1. Overview

In response to your call for submissions associated with the current datacasting review, I am happy to submit my views on behalf of the Interactive Television Research Institute at Murdoch University. I fully appreciate the challenging task you face in identifying a viable policy solution as crafting an effective framework remains a major challenge for policymakers worldwide. It is clear, however, that the existing regime is unlikely to deliver the Commonwealth’s policy objectives, hence a change to the scheme seems well timed.

I should caution that the very short window allowed for making this submission, particularly falling over the holiday period as it did, has significantly inhibited my capacity to more fully develop the range of arguments presented herein. As it is, I am forced to develop this submission while traveling overseas. Although I have not been able to more fully develop and document my arguments in the manner I would have preferred, given this short window, I am happy to elaborate on any of the points raised should the Department value additional insight.

1(a). Personal Background

As Director of the Interactive Television Research Institute at Murdoch University, I follow the issues associated with the emergence of a viable digital television industry in Australia closely. I am regularly invited to address international digital television conferences and work closely with major industry players worldwide. Although much of my work focuses on consumer research and business models associated with interactive television technologies, I have also been invited to address international audiences on the policy implications associated with the emerging medium. This has given me wide exposure to the policy frameworks adopted by other countries and the range of issues which policymakers worldwide are struggling with.

As an educator, I also train students in both the applied and strategic facets of interactive television. My students have developed interactive television proofs of concept for major global brands including Nike, Pizza Hut and Telecom New Zealand; in close collaboration with these advertiser’s agencies including FCB, Singleton Ogilvy and Mather, Carat Interactive, and Saatchi and Saatchi New Zealand. Our honours and post-graduate students have also completed significant studies exploring a wide range of consumer responses associated with iTV. Our
research is unique globally in that we have an analytical focus which has helped us better understand consumer motivation associated with iTV usage. The quality of our approach to both teaching and research has resulting in a range of awards including a Prime Minister’s Award for University Teacher of the Year (2001) and an Asia-Pacific ITT Award of Excellence.

I have also provided a range of consulting services to major players in the emerging digital television landscape. Such consultancies have spanned the full iTV value chain including training and research conducted for advertising agencies, pay TV platforms, telcos, broadcasters, government agencies, market researchers, advertisers, industry associations and prospective datacasters. With regards to the latter I should mention that I was the principle consultant to the Australian Datacasting Corporation (ADC) which was one of the three remaining participants in the datacasting auction prior to its cancellation. I wish to clarify, however, that my current submission is not a reflection of the views of ADC (indeed, many of my views here are not a reflection of ADC’s best interest) and is based purely on what, in my capacity at the University, I believe best serves the wider community interest. I share this background information with you to highlight my familiarity with the issues associated with this submission.

2. Options for Change

Each of the options for change under consideration have their own relative challenges and strengths. It is difficult to fully assess the potential impact associated with each because I believe there is a lack of clarity as to what the full range of policy objectives associated with the regime really are. Even those objectives which have been specifically identified in the legislation, such as the distinction to broadcast services, are vague as it is not clear what dimensions of broadcasting the legislation is intended to protect in the first place [see discussion under section 6(a)].

I believe any attempt to evaluate such options should articulate the principles the policy is intended to serve and weigh the different approaches relative to these criteria. I have attempted exactly such an approach under section 2(f) of this submission. Before providing this overview, however, I will first comment on each of the options under consideration.

2(a): Option 1: Liberalise the genre rules

There is no question that the current genre rules severely constrain viable business models associated with interactive television services. This should not be misconstrued as arguing that there are NO viable models under the regime. My work for the Australian Datacasting Corporation, for example, did identify a viable business plan for datacasting under the existing regulations – but I must say that outside of this very specific model I have not seen models which I believe would attract investors. Clearly there are few viable models under the regime.

There are at least two problems associated with the genre rules. First, the scope of the rules is so overly restrictive that it catches within its web more forms of content that is perhaps necessary to protect the distinction with television content. In other words, rather than maximise the opportunity to deliver innovative services and stimulate
digital conversion, the rules chill such services in providing the tightest restriction possible so as to protect broadcasters. In principle, it is possible that a more liberal set of rules, designed to tilt more towards the interests of datacasters, could address this deficiency and encourage development of the sector.

Unfortunately, however, I believe that even with such liberalisation, the regime remains unworkable because of the second problem associated with the approach. Specifically, the approach adopts a highly subjective approach which cannot provide datacasters with business certainty. The subjective nature of the definition inherently denies prospective datacasters clarity as to whether their content would qualify as television content under the scheme. This is particularly problematic because datacasters would, in all likelihood, need to contract distributors for the rights to programming. It is probable that under the scheme, a datacaster might enter into such contractual obligations with a sincere belief that the content they were contracting was datacasting in nature only to discover later (following a complaint by a broadcaster, for example) that the content was deemed as broadcasting. Under this scenario it is possible that the datacaster would still be held liable to the contractual obligations, facing significant financial losses. One might argue that such contracts might contain exit clauses allowing for such a scenario – but here again this disadvantages datacasters who then face competitive disadvantage in negotiations for such content.

Business certainty, therefore, is a critical test which should be met under any datacasting policy if such datacasting is to play a role in stimulating digital conversion and providing new innovative digital services to the market. Even with liberalisation, this is not possible under the genre rules because of the inherently subjective nature of this approach.

2(b): Option 2: Case by case assessment by the ABA

The possibility of empowering the ABA to provide case by case assessment is an interesting solution, but one which would require significant changes both to the powers given the ABA and the resources which it would require to effectively implement such an approach. For such an approach to work, I believe there are a number of critical considerations which would need to be built into the solution. Among these are the following:

2(b)i: Transparency:
Under existing legislation, the ABA is not intended to formulate national policy, per se. Without a high degree of clarity and transparency in determining the criteria by which the ABA would implement such a solution, there is a high danger that the ABA would transgress its authority and essentially become a policy-making institution. Although this might not be the intent associated with such an approach, there is a high danger of the ABA being forced to assume such a role given the ambiguity of the legislation. In essence, therefore, this solution does not resolve the issue as the subjective nature of the standard remains problematic.

2(b)ii: A priori evaluation:
Another extension to existing ABA powers would need to come in
the form of legislation extending the powers of the ABA so that it could advise datacasters in advance whether the service they were considering qualified as datacasting. Without such machinery, the problems associated with a lack of business certainty [as noted in section 2(a)] continue to be problematic.

2(b)iii: High regulatory cost:
Without question, such an approach would also make substantial demands of the ABA which would require a significant increase to its existing human resources. This is the case not only because of the significant resources required to determine whether particular services qualify as datacasting, but also because of the substantial resources that will be required to accommodate the appeals which will almost certainly follow the ABA’s determinations. Here the question is whether the Commonwealth is prepared to significantly increase ABA funding so as to enable it to meet the policy objective.

2(b)iv: Beauty contest:
Although I discuss the merits of the beauty contest elsewhere, I believe it is prudent to discuss the role which the ABA might play under such a scheme and clarify how this differs from the proposed solution. The advantage to the beauty contest is that the datacaster themselves define the standard and criteria against which they will be regulated. In this context, the ABA is not determining policy, per se, but rather is placed in the role of enforcing policy – a role which it is best suited to fulfill. Such an approach also makes significantly less demands on the ABA as the specific services are identified up front, significantly diminishing the need for day-to-day determination as to whether a particular service is or is not datacasting. Also, it provides maximum certainty to businesses and avoids the need to empower the ABA to make such a priori determinations.

In conclusion, although there is certain appeal in the ABA option, its utility primarily becomes practical under a ‘beauty contest’ approach. Without such a mechanism, however, it will require the introduction of significant new powers for the ABA and a significant increase in funding to enable it to effective fulfill its new demands.

2(c): Option 3: Define datacasting services as interactive services

In one sense, this approach provides an exciting possibility that could, in theory at least, result in a high degree of innovation and help stimulate digital conversion. It assumes, of course, that interactivity is a ‘driver’ for the take up of digital television – an assumption which is being increasingly challenged.

Interactivity represents a significant feature associated with digital television technologies. Most recently a number of analysts have maintained that interactivity is not a ‘driver’ for the take up of digital services. This view is increasingly reflected in the popular discourse associated with digital television. On a number of occasions,
for example, Australian broadcasters have argued that interactivity is not a driver. I would disagree, however, both on the basis of the evidence we’ve found in our own consumer research at the Interactive Television Research Institute and on the basis of the evidence we’re seeing in the global digital television market.

Specifically, I believe, much of the confusion associated with the potential for interactivity to serve as a driver is associated with surveys which have attempted to evaluate existing user responses to a variety of services. These surveys, however, were based on existing interactive content – which, almost without exception, have been extremely limited. For the most part, therefore, the construct of interactivity has been limited to walled garden style advertising services – which act as a revenue driver rather than a consumer driver.

In more recent months, however, interactive usage in the UK has increased significantly following the availability of compelling interactive content such as reality television, newer sporting applications, interactive comedies and most recently interactive documentaries. Whereas interactive usage had declined from 54% to 50% of households iTV enabled over the past two years, it has surged up to 76% in the past six months. This dramatic increase in usage is a clear reflection that as interactive content comes into the mix, interactivity becomes a clear driver for digital television.

Unquestionably, therefore, a definition based on inherent interactivity could go far in advancing datacasting services. It can also have the additional effect of stimulating Australian interactive television production, which, in principle, could help reinforce Australian content producers in the emerging international market for iTV content.

However, the approach has a number of significant problems which any such approach would need to address. For example, it may require a minimal ‘threshold’ so as to insure that datacasting content includes a high degree of interactivity. It is conceivable, for example, that datacasters could provide minimal interactivity (an EPG or single interactive choice at the start of the program, for example) and technically comply with the requirement even though the nature of the programming is not really interactive. One possible approach might be a time limit – similar to the 10 minute rule under the genre scheme – which helps insure that such a threshold is met.

There is also a question as to how the regime would apply to FTA broadcasters? Would the standard be the same? Under such a scenario the ‘enhanced programming’ regulations would essentially become obsolete as there would be no need to distinguish between datacasting and enhanced programming, per se.

But the biggest problem associated with this particular approach is that it runs a high risk of violating the broadcast moratorium. It represents the most liberal approach to datacasting under consideration. Unless there was some method of again defining a distinction to broadcasting, broadcasters would have no assurance that the type of programming characteristic of broadcast television would not feature in the service. Once again, the solution fails to address to core problem of distinguishing between broadcasting and datacasting.

2(d): Option 4: Allow the provision of open narrowcasting services and/or
subscription narrowcasting or broadcasting

For all practical purposes, the provision of datacasting services provides a form of narrowcasting as the signal can only be viewed by those with digital decoders. In the immediate future, therefore, the limited market size for digital television services should not pose significant threats associated with universal coverage. Whether or not such an approach is desirable post-2006, however, is a different question altogether.

There are a number of business models associated with narrowcasting of datacasting services which may help drive digital conversion. For example, it is conceivable that there could be a sizeable market for programming delivered in foreign languages which would have pockets of audiences which could be delivered to through a datacasting service. Such an approach might or might not require a subscription scheme. Similarly, it is possible that subscription services such as ITV Digital in the UK (formerly ON Digital) could help drive set top penetration. Under a subscription scheme, in particular, there is a compelling model for set-top-box distribution, potentially helping accelerate digital conversion.

For broadcasters, such an approach might also enable new business models. For example, although it is not clear whether audiences value multiple camera angles in sporting events, a larger problem associated with such services is that there is no clear business model for their incorporation. What additional revenue is generated through the provision of such services? Without a financial incentive, what would motivate broadcasters to incorporate such features? It is possible, however, that under a subscription model such features could be made available on a pay-per-view basis.

But the biggest problem associated with such an approach is that it marks a significant departure from the fragile balance between FTA broadcasters, prospective datacasters and pay TV providers. The pay TV industry in Australia is among the most financially disadvantaged in the world: Paying significantly higher rates for programming on a per capita basis than other countries, suffering from overbuild associated with duplication in service delivery areas, facing limited economies of scale and struggling through its relatively late introduction. Regulatory conditions, such as the anti-siphoning rules, further constrain their capacity to develop a financially profitable business as such regulation significantly inhibits pay TV take up. Hence, any attempt to convert datacasting to subscription TV licenses must consider the potential impact of such a move on the pay TV industry.

On one hand, expanding datacasting to allow for such subscription services could work to pay providers advantage by expanding their coverage areas. Optus, for example, might benefit from the opportunity to extend its service to areas not covered by its cable. For Austar and Foxtel, there might be financial benefits associated with delivery via terrestrial vs. satellite as the cost for reception apparatus might be lower. However, these benefits would have to be weighed against the threat of increased competition – and this in an industry that is struggling to demonstrate its financial viability in Australia.

One possibility which might allow for the best of both worlds would be to allow the datacasting transmission licensee to transmit subscription services but deny them
Submission of the Interactive Television Research Institute

access to subscription TV licenses by legislation. In other words, datacasters could – under this scenario – carry the programming of a pay TV provider, but not act as a provider in their own right. The intent of such a scenario would be to extend the reach of existing pay providers – essentially acting as a pay TV dividend.

Another complication with this approach, however, is that it calls into question whether FTA broadcasters would be allowed to use their ‘datacasting’ spectrum to provide such subscription services. This opens up a much bigger can of worms as so much of the legislation in Australia has afforded broadcasters special rights (such as free digital spectrum, anti-siphoning protection, etc.) on the basis of the ‘free-to-air’ nature of their services. A compromise might be to allow ‘enhanced programming’ on a subscription basis – so that the integrity of free-to-air programming is maintained but incentives are introduced to drive new innovative digital applications.

2(e) Alternative approaches

As an alternative to the above approaches, I would again call attention to consideration of the beauty contest option which I called for during the original datacasting review. I believe that the experience of datacasting to date – both within Australia and overseas – demonstrates that this approach will provide potential datacasters with the highest degree of business certainty, enable the provision of innovative services, best serve community interests and protect the moratorium on the provision of broadcast TV services.

Such an approach would articulate clear policy objectives associated with the distribution of datacasting licenses and evaluate proposed services relative to these objectives. Such objectives, for example, might include the following:

- That the service not be a broadcast television service
- That the service best serves the community interest (this might include the provision of government services and the transmission of community television on the spectrum)
- That the service stimulate digital conversion
- That the service serve the widest audience possible (a universal coverage requirement)
- That the service promote Australian cultural industries
- The likelihood that the prospective datacaster will be able to deliver on their proposed service
- Etc.

Although there has been a history of problems associated with the process of identifying the winners in such a contest, once such issues are resolved, the industry can proceed with a high degree of certainty. Moreover, one would assume that the Commonwealth has the benefit of learning from its previous problems in this space and could better facilitate the process, insuring a high degree of transparency in the process.

I strongly believe that this is the only option that delivers both business certitude while also serving community interests. Relative to other approaches, I believe this also presents the fewest problems and the least legal intervention across time.
2(f) Datacasting Services for Broadcasters

Inherent in all of the approaches noted above is a question whether the approaches adequately address both the needs of datacasters and broadcasters. Much has changed since the original legislation was introduced. For example, the delicate balance between new and existing players which was supposed to insure that broadcasters did not get a ‘head start’ in datacasting was largely lost due to cancellation of the datacasting auction. Likewise, the datacasting charges scheme has defined the manner in which broadcasters are ‘taxed’ for datacasting services in a manner which does not differ from their provision of broadcast services. In terms of the financial structure, therefore, a ‘datacasting levy’ has not really eventuated – as appeared to be the original intent based on comments by the Government associated with the digital TV landscape. Accordingly, it is questionable whether regulating ‘datacasters’ and ‘FTA broadcast datacasters’ under the same regime really makes sense.

Likewise, restrictions imposed on broadcasters – governing ‘enhanced programming’ and ‘datacasting’- are difficult to draw under many of the approaches discussed above. One alternative, adopted in a number of countries, is to define datacasting activity by broadcasters loosely in terms of a percentage of the spectrum which they are allowed to dedicate to datacasting services.

In light of this, I believe that the entire digital TV scheme needs a significant overhall as there is a domino effect associated with the legislation: Changing one part has significant influence on the others. Although it seems unlikely to eventuate, I believe a ‘digital TV enquiry’ exploring how to help further stimulate digital television is highly necessary and would be well timed.

3. The Alternative Options Compared

In attempting to bring together the above discussion, I have prepared a table (see table 1) outlining the relative contributions of each approach against a core set of policy objectives. The numbers in each column represent a ranking score – from 1 to 5 – comparing the relative contribution of each approach to the stated policy objective. The scores represent forced rankings relative to each other (for each objective there is a 1 to 5 ordinal ranking).

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<thead>
<tr>
<th>Genre Rules</th>
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<th>Interactive</th>
<th>Beauty Contest</th>
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<td>Different to Television</td>
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<td>Audience Share</td>
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<td>Program Rights</td>
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<td>Advertising Revenue</td>
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As you can see, on the basis of the policy objectives highlighted above, the beauty contest emerges as the clear approach delivering the greatest return to the community and the highest degree of business certainty.

3(a): Arrangements after the end of 2006

It is difficult to articulate a case for datacasting licenses post-2006 at this point in time because it is difficult to visualise, at this juncture, exactly what type of datacasting services might eventuate – particularly because the evolution of such services is directly dependent upon the particular model for datacasting which the government adopts.

There is, of course, some speculation that such licenses might evolve into full broadcast television licenses at some point in the future. However, the limited license period constrains the relative value associated with such speculation. Although articulating such a possibility now might significantly improve the value of the datacasting spectrum in an auction, it also raises significant questions of cross media and foreign ownership. In this context, I believe that a promise to allow such licenses to provide such services cannot be made without specific legislation addressing ownership issues.

Moreover, the legislation has a built-in remedy to address arrangements post-2006 in the form of the 2005 review. Accordingly, I do not believe it is necessary to specifically articulate the fate of datacasting post-2006 at this point in time.

3(b): The viability of Government / Community TV Services

With regards to the viability of a business case for government information services and/or community TV for datacasters, I would maintain that there are conditions under which such services would present a viable business model. However, these opportunities diminish relative to the commercial viability of the service as a whole. In other words, under a more commercially viable model of datacasting services, the viability of government / community services diminishes significantly because the
value of such services is always relative to alternative use of the spectrum.

Under the existing rules, for example, government services represent a valued source of content for a datacaster who will be somewhat desperate to find content which withstands the genre test. But under a subscription datacasting model, the value of the spectrum is probably too significant to allocate for government / community services. Hence the cost to access the spectrum increases dramatically, resulting in a less viable gov. / community business model for datacasting.

Under the beauty contest approach, government and community services enjoy benefits even greater than those under the existing approach because candidates will go out of their way to identify such opportunities in their attempts to secure the spectrum.

4. Datacasting licensing

4(a): Allocation process

The adoption of a price-based allocation process in the 2001 datacasting auction clearly demonstrated the limited utility of this approach. The cancellation of the auction represented what Professor Mark Armstrong has pointed out as a significant shift in policy:

“Until Alston's statement, the official line was that auctions for telecommunications and broadcasting were not a fund-raising exercise. They were just an efficient market-driven system to hand out licences. The May statement showed that the Government was prepared to abandon market-driven principles when it could not extract enough money from communications.” (Australian Financial Review, Jan 10, 2002, p47).

Professor Armstrong also highlights the degree to which this approach has resulted in the new economy subsidising the old at a time in which Australia needs to significantly reinforce competitive advantage in the new economy. Others have also questioned whether paying high fees to acquire spectrum best positions organisations to best deliver on services, often delivering significant financial liabilities which severely constrain their capacity to deliver the innovative services in the first place.

Moreover, given the recent tech bubble crash and the high degree of confusion surrounding digital television in Australia, it seems highly unlikely that a price-based datacasting auction would deliver a significant windfall. And one might also question whether those who ‘win’ spectrum in an auction, often reflecting speculative value associated with the spectrum in the future, are best positioned to deliver innovative content driving digital adoption.

Finally, I question whether the ‘highest possible return to the community’ is best measured in financial terms. In fact, often the price-based approach delivers the least return to the community in terms of the services offered. Reducing return to the community to purely financial terms does a great dis-service to the wider interests of the community.

Accordingly, I believe strongly that the beauty contest represents the best approach to
the allocation of datacasting spectrum for the various reasons noted earlier [see section 2(e)].

4(b): National vs. Local Datacasting Licenses

With regards to the question of local vs. national licenses, I believe that this depends largely on the policy objectives associated with such datacasting. There are clear advantages to both.

One of the distinct opportunities enabled by datacasting services, for example, is the provision of localised content. Such content may be best positioned to serve local community interests. Where the Commonwealth’s objective is to develop a datacasting service that best serves community interests, the allocation of localised licenses may best serve its objectives. Likewise, given the uncertainty associated with which business models will best serve datacasting, the Government might have an interest in localising license allocation so as to insure that the widest range of players participate – resulting in a wider range of potential business models (and thus a higher likelihood of discovering viable models).

In contrast, however, the Government’s objective of stimulating digital conversion may be best facilitated by a relatively large player prepared to invest considerable sums in the development of a national datacasting service. Under such a scenario, larger economies of scale best position the datacaster in the acquisition of programming and in insuring the greatest financial return associated with their service. Hence, allocation on a national scale may help insure the emergence of players most likely to succeed in delivering a financially viable business.

The ideal compromise might be for the Commonwealth to allocate at least one national license and allocate remaining datacasting licenses on a market by market basis.

4(c): the number of licences to be offered in an area

Assuming the Government adopted the recommendation noted earlier, advocating one national license and the remaining localised would allow at least two licenses to be on offer. In certain markets more localised licenses might be offered given the degree to which such spectrum is available in such markets. Such a measure is most consistent maximising innovation in the discovery of viable datacasting models.

4(d): whether restrictions should apply to who may seek one or more of those licences.

To insure maximum diversity, only one party should hold a license in any given market. Accordingly, broadcasters (who have datacasting licenses by default) should be prevented from seeking these licenses.

If the scope of the datacasting regime stipulates that these will become commercial television licenses in the future, the restrictions on foreign ownership and cross media ownership should apply until legislation is enacted eliminating such conditions.
5. Carrier License Exemption

I can see no problem in extending the carrier license throughout the life of the datacasting license.

6. Other

I believe there are a number of critical questions which are relevant to the datacasting regulations but which have not specifically been raised in the call for submissions. Accordingly, I appreciate the Department’s invitation to comment on such issues.

6(a): Clarification of ‘broadcast television’ services

To a large extent, discussion of datacasting has focused on identifying a solution which differs from broadcast television services. The focus on datacasting has largely ignored an equally critical question: Exactly what is meant in the legislation by broadcast television? What adverse impact, specifically, is the moratorium intended to protect? This is a critical question because any crafting of an appropriate policy must have greater clarity in terms of what specific aspects of broadcast television fall under the umbrella of the moratorium.

In exploring this theme further, there are a few characteristics associated with broadcast television which might – or might not – fall within this scope. It is not my intent to advocate a particular definition – rather, I’m simply calling attention to the inherent problems associated with developing policy where such definition remains vague and unspecified. Clearly, the appropriate policy depends, to a considerable extent, on which aspects of broadcast television the approach is intended to protect.

Among the possible features which the legislation may – or may not – be intended to protect are the following:

6(b)i: Audience share:
The advent of new media and additional broadcast channels in other countries has delivered increasing levels of audience fragmentation. One interpretation of the legislative intent, therefore, is that the distinction between broadcasting and datacasting should protect FTA broadcasters existing market shares and not significantly erode these.

This approach is somewhat problematic, however, because it largely defines datacasting as an ‘unpopular’ service incapable of attracting a substantial audience. Such an interpretation also conflicts with the entire principle behind datacasting in the first place: That of stimulating consumer demand for digital television reception equipment thereby accelerating digital conversion.

6(b)ii: Program rights
With limited economies of scale and an extremely high degree of competition between FTA players, Australian broadcasters have traditionally paid disproportionately high rates for access to premium television content. The addition of more players in the television mix
could have the adverse effect of driving program rights even higher. In this context, distinction between datacasting and broadcasting might be seen as protecting the environment in which broadcasters compete for access to such content. On the whole, this is a compelling argument as it is possible that the introduction of additional competition in broadcasting could drive prices even higher at a time in which future revenue opportunities for broadcasters are potentially in decline.

6(b)iii: Advertising revenue:
For broadcasters, the distinction with datacasting may really be about protecting their advertising revenue. This view, however, seems to contradict the digital television legislation which creates a clear exemption from genre rules for all advertising content. In a free-to-air environment, it is almost impossible to conceive of a datacasting model that would not – in some way – depend upon attracting advertising revenue. Hence, directly protecting the advertising interests of broadcasters seems to transgress the contextual environment associated with the very creation of datacasting services in the first place.

6(b)iv: Analog service:
Perhaps the most extreme view would be to argue that the protection to free-to-air television should cover analog television services only. As it is highly unlikely that digital television penetration will reach the majority of Australians by 2006, access to ‘digital’ signals will be limited to a fraction of the country. In this context, the availability of digital channels represents a ‘second class’ citizen in the television landscape as such services would have limited reach, thereby limiting their capacity to generate advertising revenue. Under this argument, all restrictions on datacasting licenses are inherently unnecessary as they pose no direct competition to analog television services. Although this presents an interesting argument, I question whether it really reflects legislative intent as the Government’s discussions of the moratorium have always implied that it applied to both analog and digital transmission services.

Under the discussion noted above, it seems the characteristic associated with FTA broadcasting which best ‘fits’ the protection scheme is associated with protection over program rights. Accordingly, in evaluating the various options presented the Department may wish to consider the potential impact associated with this. Likewise, an alternative regulatory mechanism may better reflect these interests. For example, datacasters may be given exemptions from existing genre rules where the content involved is self produced content (thereby eliminating an adverse impact on broadcast rights) or a scheme similar to the anti-siphoning rules may allow datacasters to access content which has been rejected by FTA broadcasters. My point is discussing such options is simply to highlight the potential benefits associated with greater clarification of the specific facets of broadcasting which should be protected.

7. Conclusion

I hope that my submission is of some use to the Department as it considers
alternatives to the datacasting regime. As I have noted throughout my submission, I believe the most viable approach is a beauty contest which allows applicants to themselves demonstrate how they will deliver the Commonwealth’s policy objectives. This will not only help insure that the service steers clear of broadcasting, but will also provide maximum benefit to the community and it will provide investors with the great clarity and flexibility in pursuing appropriate business models.

In demonstrating the value associated with the different approaches identified by the Department (together with the beauty contest option), I have charted the utility of each approach relative to central policy objectives. I believe this approach helps highlight the value of the beauty contest approach. Even if the Department does not agree with my findings, it may find this approach useful in shaping it’s own evaluation.

Once again I apologise for the rather rushed nature of this submission. To a large extent, however, this was an unavoidable by-product of the narrow window in which to respond to the call for submissions.

If you have any questions associated with any of the elements I have raised herein or if you feel the Institute might be of any further assistance in helping you address the datacasting review, please do not hesitate to call on us.

Sincerely,

Professor Duane Varan
Director, Interactive Television Research Institute