Editorial

Terry Flew

Creative Industries Faculty,
Queensland University of Technology,
Building z6 – Room 503,
Creative Industries Precinct, Musk Avenue,
Kelvin Grove QLD, 4059, Australia
Fax: (61) 7-3138-8105
E-mail: t.flew@qut.edu.au

Biographical notes: Terry Flew is a Professor of Media and Communications in the Creative Industries Faculty at the Queensland University of Technology. He is the author of *New Media: An Introduction* (2014, 4th ed., Oxford), *Understanding Global Media* (2007, Palgrave), *The Creative Industries, Culture and Policy* (2012, Sage), and *Global Creative Industries* (2013, Policy). He is a member of the Australian Research Council College of Experts for Humanities and Creative Arts, and the Research Evaluation Committee (REC) Committee for Excellence in Research for Australia (ERA). During 2011–2012, he was seconded to the Australian Law Reform Commission to chair the National Classification Scheme Review.

This special issue of the *International Journal of Technology Policy and Law* considers recent developments in the reconfiguration of communication regulation to account for the impact of media convergence. It is readily apparent that media worldwide are going through a series of transformations, associated with the rise of the internet, user-created content and social media. The papers in the collection draw upon legal and policy developments in Australia, the European Union and South Korea, and consider such issues as public participation in media policy and regulation, civic media governance for online platforms, the future of copyright laws, the roles and responsibilities of internet intermediaries, and regulatory frameworks for internet protocol television (IPTV).

One of the ways in which the internet transforms medialaw, policy and regulation is the manner in which it breaks the link between media content and delivery platforms. Digital media convergence points towards a shift from *vertically-integrated industry 'silos'* (print, broadcast, telephony, etc.), and the associated need for sector-specific regulation, to a series of *horizontal layers* of:

1 infrastructure

2 access devices

3 applications/content services

4 content itself (ACMA, 2011).

This raises the issue of whether platform-based forms of media regulation can be sustained in the context of media convergence and, if not, then in what ways do these laws and policies need to be transformed and adapted? This question of what *convergent*

media policy may look like has been the subject of considerable engagement by governments, analysts and industry representatives over recent years, although it is fair to say that the issues raised have not been adequately resolved in subsequent legislation.

A recurring issue for national governments is that of determining the relationship that policies relating to the internet have to media policy more generally. For much of the 1990s and 2000s, policies to grow the internet were pursued as information policies, seen as having primarily economic objectives, and policies concerning ownership, content development and community standards as media policies, with only limited overlap between the two. But media policy worldwide is being dramatically transformed by digital convergence, and associated developments such as media globalisation, the blurring of boundaries between media forms and industries, and the greater ability of media consumers to themselves become producers of media content and distribute this material across global media platforms. Moreover, the same media content can increasingly be accessed across multiple devices, including tablet PCs, smart phones, and internet-enabled 'smart' televisions. These developments can be seen as marking a shift from the *mass communications* media paradigm of the 20th century, towards a *convergent social media* paradigm, requiring not only new policies for new media, but a wider rethink of both the principles of media policy and the regulatory instruments through which it is enacted.

National media regulation developed over the 20th century with the rise of mass media of film, broadcasting and, to a lesser degree, print. In particular, broadcast media were subject to extensive government regulation on the basis of 'public good' characteristics of the media product, and the need to manage access to spectrum. Industry-specific regulations governing ownership, content and standards were developed, arising from the perceived centrality of the broadcast medium to public communication, the capacity of media owners to influence public debate, and concerns about potential risks to children and others from exposure to harmful media content. While many of these regulations are 'negative' in the sense of setting controls over access to broadcasting licenses or restrictions on what can be screened, there have also been more 'positive' regulations, that aim to stimulate various forms of local content production, including local drama, provision for cultural and linguistic minorities, children's programming, and documentary and factual programming.

The 2010s saw significant proposals for media reform developed through comprehensive policy reviews. In the UK, the Leveson Report was the most prominent public engagement with questions of how to regulate news media and journalism (Leveson, 2012), but the UK Government has also committed to a comprehensive review of the *Communications Act*, with new legislation to go to Parliament by 2014. In Singapore, the Media Development Authority completed a Media Convergence Review in 2012, while in Australia a range of reviews took place including the Convergence Review (2012), the Independent Media Inquiry (Finkelstein and Ricketson, 2012), and the Australian Law Reform Commission's Reviews of the National Classification Scheme (ALRC, 2012) and, most recently, Copyright in the Digital Economy (ALRC, 2013).

All of these inquiries have grappled with the observation, made by the Australian Communication and Media Authority (ACMA) (2011, p.6), that 'regulation constructed on the premise that content could (and should) be controlled by how it is delivered is losing its force, both in logic and in practice'. As the former Chair of the Canadian Radio

and Telecommunications Commission (CRTC), Konrad von Fickenstein, told the Banff World Media Festival in 2011 that:

> The industry is going through fundamental change in technology, in business models and in corporate structures. It has become a single industry, thoroughly converged and integrated. Yet it continues to be regulated under … separate Acts, which date from 20 years ago. Authority continues to be divided among different departments and agencies. [Theckedath and Thomas, (2012), p.4]

It has proved very difficult to translate reviews of media policy in the context of convergence into legislative reform for a few reasons. One is the concern that application of media policy instruments to online media amounts to 'censoring the internet'. Another is the uncertain relationship between national policies and media that operate on a global scale, although it is notable that comparable issues have been arising around the taxation obligations of companies such as Google, Apple and Amazon. Another issue is that of what is known as 'regulatory parity': regulated entities such as broadcasters argue that any new legislative framework should entail reduced restrictions on their operations, as they claim that they are more regulated because they are more influential media is now open to question. Finally, there is the important issue of how media users are engaged in such processes. Historically, media audiences were largely understood as being the passive recipients of media content, and hence in need of protective forms of regulation, reinforced by the limited range of content, channels and platforms available. In the online space, where media users are not only navigating across a potentially infinite range of content across myriad devices, but are themselves also active creators of digital media content, the protective rationales no longer provide an adequate justification for media regulation.

Reviews of media policy that point to radical changes in the media landscape require rethinking of both core principles and appropriate policy instruments. Five issues in particular have become considerably more complex.

First, there is the issue of identifying who are the relevant media industry actors, as the relationship between devices, platforms, services and content becomes increasingly blurred, and the rise of 'new media' giants raises new questions about their relationship to forms of media regulation. There is the related issue of regulatory parity between 'old media' and 'new media' platforms and services. This has both a historical dimension, as the broadcasting industry has traditionally been subject to extensive forms of regulation, but also presents the question of parity between nationally-based media and 'deterritorialised' media platforms such as YouTube and IPTV. In this special issue, Chang Yong Son captures these complexities in the Korean context around the development of IPTV, where responsibilities are divided across the service between the Ministry of Culture, Sports and Tourism (responsible for content), the Korean Broadcasting Commission (responsible for platforms), and the Ministry of Information and Communication (responsible for networks). Needless to say, the biggest Korean media companies, such as Samsung, LG and Korea Telecom, now work across all three in the context of convergence.

Second, there is the question of equivalent treatment of media content across platforms, as digital content now moves easily between print, broadcast and online, and can be accessed across multiple devices. Adam Swift discusses the proposals developed in the Convergence Review in Australia to move the focus of regulation from top-down platform-based regulation towards a principles-based approach that aims to empower

users as citizens more actively engaged in the regulatory process. Kate Crawford and Catharine Lumby relate this wider regulatory challenge, which the Convergence Review and other related reviews ultimately failed to resolve, to the challenge of participatory media governance and a 'new pluralism' that gives media users as citizens more of a stake in the current and future development of networks, and the content available on them.

Third, the question of a 'threshold of influence' arises for media content and its providers, or when is media 'big enough' for regulation to be appropriate, in light of the rapid growth of user-created content and small-scale online distribution platforms (e.g., blogging, online video hosting). Noam (2009) has argued that the key to understanding media ownership questions today lies in recognising that a two-tier media system has been evolving, with large *integrator* firms operating in oligopolistic market structures being at its core, surrounded by a large number of specialist firms that undertake much of the actual content production [Noam, (2009), pp.436–37]. The second half of the 2010s was a period of crisis for many of the media conglomerates that had dominated the previous decade – companies such as Time-Warner, Disney, News Corporation, Viacom/CBS and Sony – triggering the debate about whether there was a 'crisis of the media moguls'. But in many of the media markets in which these media giants operate, their challengers were now big ICT and software companies such as Google, Apple and Microsoft: newspapers compete for reader attention with online news portals; TV networks battle with *YouTube* for the attention of screen media consumers; TV programmes, music and movies are increasingly downloaded from iTunes or Netflix; and so on. In other words, the big internet and new media players are coming to play an increasingly important role in traditional media environments.

Fourth, there is the continued validity of distinctions made between 'media content' and personal communication, and expectations that the latter should have 'free speech' protections from government oversight or censorship, as differences between modes of communications based on their 'mass' or 'public' qualities are blurred in the context of media convergence. The leaks of former US intelligence officer Edward Snowden, published in *The Guardian*, about widespread surveillance of online communication reveal the sensitivity of such privacy issues in the online environment, as well as the recurring question of 'who watches the watchers?' In this special issue, Catherine Easton considers haw debates such as these have been evolving in terms of laws relating to the liabilities of internet intermediaries in the European Union and the EU Member States, in relation to fields such as electronic commerce, defamation, intellectual property laws and data protection.

Finally, there are questions around the most appropriate laws to promote the digital economy, and the balance between the interests of individual agents (companies, users, groups, etc.) and the wider public interest. In the context of a review of Australian copyright law in the changing digital economy, Terry Flew, Nicolas Suzor and Bonnie Rui Liu consider arguments that existing copyright laws constitute a fetter on innovation, and critique arguments that they are a necessary condition for the ongoing activities of the creative community. They argue the need for both business model innovation in the digital environment and policy innovation, identifying UK initiatives such as Digital Copyright Exchanges (DCX) as one way of enabling fair use to occur and providing a low-cost means of enabling one-off uses of copyrighted materials that can still benefit copyright rights holders while acting to resolve the current legal and administrative maze that constitutes copyright and intellectual property laws at present.

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