulatory measures (such as an open access regime) were introduced, would the option of licensing broadcasters, multiplex and / or other platform operators be an appropriate means of monitoring compliance?*

Responses on the option of licensing broadcasters were few although evenly divided.

#### **Question 7.11**

*Which of the options to encourage investment in digital content and infrastructure, and to ensure the digital broadcasting industries are yielding an optimal economic return to New Zealand, do you support? Please give reasons for your views.*

This question drew a reasonably large number of responses. Amongst those who made their preference explicit, there was an even division of opinion. The role of regulation in encouraging investment was a major recurring theme; with some submitters considering that further regulation would not be an appropriate means of encouraging investment, others advocating regulatory certainty/consistency, and one arguing for continued regulation “where necessary”.

#### **Question 7.12**

*If government intervenes to encourage investment in infrastructure, how can it ensure that it does not make de facto technology choices that preclude innovation in other areas?*

A smaller number of responses were received on this question. Some submitters considered that government intervention would inevitably equate to *de facto* technology choices. Others suggested that this effect could be minimised or avoided by tying any financial assistance offered to open access requirements, working closely with industry and consumer groups, limiting government intervention to clearly defined outcomes, and undertaking proper consultation.

#### **Question 7.13**

*If a “build” obligation were placed on media platforms to ensure a minimum roll-out, how could such a requirement best be designed (e.g. the provision of incentives to encourage co-operation)? To which networks should it apply?*

A small number of respondents addressed this question. Although the question assumed the imposition of 'build' obligations, two submitters argued against such imposition in most or all cases.

Amongst submitters who accepted the question's assumption, one suggested that any build obligations introduced should apply widely, namely to digital broadcasting networks, fixed and mobile telephony networks, and internet networks; while another cautioned that only the actual owners of such infrastructure should be involved (not content providers or platform operators). Regarding the design of the obligations, one submitter argued for the linking of commercially attractive and unattractive zones before inviting tender, and for withholding licences until certain progress had been made; while another favoured tax breaks and inclusion of open access rights.

### **Question 7.14**

*If a media-funded pool were established to ensure broad geographical service availability of networks, who should be levied, and how should such a fund be administered?*

As for the previous question there were not many responses on this issue. Although the question focused on a 'media-funded' hypothesis for the pool, one submitter argued for funding exclusively from general taxes, and another argued for funding from general taxes where the objective being pursued was social or concerned the pursuit of economic development. Appropriate contributors to a media pool were considered to be network operators, media content providers when they are not the owners of network distribution infrastructure, and industry (unspecified).

## SECTION EIGHT: GENERAL / OTHER COMMENTS

### Overview

Responses to this section of the discussion paper were relatively brief. Some submitters used this section to comment on aspects of broadcasting not specifically covered by the review.

### Response by question

#### **Question 8.1**

*Are there any alternatives, beyond the illustrative measures identified in this discussion paper, that you would recommend policy-makers consider as mechanisms to deal with issues across the value chain, or under the headings of “content”, “distribution” and “networks”?*

Submitters generally reiterated the key points made earlier in their submission.

#### **Question 8.2**

*Are there any other general comments you would like to make about the digital broadcasting review of regulation?*

A few general comments about the digital broadcasting review of regulation were made that had not already been raised by submitters, as follows:

#### *Consultation and documents*

- The review was seen as not having sufficient regard to Māori as Treaty partner; the documents do not refer to the *Māori Broadcasting and e-Media Outcomes Framework*; the analysis was monocultural
- The *Digital Strategy* and the *Digital Content Strategy* should have been more clearly referenced
- There is too much use of jargon, legal-ese, official-ese
- Further consultation is needed once views from this process have been made known.

#### *Scope*

- There is need to get direction of change right, rather than the mechanism for implementing change
- There is a need to clearly define issues / problems before imposing regulation
- There should have been more emphasis on the migration of radio to digital
- The risk for children using multimedia platforms to access broadcast content should have been acknowledged

### *Further research*

- Needs to be done on how the introduction of mandatory or voluntary anti-siphoning regulation would affect the property rights of sport and recreation organisations, or event organisers.

### *Outcome*

- In recognition of the small number of operators in our market, keep regulation light-touch and review the regime periodically for appropriateness
- The direction taken needs to be aligned with, and not pre-empt, the stocktake reforms in the telecommunications sector.

## **BROADCASTING AND NEW DIGITAL MEDIA: FUTURE OF CONTENT REGULATION**

### **Overview**

The discussion paper asked questions about the scope of content standards regulation, the role of a regulator, and the concepts that should guide regulation.

The responses demonstrate fairly wide agreement with the proposition that a single standards regime should apply to 'broadcasting-like content' across platforms. However, the view was also widely shared that the regime's application should be varied according to the nature of the audience's or user's engagement with different platforms.

The paper deliberately kept questions about a common regime separate from questions about the continued use of an agency, as opposed to self-regulation. Thus, there were respondents who favoured a single regime *and* either the use of an agency or self-regulation (or forms of co-regulation).

The term 'broadcasting-like content', used to suggest audio-visual content that had been produced to a certain professional level and presented to the public, was not queried by most respondents. This term tended to prompt distinctions between content that had been edited or aggregated by a broadcaster, or other provider, and the wider world of user-generated content. Many respondents wished to draw a line at that point.

There was only cautious interest in a wider role for a standards regulator, although a variety of submitters expressed the view that aspects of the broadcasting environment required closer monitoring. Concerning media literacy and education, it was generally felt that, if a regulator should play a role, it should support or co-ordinate, rather than replace, the efforts of educators and other existing projects.

In relation to the statutory concepts that should guide content regulation, and the concerns that should be reflected in it, there was only a limited interest in innovation. This may be because the concepts are both high-level and widespread amongst countries of our type. Regarding standards particularly applying to journalism, distinctions were made between organisations setting themselves up as authoritative, and providers (or pieces of content) that were explicitly partisan.

As the discussion paper combined principal questions with follow-up questions, the responses to some questions have been combined in the following summary.

## **Response by Question**

### ***Question 1***

*What concerns are appropriate to be addressed through content regulation?*

There was fairly wide support for the range of concerns reflected in current Act, which were noted in the paper as including the protection of minors (emphasised as particularly important by several submitters), the portrayal of violence, accuracy in reporting, the protection of privacy, and the fair treatment of people who are the subject of programmes.

Additional concerns that that submitters proposed the legislation should more explicitly reflect included freedom of speech, incitement, denigration, and avoidance of ethnic or gender discrimination. Other concerns noted by submitters are outside the scope of standards as currently presented in the relevant part of the Act. These included fair treatment of elections (dealt with in a separate part of the Act), copyright protection (in a separate Act), protection of Māori language and culture, and quality standards concerning how broadcast content represents New Zealand and promotes informed debate.

### ***Question 2***

*Should a single regulatory regime apply to all broadcasting-like content no matter how it is distributed?*

There was wide support for all broadcasting-like content being dealt with under the same broad regime (through some specified support for a single set of principles, as distinct from a single regulator). This was seen as ensuring consistency for content providers and the public, especially where similar content is appearing on different platforms.

There was disagreement about whether a single regime should encompass all internet content (including user-generated content), or the print media (which are increasingly putting audio-visual material on-line). Several submitters suggested that a boundary be drawn between audio-visual content produced by an organisation exercising editorial control, and user-generated content.

Some submissions also expressed opposition to combining a standards regime with a spectrum or economic role (although this was not proposed by the paper).

### ***Question 3***

*Should the same general regime apply, but with a less strict or detailed code for content received on the demand of individuals than for content broadcast conventionally?*

There was wide support for this idea, some being expressed in answers to the previous question. It was the view of many that the control exercised by the user makes a difference.

Suggestions as to which types of standards could be varied according to the conditions of access differed markedly. However there was a tendency to regard standards relating to journalistic practice (where the interests of third parties, not just the audience member, are involved), or those relating to law and order, as needing to be applied more consistently across platforms than those relating to good taste and decency.

A minority thought the regime should be strictly uniform in its application to different platforms.

#### **Question 4**

*Publicly-owned broadcasters have special mandates to set standards of quality (such as the Charters of TVNZ and Radio New Zealand or the legislation of Māori Television). Should their content be regulated differently from the content of private-sector broadcasters or the same?*

Most submitters considered that public broadcasters should be regulated in the same way as other broadcasters. It was argued that as they were in the same market a level playing field should apply, or that different sets of standards between public and private broadcasters would cause public confusion.

The few who took the opposite view referred to public broadcasters obligation to model standards for all broadcasters.

#### **Question 5**

*Should broadcasting-like content provided to audiences from overseas be subject to New Zealand's regime for content regulation?*

#### **Question 6**

*If you answered yes (to Question 5 above), what form should regulation take, and who should regulate such content?*

Most respondents thought overseas-sourced content should come under the New Zealand regime, and that standards should be applied consistently. However, various comments were made on the technical limitations of doing so, and differing suggestions made on how it should be managed. Material that has been 'aggregated' or re-broadcast locally was regarded as more easily placed under a common regime.

There was some support for a state regulator to have responsibility for regulating content provided to audiences directly from overseas. Others considered self-regulation under a code, to be more practical or otherwise desirable. Other approaches, noted in the consultation paper e.g. filtering software, and media literacy programmes, were also mentioned.

### **Question 7**

*Should there continue to be a state agency available in New Zealand to operate a system of content regulation? or,*

*b) Should broadcasters be able to regulate themselves, within the requirements of legislation?*

Support by respondents, including some broadcasters, for the maintenance of a state standards agency was fairly widespread. Self-regulation was supported by other broadcasters, some 'new media' organisations, and (if all audio-visual content were to be included) respondents from the print media. Advocacy groups were of the opinion that self-regulation would not command sufficient public confidence. Some responses argued there is an element of self-regulation or co-regulation in the status quo, because the Broadcasting Standards Authority operates only as a back-up.

### **Question 8**

*a) Are the current arrangements for monitoring public broadcasting and the broadcasting environment adequate?*

*b) Are there any gaps in the current arrangements?*

### **Question 9**

*If you believe that there are gaps in the current arrangements, would such [a "watchdog"] agency play a useful role? If you answered "no", what other ways of monitoring the broadcasting environment could be explored?*

The idea that a standards agency should play a wider watchdog role was not widely favoured (though some submitters were strongly in favour). In some cases opposition to the idea was combined with distrust of a 'super-agency' and a concern that the various functions that would need to be combined would be incompatible.

Several respondents, however, maintained that there were gaps in current arrangements, especially in ensuring good public service broadcasting performance from TVNZ, or in providing a wider consideration of trends in the media environment. Those who favoured a broader role disagreed as

to whether the Broadcasting Standards Authority should be the body responsible, or another agency such as NZ On Air.

Respondents who supported the idea of a watchdog agency saw value in its playing a role as a commentator on the state of the media, or emphasised a need for better accountability by funded broadcasters.

### **Question 10**

*Do you favour a stronger role for a state agency in encouraging media literacy?*

### **Question 11**

*Would a greater emphasis on media literacy be useful to NZ audiences in order to identify and avoid undesired content sourced directly from overseas? Are there any other measures that should be considered?*

A mixture of views was expressed on whether a standards agency should play a stronger role in encouraging media literacy. Several submitters thought the current initiatives (in which the Broadcasting Standards Authority plays a part) were adequate, or that media literacy was principally a matter for the education system. Others proposed a coordinating role for an agency, while cautioning against concentrating efforts in one body. Some argued that media literacy should not be regarded as a substitute for regulation i.e. as an excuse for a caveat emptor” approach. A minority took the view that media literacy is a skill that adults, at least, can and do develop for themselves.

There was greater agreement that media literacy, however supported, could help people deal in an informed way with the mass of overseas-sourced material.

### **Question 12**

*Should these roles [re media education and violence] be part of the mandate of NZ’s broadcast content regulator?*

### **Question 13**

*Should it have a similar educative and collaborative role in relation to other matters, such as, for example, the interests of children and young people?*

Respondents who indicated a general concern about violent content on television, or who had an involvement in media education, tended to be in favour of the proposition in question 12.

Others, while concerned with the issue, cautioned that existing provisions in media education should continue, and saw an agency as best having the role as a supporter of these efforts, rather than taking on a new role. The two national broadcasters that commented directly on this question considered other tools (e.g. age classifications, conditional access) to be sufficient, or argued that violence on television was mild compared with other media and should not be targeted.

On the question as to whether an agency should play a similar role in relation to other matters (including the interests of younger audiences), responses fell into similar groupings. There was support for a collaborative role for an agency in relation to existing programmes, as a preferable alternative to a stronger core role in this area.

#### **Question 14**

*Are a single set of broad concepts as a basis for content regulation more, or less, important in an era of increased choice in content and in the ways of receiving it?*

#### **Question 15**

- a) *Should the concepts currently guiding the standards applying to broadcasting continue to apply to broadcasting?*
- b) *If yes, should they apply more widely across the scope of content regulation, - that is, beyond conventional broadcasting?*
- c) *Are there different concepts that should be added or substituted for those in the Act, and applied either to broadcasting or to a wider range of content?*

Most respondents considered that a single set of concepts was as important as before, or more important, in an age of greater media choice. This was regarded as a simpler and more equitable approach for providers (if accompanied by tiered levels of regulation for different classes of providers), in contrast to the introduction of different sets of concepts. Internet and telecoms organisations were amongst those regarding a single set as being as important, or more important, in an age of greater media choice. Several expressed, in different ways, the view that the benefits or harm arising from content do not change essentially according to the platform on which it appears.

A majority of respondents also believed the same set of broad concepts should apply “beyond conventional broadcasting”, with some reservations depending on how far beyond standard broadcasting the concepts were seen to apply. (It was suggested for example, that not all concepts could be

applied to niche or user-generated content.) The desirability of flexibility for different platforms was emphasised, as in the answers to question 3, so that authorial content, for example, is not constrained.

A few additional concepts were offered: the ability for viewers to comment on the quality of content (related to the watchdog idea); quality criteria going beyond standards as currently conceived by the Act; a concept relating to freedom of expression (and responsibility in using it); and racial denigration

### **Question 16**

*Do you have a preference between these two possible approaches? [good taste and decency vs. social harm]*

Respondents engaging with this question were split into two camps. Reasons given in support of a change to actual social harm as the guiding concept, included the subjectivity involved in assessing good taste and decency; the difficulty of applying such concepts in a multi-platform era; and the desirability of alignment with the concepts in the Films, Videos and Publications Act. Those supporting the retention of good taste and decency as the guiding concepts based their view on the difficulty of establishing actual social harm (i.e. the threshold for a finding in favour of a complaint would be too high), the subjectivity involved in assessing it, the interests of the young, and the greater degree of informed consent involved in accessing the content e.g. books and films governed by the Films, Videos and Publications Act (where the social harm concept applies).

### **Question 17**

*Does this principle [of balance], as currently expressed in the Act, remain important in an era of an increasing variety of outlets for information?*

### **Question 18**

*If the principle of balance remains important in conventional broadcasting, should it apply more widely if the scope of regulation is widened beyond conventional broadcasting?*

The balance principle, as expressed in the Act, was supported by a majority, as well as its extension to other platforms. Respondents engaged in news production were more sceptical and two broadcasting organisations strongly disagreed, emphasising the ability of audiences to seek out a range of views. There were contrasting views on whether an increase in media outlets made the principle less important. Several submitters made a distinction between content declaring itself to be authoritative and that which was clearly authorial or partisan, or wished to exclude user-generated content from the principle.

### **Question 19**

*To what extent is the achievement of accuracy dependent on the availability of a balance of views:*

- a) within a broadcast programme, or other audio-visual content?*
- b) across broadcast programmes, or other content, by the same provider of content?*
- c) across the media as a whole?*

Media organisations tended to view the idea that accuracy is related to access to a variety of viewpoints with scepticism, arguing that “facts are facts”. Others took the view that, beyond matters of strict fact, awareness of a variety of views help to build up an audience’s understanding of an issue or situation. A balance of views should thus be represented within and across programmes and other content, although not in exact proportions. The maintenance of balance across the media was regarded as something beyond the scope of standards regulation, requiring (as the most extensive response suggested) other interventions such as strong public broadcasters.

The idea that professionally-produced news and current affairs aiming to be authoritative should be held to different standards than authorial or individually generated content, recurred in responses to this question.

### **Question 20**

*Do you have comments on aspects of content regulation that are not covered by the questions above? If so please include them here.*

The few responses to this question tended to advocate measures beyond the scope of the content standards paper including abolition of the current restrictions on advertising under the Broadcasting Act, and a “full scan” of government interventions in relation to the protection of Māori language and culture.

One issue not covered in the paper raised by the Office of the Clerk of the House of Representatives was the relation of the standards regime to parliamentary privilege, in the case of live coverage of Parliament. A further issue not canvassed in the paper was whether a standards regime should allow complaints to be made on behalf of third parties (people who are the subject of content) by complainants unconnected to those parties.