

Commercial Public Service Children's Television

Oxymoron or Media Commons for Savvy Kids?

Ruth Zanker

ABSTRACT

The article has two aims. First it explores how winners of wider discursive battles over 'public interest' and 'freedom of speech' have increasingly shaped national interpretations of children's media rights in the western world. This article argues that the winners of these discursive battles are powerful in terms of shaping children's media provision. The second part of the article focuses on the particular challenges facing policy-makers and broadcasters in New Zealand as they go about defining new public service outputs for children. This nation of four million inhabitants is in the middle of a difficult experiment. The Labour Government, elected in 1999 (and again in 2002), has declared an intention to claw back public service outputs on its state-owned broadcaster TVNZ, after a decade in the deregulated media marketplace.

Key Words children's media rights, children's public service television, commercial free speech, cultural agency, free trade

Introduction

This article has two aims. First it explores how winners of wider discursive battles over 'public interest' and 'freedom of speech' have increasingly shaped national interpretations of children's media rights in the western world. Battles over public interest, freedom of speech and individual rights in broadcasting have, arguably, focused on provision for adults, often in regards to television news and current affairs. The author

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argues that the winners of these battles are equally powerful in terms of shaping children's media provision. Who wins the battle for young people? The winners shape the media resources available for children and thus the imaginative horizons available to children¹ as they playfully construct cultural identities and social expectations.

The second aim of the article, once these discursive battles are laid out in broad terms, is to focus on the particular challenges facing policy-makers and broadcasters in New Zealand as they go about defining new public service outputs for children. This nation of four million people is in the middle of a difficult experiment. The Labour Government, elected in 1999 and re-elected in 2002, have declared that they intend to claw back public service outputs on its state-owned broadcaster TVNZ, after a decade or more functioning as a successful commercial enterprise in a deregulated media marketplace. As one British commentator puts it:

Broadcasters seeking to peer into the future of public-service broadcasting (PBS) don't need a crystal ball or expensive consultants. They just have to travel to New Zealand. The country is in the middle of a unique and difficult exercise — trying to reinvent PBS after more than a decade spent wholly in the free market. (Snoddy, 2001)

The difficulty of this enterprise cannot be underestimated. New Zealand's attenuated regulatory framework, small production pool and tiny market size place the lofty ideals of the BBC 'full service' public service remit for children under intense scrutiny in terms of national benefits and costs (Zanker, 1999, 2003).

New Zealand offers a contrast to the broadcasting political economy of Europe during the 1990s. In Europe, key public service channels and producers have flourished as they exploit a double set of regulatory advantages. First, producers in Europe have been protected from the worst excesses of audiovisual dumping from the US and other regions by European television content quotas and national licence requirements, while continuing to have access to generous television production funding from national public purses. Second, producers have been able to take advantage of radically liberalized transnational trade in audiovisual products and increasingly efficient policing of creative, intellectual and performance rights (Born, 2000). This has all occurred against the backdrop of a decade of intense market positioning within new transnational audiovisual flows. For example, one 'quality' brand that draws on public funding, BBC Worldwide, is now viewed by many competitors as one of the most ruthless players in the international children's marketplace (Steemers, 1999).

This article asserts that issues surrounding Labour's broadcasting policy in New Zealand, as they relate to provision for children, provide a stark map to discursive battles over what constitutes children's media spaces in the western world. These issues illustrate how and why it can be argued that children's public spaces are morphing relentlessly from modernist northern European public service ideals of non-commodified children's civic space (a place of commercial virginity as it were) into a new public realm where children's civic and consumer rights converge.

First it is important to outline the discursive battlefield that has shaped current children's media provision.

The problem of defining the principal agent for children's television

The confusion and conflict over defining the 'best interest of the audience' for adult audiences only intensifies when it comes to denning the 'best interest' for children. Deep discursive fault lines run through debates over who should be the 'principal agent' for children's television. Tracking these takes us to an understanding of 'power' in terms of recent cultural formation and economic clout.

Over the centuries, 'in the name of the children' has been the rallying cry for any number of ideological positions in terms of defining the desirable relationship between children and adults (Qvortrup et al., 1994; Jenks, 1996). But the 1990s has seen a significant shift in how this rhetorical device has been deployed in terms of children's media content provision. Central to this is the assertion that children, arguably the last voiceless minority, have finally been 'given a voice' to speak on their own behalf through audience research (Laybourne, 1993; Davies et al., 1998; Kelley et al., 1999; Buckingham and Davis, 2000; Rydin, 2003). This has radical implications for children's media policy in terms of interpretations of children's media rights.

It is helpful to keep some specific considerations in mind during the following discussion. Every adult, whether in the guise of parent, advertiser, programmer, producer, regulator or researcher, holds a particular construct of the 'child-viewer' in mind; and second, different constructs of 'the child' and 'the adult' are aligned, or sometimes placed in opposition, in arguments over media provision, access and regulation.

The following historical analysis of the shifting principal-agent relationships between broadcasters, regulators, funders and audiences, and the consequent interpretations of benefits 'for children', reveals a

profound shift in rhetoric and practice over the last two decades, arguably accelerating into an unstoppable transnational phenomenon during the late 1990s.

The challenge of children's public service provision

National public service children's television production in Europe and key English-speaking nations has been justified for half a century or more in terms of developmentalism. Its social role has been to inculcate impressionable and vulnerable children into national cultural and civic citizenship. This contrasts to the US regulatory environment during the same period,² which has largely conflated children's television with popular commercial television (Kline, 1993).

Global popular children's culture has been largely defined by American culture during a period of overwhelming comparative advantage for the US industry in global audiovisual trade in children's entertainment. In 1981 the deregulatory FCC (Federal Communications Commission) Chairman Fowler famously encapsulated this pragmatic industrial position in the phrase 'television is the equivalent of a toaster with pictures'. Television content was viewed as appropriate for children as long as parents deemed it so. In 1983, two years after radical media deregulation, which saw children's television swamped by toy-promoting animations with crude gendered appeal, Chairman Fowler insisted that the market would eventually serve children well enough because someone would:

. . . sooner or later figure out how to do what the networks had historically failed to do, make a profit while doing quality children's programs. (Minow, 1995: 127)

Later in the article, a case is made that, in critical ways, Fowler may have been proven right, at least in terms of American children. A new service has evolved that combines dual market appeals: to anxious parents wanting 'quality' television and to 'kids' as savvy citizens and consumers. This article argues that this new commercial public service rhetoric has implications for children's public media spaces in many smaller nations.

Unpacking 'public interest' and children

Unpacking historical American definitions of 'public interest' in broadcasting enables one to make sense of emerging transnational definitions of 'public interest' for children in their media.

Minow (1995) traces current American definitions of 'public interest' back to the radio era. American audiences, parochial and regional at that time, were reconfigured into 'designated marketing areas' (DMAs) shaped by the range of radio signals which cut across earlier 'communities of interest' of, for example, immigrant communities and state loyalties. In such a way, commercial community of interest and cultural community of interest became the same community. The power of the concept of DMAs is that it neatly conflates 'public benefit' in terms of citizens with that of the 'public interest' of DMAs of consumers.

The DMA, and its power to define community of 'public interest', resonates in the rhetoric defining new transnational communities of children drawn together by satellite footprints and windows of broadcasting rights. These DMAs cut efficiently across national and cultural particularities in the name of newly empowered communities of consuming 'kids'.

As has already been mentioned, deregulation of the US media industry in the 1980s saw toy-generated 'kid-vids' dominate children's media provision. In the mid-1980s it was ruled that animations designed to market toys met public interest requirements simply because 'the public' of children were clearly interested in them as demonstrated by ratings (Kunkel, 1999). Throughout this period, American television interests successfully used the First Amendment of the Constitution in defence of market freedom and against the threat of content regulation of children's television. The First Amendment wording — 'Congress shall make no law . . . abridging the freedom of speech, or of the press' - provided the means of foreclosing further debate on 'public interest'. The argument went thus: the marketplace of ideas, however imperfect, cannot abide any form of government intervention, and any intervention — even on behalf of children — is unconstitutional. 'Children's public interest' became synonymous with whatever the media market found profitable to offer children (Minow, 1995). In the mid-1990s, under Clinton, 'public interest of children' was redefined to include educational content requirements for licence renewals. However, this article argues that it is the earlier definition of public interest that has rhetorical power in arguments over public interest and freedom of speech in children's transnational and many national audiovisual and marketing flows.

Free trade: WTO, GATT, TRIPS and GATS

The 1990s saw the deregulation of national media industries in many western nations. This development has enabled two pincer movements of

'rights' that work to the advantage of transnational media conglomerates, marketing interests and advertisers.

First, new multilateral arrangements supporting the right to free trade and the right to free speech have seen the convergence of these into a powerful new rhetoric of transnational commercial free speech. Second, these transnational arrangements have seen the tighter policing of transnational rights related to intellectual and performance property, not just for television but, critically, across emerging audiovisual and marketing windows and platforms. These two pincers have had a profound impact on how children's producers shape their proposals, as well as funding and ongoing rights arrangements. It also has a profound impact on options facing regulators and producers in exposed national media environments like New Zealand.

The General Agreement on Trade and Tariffs (GATT) of 1994 established the World Trade Organization (WTO). This signalled a deepening commitment to trade liberalization in services and investment. At the same time, the Trade Related Aspects of Intellectual Property (TRIPS) was passed. This confirmed that the intellectual property arrangements first described by the toothless Berne Convention were to be respected and rights extended to new media (Given, 2003). At that time, the US sat outside the Berne Convention.

The balance of power changed at the Uruguay round of the General Agreement on Trades in Services (GATS) in 1996, when the issue of dismantling national tariffs, audiovisual quotas and regulations was added to the agenda. Much has been written about the spirited European response to this threat to its audiovisual frontiers. To summarize: France convinced Europe to exclude cultural products from negotiations, drawing on the precedent set by Canada when it negotiated cultural exemptions from the 1994 North American trade agreement (NAFTA) (Given, 2003). The rhetoric might have been couched in cultural terms but the benefits for European and Canadian producers have been financial. Since that time, Canada and European nations have continued to protect, and indeed grow, their lucrative cultural industries using a mix of national and regional quota, government subsidies and licensing requirements. This has enabled many producers to position themselves strategically as 'quality' audiovisual producers, co-producers and exporters during the late 1990s. These were also years of exploding demand for media content in the fragmenting media environment (Norris et al., 2003; Zanker, 2003).

New Zealand, in the full flush of its brave deregulatory experiment, was one of a handful of nations to quietly sign away its audiovisual quota

at zero percent in 1996. During the 1990s, its children's production industry simply hobbled along, a beleaguered cottage industry funded via an annual competitive round. Producers survived by solving ratings problems for commercial broadcasters, which meant being required to compete with global animation hits on opposition channels (Zanker, 2002).

It is paradoxical that the Uruguay GATS round that was dedicated to *removing* rules about trade in goods and services also enabled the *tightening* of property rights for those already well positioned to take advantage of intellectual property and performance rights. A new dispute settlement process, envisaged under TRIPS, was put in place to give this clout. The USA joined the Berne Convention at the end of the GATS round, thus enabling a much-expanded surveillance of intellectual, copyright and performance rights. This played into the hands of established American-owned entertainment conglomerates, and some clever niche players from Europe and other protected audiovisual environments.

It is important next to understand how interpretations of expanding multilateral agreements are shaping national public media spaces for children in many nations.

Free trade and free speech

As early as 1996, leading world broadcasting associations and advertisers had devised a single global standard for the purchase and production of television advertisements (Jeremy Irwin, executive director of the Association of New Zealand Advertisers, interview 6 June 1998). But it was during the late 1990s that advertisers became increasingly active politically, lobbying a range of governments to favour widening interpretations of free speech articles in national and multinational agreements. It was during these years that American honed free speech principles, and constructions of public interest were used to support the free flows of advertising messages and commercial intellectual property rights within and across national borders.

In Europe, for example, the European Free Trade Association based in Geneva used a free speech principle from the regional European Convention of Human Rights (Article 10) in order to instruct Norway that it could not prohibit advertising to children on satellite broadcasts into the country. And again, the European Court of Justice informed Sweden in 1996 that it could not block children's advertisements beamed into Sweden that originated in another EU country, despite a national

political wish to do so (Herman and McChesney, 1997: 51). The declared Swedish intention to ban children's television advertising in the European Union when it assumed presidency in 2001 (Edling, 1999) triggered a rhetorical war in the international broadcasting and trade press. Faced with this threat to 'free speech', European advertisers fought a pitched battle to ensure that whatever was legal to sell was legal to advertise (Howell, 1999). Indeed protection of children from advertising was depicted as a:

. . . serious attack on our citizens' freedom of thought and speech, a wide ranging attack on the freedom to communicate commercially, and an insidious attack on the family and the duty to educate our children in the values of a free society and a liberal democracy. (Twinn, 1999)

Well-organized and dedicated regional movements as far flung as the Interamerican Society for the Freedom of Commercial Speech in Central and South America (Wiggs, 1999) and global associations like the 50-year-old World Federation of Advertisers argued consistently for commercial free speech across boundaries.

New Zealand's advertising interests were at the vanguard of this global advertising movement. In 1999, the executive director of the proudly self-regulatory Advertising Standards Authority of New Zealand argued for a self-regulatory 'Borderless Advertising Charter' at the Seoul World Congress of the World Federation of Advertisers. The first paragraph of the proposed charter reads:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (UN Covenant on Civil and Political Rights, Article 19, cited in Wiggs, 1999)

Article 19, originally designed to ensure political, religious, scientific and artistic freedoms, had morphed to encompass transnational commercial messages. Wiggs went on to argue that economic and media deregulation was spearheading an efficient and responsive consumer-driven marketplace where national regulators intent on restricting commercial flows had no place (Wiggs, 1999).

Children's rights

The last knot to unpick in this discursive tangle is the rhetoric of 'universal human rights' as they have been extended to children. The children's rights movement is singular in that it was not activated by the

group itself, but by interested adults. When analysing the rhetoric one must always foreground one question: in which adult's interest is this assertion of children's rights made?

Children's rights were codified in the Convention on the Rights of the Child and adopted by the General Assembly of the UN in 1989.³ Compliance by signatory nations, including New Zealand, is reviewed regularly by governments and interested NGOs. The US is not a signatory to this date, but the reasons why constitute another article.

On surface reading, the Convention appears to create an elegant bridge between individual freedoms and more protective objectives. But, as Buckingham and others have already discussed, the Convention on the Rights of the Child has proved to be a highly ambiguous project. The next section explores tensions within the document over constructs of 'individual rights' and 'the child' (Buckingham et al., 1999).

The rhetoric of children's rights admits children to 'the public sphere'. For example, it treats them, in certain respects, as citizens, on grounds that 'assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child' (Article 12). It also extends the sphere of children's welfare into that of the media. The Convention is marked, in other words, by the discourses of developmental psychology and social welfare in terms of the impressionable and vulnerable child. Article 17 ensures that a child 'has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health'. This includes 'the linguistic needs of children who belong to minority groups or who are indigenous' (Article 17.d) and 'guidelines for protection of the child from information and material injurious to his or her well-being' (Article 17.e).

But the statements about individual freedom of choice in Article 13.1 can be interpreted as a defence of the child as an empowered agent who has the:

. . . freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers . . . through any media of the child's choice. (UN Convention on the Rights of the Child, Article 13.1)

The squabbles between those that foreground the lofty words in Article 17 and those in Article 13.1, as well as interpretations of Article 12, are central to dilemmas facing those defining public service children's media provision.

These policy squabbles echo recent theoretical arguments within the sociology of childhood. Modernist 'quality provision', once defined by adult definitions of social and educational developmentalism (crudely what is outlined in Article 17) has come under attack from audience researchers who argue that there should be more respect for children's media agency (enabled by Article 13 and some interpretation of Article 12). Both formative production and marketing research increasingly involve children as expert informants on content and appeals. It is not surprising, then, that over the last few years children's producers (including public service producers) are addressing children as savvy and fussy consumers as a result of these ongoing conversations (Zanker, 2002).

The task facing public broadcasters in marrying Articles 17 and 13 of the Convention opens up new questions about children's media rights. What is good children's television? Is it 'learning-stage appropriate' narratives long favoured by child development experts (and the archetypal 'protective' mother)? Or is it the gaudy consumerist, often violent, fare that children tend to say they prefer, given the right to choose? And why might this be the case?

It is worth noting that commercial programmers and advertisers have long argued that children prefer slick commercial animation over 'fruit and veg' public service genres. They argue that children like to watch 'up' from their own age group (Schneider, 1987: 5). They are (as marketing jargon puts it) 'growing up older younger' ('Capturing Kids', 1999). Research demonstrates that children are indeed drifting from public service provision in the multi-channel environment (Blumler and Biltereyst, 1997; Goonasekera et al., 2000). Children are now adept at surfing the media and subverting parental guidelines. Cultural references from popular consumer hits are central to their peer group pleasures and, further, constitute the cultural capital to be used in the process of defining social identity. They know what they like and they like exercising their 'choice muscles' (as Nickelodeon puts it) as consumers. Like it or not, they often choose racy, crude and violent consumerist fare over local public service provision (Laybourne, 1993; Seiter, 1993; Buckingham and Davies, 2000; Rydin, 2003).

It is common knowledge that marketers have exploited the child as active consumer since Disney invented Mickey Mouse Ears, even though many argue that this became particularly venal during the cynical 1980s kid-vid era (Pecora, 1998). But the critical shift occurred in the mid-1990s, when a pay channel refined this old consumerist address back into a powerful appeal of 'quality market provision'. Has Chairman Fowler

finally been vindicated for what he said in 1983 that someone would 'sooner or later figure out how to . . . make a profit while doing quality children's programs' (Minow, 1995: 127)?

Nickelodeon's new address to children as 'consumer citizens'

Viacom-owned Nickelodeon has led the way in terms of positioning itself as a parent-friendly global 'consumer commons' for children and unabashedly competing with national public service providers as a quality provider. The challenge facing national public service children's providers is no longer just competition from imported animation hits on other free-to-air channels, but finding a national unique selling proposition that can compete against this powerful new values-driven, parent-friendly yet 'kids-only' global consumer commons. This has profound implications for understandings of children's shared 'public space' in smaller nations.

After a slow beginning in the 1980s, Nickelodeon took off in the USA during the 1990s. By 1993, Geraldine Laybourne, the visionary CEO of Nickelodeon from 1985—95, could argue that Nickelodeon had become Minow's quality children's provision (Laybourne, 1993). When advertising was added a year or so later in the US, she argued persuasively that a nurturing, protective service for children and service to advertisers was not incompatible. As she put it:

. . . while we are a business, we're responsible as kid advocates to protect them from commercial exploitation . . . that means walking a very distinct, but fine line. (Laybourne, 1995)

Nickelodeon then began to unroll regional transnational satellite pay services. These were pitched to appeal to middle-class parents and their affluent children. Since then Nickelodeon has managed to position itself in many nations as safe, wholesome children's television by selling a privatized 'quality' media environment to anxious parents, while appealing to children with hit programming and thus to advertisers through its 'kid-savvy' address (Goonasekera et al., 2000).

Nickelodeon's rhetoric of individualism and fragmenting choice delineates a potent new global market niche of 'us' (kids) vs 'them' (wrinklies). Indeed they 'pledge allegiance to kids' everywhere. In a world where 'tweens' spending power is calculated at US\$14 billion and growing what is good for kids is good for business (Kantrowitz and Wingert, 1999), Nickelodeon has evolved a highly successful marketing position as a global home base to kids, in much the same way that MTV defines itself as a global home base for youth. Its brand has become a consumption community that respects 'kids' in terms of their individual

agency, democratic rights and purchasing power. Indeed, Nickelodeon targets 'kids', an American term signifying peer group savvy individuals as opposed to protected children.

This Utopian appeal to 'kids' as 'consumer citizens' is worth investigating further. This new rhetoric increasingly imbues emerging children's audiovisual products and brands, including public service 'brands'. The question to ask is, just *who* is empowering *what* kids in this new public space?

Nickelodeon in New Zealand

Now the discussion returns to the concept of DMA, because it enables one to make sense of children's audiovisual flows since the mid-1990s. First it is useful to map Nickelodeon's double presence as a DMA in the New Zealand mediascape. This provides some clues as to why the simple political wish post-1999 to create non-commodified public spaces for children is proving such a challenge.

First, Nickelodeon has a children's community of interest defined by the DMA of a regional satellite footprint. A place where:

. . . 'Nick' is for you, by you and about you and your world. (Nickelodeon, 1998)⁴

New Zealand currently receives Nickelodeon's South East Asian feed. No local New Zealand children's production is commissioned,⁵ however, advertising is sold to New Zealand advertisers and transnational brands on the channel. In light of this, it is interesting to ask where the empowering conversations between children and Nickelodeon's audience researchers (and likewise client global advertisers) take place. Is this 'research conversation' conducted in New Zealand, Singapore, Malaysia or Orlando, Florida? Whose children's agency is being empowered?

It is on this question that audience researchers who reject essentialist constructs of universal childhood and posit the constructedness of local childhoods face real questions about agency and power. A week's viewing of Nickelodeon in April 2003 suggests a strong US twist of politically correct (also demographically market advantageous) Hispanic content in the South East Asian feed to bicultural Maori/Pakeha New Zealand!

Second, and more difficult to pick apart, is Nickelodeon's DMA as defined by free-to-air New Zealand television channels. In the late 1990s, TVNZ were delighted to win rights to show Nickelodeon's hit show *Rugrats* (a Klusky Csupo commission) after school on TV2. It quickly became a huge hit for TV2, featuring on a promotional video made by TVNZ Sales and Marketing to sell advertising packages.

The Rugrats brand also offered marketers a range of Rugrats licensing deals and 'events' that were managed by TVNZ Enterprises, a stand-alone entrepreneurial business unit within TVNZ's Sales and Marketing area. During the hit run on TV2 during 1997—9, a raft of lucrative licensing deals for cereals, fast food, soft drinks and merchandise targeting children were signed off. For example, the beginning of the school year in 1999 saw a Krispa chips promotion that used Rugrats characters for 'Attention grabbing packaging . . . in store displays . . . cross promotions with other licensed product . . . giveaways in pack' (*Licensing Now*, 1998). In 1999, TVNZ Enterprises managed the national launch for the *Rugrats* movie. As the marketing rule book put it:

Nickelodeon's mission statement doesn't mention television or toys or movies or recreation because Nickelodeon isn't a particular product or service . . . hear the name Nickelodeon, seeing the Nickelodeon logo playing with Nickelodeon product, or watching Nickelodeon on television all makes kids feel a certain way. . . . What's good for kids is good for business. (Nickelodeon, 1998)

It was going to be an interesting challenge teasing out what constituted local public service broadcasting for children on TVNZ in the wake of the 1999 election.

New Zealand's deregulated environment

As has been stated already, New Zealand presents an extreme case study in which to explore evolving definitions of public service broadcasting for children. TVNZ, the state-owned broadcaster, was required to return a large dividend to the government from its commercial operation and there was no limit on the number of ad spots sold during the 1990s. There were, and continue to be, no licence-renewal requirements or quotas. Public service funding is allocated across all national free-to-air channels on a competitive basis, NZ On Air for mainstream programming, Te Mangai Paho for Maori-language programmes (and since 2004 a Maori-language channel).⁶

NZ On Air's mainstream children's funding objectives reflected elements of Reithian full service to children, underpinned with a requirement for local cultural inflection, thus limiting opportunities for export and co-production. Children's producers were required to be commissioned by one of two highly commercial channels, TV2 and TV3, to gain access to public funding (Zanker, 1999).

The environment during the 1990s was one of savage commercial competition between marginally profitable national channels. This

extended to the children's viewing zones where global animation hits like *Rugrats* became the favoured programming weapon. Unreliable ratings from only 500 households would make or break risky local children's programmes (Zanker, 1999). In 1998, the New Zealand Screen Producers and Directors Association (SPADA) reported 'New Zealand's broadcasting environment is now the most deregulated in the world' (McBeth and Snowden, 1998: 6).

In 1991, the New Zealand Bill of Rights was passed. Article 14 reads 'everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind'. During the 1990s, advertising interests (including commercial broadcasters, state-owned TVNZ and CanWest-owned TV3) lobbied to ensure guaranteed freedom to advertise all legal products.⁷ As the head of the Self-regulatory Advertising Standards Authority put it:

We are moving headlong into a borderless global economy powered by a borderless media. A most remarkable consequence has been the gigantic leap in consumer empowerment and the corresponding dis-empowerment of Governments. (Wiggs, 1999)

Reinventing public service outputs

Labour was elected in 1999 on an ambitious broadcasting platform. It promised three key changes: first, a public service charter for TVNZ; second, provisional support for the reintroduction of local content quotas; and third, a desire to introduce curbs on advertising to children.

It proved to be a battle on all fronts. It took until 2003 for the TVNZ charter to be hammered out and passed, but in the meantime the two other platform promises became highly charged political issues. In 2002, hopes to introduce a content quota were whittled down to a feeble 'voluntary quota', a resolution forced by the zero quota deal signed away at Uruguay. Meanwhile, all hopes of non-commercial children's public service provision were knocked back during a long and bitter political squabble over curbs on advertising and marketing to children.

It will be no surprise to find that there was considerable resistance to a shift to mixed objectives within TVNZ. In May 2001, for example, a leaked report from the state-owned company argued that a public service charter would cost the organization, conservatively, NZ\$48 million advertising losses (the same as its current dividend to government). The questions being raised were: Could politicians afford TVNZ to lose commercial viability in a fragmenting market-place? Was there real public will for the cost of public service television when tallied

against public funds for hip-replacements?' And, anyway, what was public service broadcasting after years of competitive culture within the state broadcaster? The case was made that high-rating commercial programmes (like fly-on-the-wall documentary and reality shows) were both popular and public service because they showed New Zealanders on air.

Labour was returned to government in 2002 and offered TVNZ an annual grant (NZ\$12 million in 2002 and up to NZ\$15m in 2003) to help it fulfil all charter requirements. It is salutary to note that in 2003 advertisers were contributing over NZ\$250 million to TVNZ revenue. The real post-election charter question loomed for TVNZ managers. How could TVNZ be retooled to reconcile charter obligations (including those for children) while not putting advertisers off-side?

Reaction from advertising interests after Labour's election was unequivocal. Any ban on children's advertising would be viewed as the thin edge of the wedge in an ideological war over commercial freedom of speech. Furthermore, any curb on advertising (for example 'treat' foods) to children would be treated as a hostile political act. There were veiled threats to shift transnational businesses and their advertising budgets off-shore to Australia. The political battle grumbled on with intense lobbying, and reached a dramatic head in 2003.

Meanwhile, TVNZ management found itself in a delicate pre-charter political position. As a commercially driven broadcaster it was required to take a united front with CanWest-owned TV3 in the defence of continued advertising in children's zones. Together, they argued that bans (or even restrictions) on advertising within children's viewing zones would make children's programming an opportunity cost that they could ill afford. Given that there was at that time no requirement to commission (or even show) *any* children's programmes, this threat was to be taken seriously.

The annual self-regulatory reviews of advertising codes between 2001 and 2003 illustrate the rhetorical war being waged by advertisers in the New Zealand political arena during this time. Advertising interests argued that a high degree of social responsibility was already required of advertisers with regard to children. By foregrounding Article 13 of the UN Convention on the Rights of the Child, they argued that children had a right to 'freedom to seek, receive and impart information and ideas of all kinds . . . through any media of the child's choice'. They argued that the media's role was rightfully limited to 'support parents who have the primary responsibility for the upbringing and development of their children' (*Advertising on TV*, 2002). In other words regulations were there

simply to ensure a level playing field. In a world of media plenty it was a case of parental *caveat emptor*, buyer beware, not the old-fashioned broadcasting role of *in loco parentis* under a nanny state.

In late February 2003, the TVNZ Act (with Charter) was passed at last. The charter requires that TVNZ:

Feature programmes that provide for the information and entertainment and educational needs of children and young people and allow for the participation of children and young people. (b.12.x.)⁸

The charter also requires 'a code of ethics to address the level and nature of advertising to children', thus signalling that a ban on advertising to children was off the political agenda. As the Minister of Broadcasting rapidly reassured advertisers: 'Viewers are citizens as well as consumers and TVNZ is undergoing a make-over to accommodate both.' TVNZ is shaped in a way 'that helps us achieve both cultural and economic ends'.

. . . the Charter will be good to advertisers, just as it'll appeal to viewers and, more generally, contribute to the development of our own New Zealand identity and culture. (Maharey, 2003)

Advertising interests appeared to have won. As a mixed broadcaster TVNZ could not afford to alienate income in the more lucrative prime-time slots. The challenge was to be seen to deliver information, entertainment and educational needs of children and young people within the existing commercial environment.⁹

But the issue of children's advertising had not gone away. The Green Party (which held valued coalition votes) accused TVNZ of disregarding its social responsibility by continued fast-food advertising to children (Green Party press release, 20 February 2002). It used an American-inspired 'pathological' effects attack to great effect. In summary, food and high sugar drink advertisers on television were driving an epidemic of national childhood obesity. They rapidly acquired powerful allies in the health lobby.

A strange episode follows. While the Labour Minister of Broadcasting had been at pains in his press releases and speeches to assure advertisers of the value of commercial free speech, the Labour Minister of Health now moved to revamp a 1956 Health Act. This had originally been designed to curb the spread of diseases like tuberculosis and the intention was now to use it to fight childhood obesity. The Ministry of Health called for submissions and was particularly keen 'to learn how to balance individual rights and freedoms and the government's ability to impose regulations for the public good' (Smith, 2003: 1).

In March 2003 a consultative seminar on food advertising was to be hosted by the Ministry of Health and funded by the self-regulatory Advertising Standards Authority that had lobbied so successfully in terms of advertising to children (Ministry of Health, 2003). A fierce battle over what constituted freedom of speech and children's rights broke out in the press before the event, both sides garnished with expedient 'research statistics'. Advertising interests issued press releases reiterating the democratic principles of individual freedom and responsibility, in which it was argued that it was 'parents, not advertisers who gave children fast food'. The keynote speech, by a 'researcher' for the American pro-tobacco lobby, was released. In this pro-commercial free speech polemic he argued, among other things, that 'If advertising really was affecting consumption we would know it by now — there is so much research on it' (Calfee, 2003: 1). The health lobby decided to boycott the event as an advertising industry set-up.

The CEO of TVNZ, chair of the Commercial Broadcasters Association at the time, delivered a speech at the event on behalf of the Commercial Broadcasters Association. In it he supported continuing responsible advertising to children.

What might appear surprising to the informed observer is that such a frenzied defence of advertising to children occurred during what was a crisis in spot-advertising space in children's viewing zones. The run of station advertising appearing on children's shows (for mattresses, gyms, pasta and loo-paper) were indicative of the fact that there were vacant advertising slots in children's zones. Advertisers often chose to reach child consumers through product-placement, sponsorship, licensing or advertisements in prime-time shows. The income from advertising in children's zones was 'peanuts' in the words of a TVNZ staff member except for the October and November pre-Christmas period (Zanker, 2002).

But the fight for freedom to advertise to children must be viewed as the vanguard battle in the free market battle for commercial free speech. Advertisers expressed fears of 'sweeping infringements on commercial speech' but clearly they feared a domino effect as health lobbyists pushed to ban other lucrative legal products, like alcohol and Pharmaceuticals.¹⁰

For the foreseeable future, public service programming on TVNZ is to be delivered within a commercial environment. TVNZ managers are faced with the tricky task of winning the loyalty of young viewers in a fiercely competitive environment while demonstrating a point of difference in terms of the charter. It is inevitable that the Nickelodeon rhetoric

of addressing children as communities of consumer/citizens becomes ever more appealing.

However, the funder, NZ On Air, has reviewed its children's policy, declaring that it is withdrawing from cheap studio and field compilations around cartoons into cultural investment in risk-taking creative content. This is a clear challenge to the status quo of programming on after school. But NZ On Air will have to convince TVNZ to commission risky higher cost children's genres marked by local cultural inflection in a competitive market.

Meanwhile producers, chafing at the bit to create longer 'shelf-life' creative children's programmes, face the same old problems: first winning commissions from commercial broadcasters; second, satisfying the NZ On Air paymaster by stamping content with a strong local inflection; and third, turning NZ On Air's requirement for local cultural inflection into a benefit, or budgeting for reversion to export 'quality' markets.

Conclusion

In the final analysis, politicians will have to use the first charter review to judge whether mixed public service and commercial objectives for TVNZ have resulted in fresh and expanded imaginative horizons for the country's children. So far it still feels like smoke and mirrors. One hopes that the coming year will see risky charter innovation that will extend our children's local imaginations. If this doesn't happen, TVNZ may well become irrelevant to the next generation of New Zealanders.

For the moment, the least of TVNZ's problems are the 'quality' pay channels like Nickelodeon, or even the new Maori-language channel launched in March 2004. However, this balance may change. It is worth noting, for example, that the low-cost non-commercial Maori-language channel already offers more local music and culture on air than mainstream TVNZ has ever dared show.

The real and present danger for TVNZ's charter aspirations in the coming year lies in the attractions of a new 'quality' global media commons which addresses 'kids' as empowered 'citizen/consumers'. The concept of children liberated as empowered consumers in a global quality media commons is increasingly attractive to entrepreneurial children's producers everywhere. This, ironically, now includes producers with an eye to international income revenue opportunities commissioned by wealthy public service organizations like the BBC (Norris et al., 2003). But this narrow construct of savvy kids empowered as consumers within a quality global media commons creates a false sense of children's agency

over their local cultural choices (and a false sense of security for parents). If children in New Zealand are defined narrowly in this way under the charter then local children's media culture will continue to be overwhelmingly shaped by the needs of market researchers, producers, product brands and advertisers 'in dialogue' with children in wealthier (more regulated) media markets.

Notes

1. 'Child' in this article refers to young people between the age of five and 12. This is the definition used by New Zealand advertising codes.
2. Increasingly so after market saturation of television sets in US suburbs.
3. The United Nations Convention on the Rights of the Child (1989); adopted and opened for signature, ratification and accession by the General Assembly resolution 44/25 20 November 1989. In force 2 September 1990 in accordance with Article 49.
4. Used by TVNZ Enterprises as style book.
5. The Australian Nickelodeon pay service shows local content, including, ironically, under Closer Economic Ties Legislation, the New Zealand award-winning drama *Being Eve*.
6. Originally funded from an unpopular licence fee, now from government grant.
7. Even though this is, in fact, a weak Act subject to a range of justified limitations.
8. 'Educational' was only added at the Commerce Committee stage, as a result of a submission from a children's media lobby group.
9. Early childhood programming continues to be advertising free. It is the targeting of children aged six to 12 that is in contention.
10. New Zealand advertising codes permit advertising of pharmaceuticals on free-to-air television.

References

- Advertising on TV: Getting it Right for Children. A Socially Responsible Approach* (2002) Wellington: New Zealand Television Broadcasters Council.
- Blumler, J. and D. Bikereyst (1997) *The Integrity and Erosion of Public Television For Children: A Pan-European Study*, research monograph. Washington, DC: Center for Media Education/London: The Broadcasting Standards Authority/Dusseldorf: The European Institute for the Media/Btussels: European Broadcasting Union (EBU).
- Born, G. (2000) 'Inside Television: Television Studies and the Sociology of Culture', *Screen* 41(4): 404-24.
- Buckingham, D. and H. Davies (2000) *After the Death of Childhood: Growing Up in the Age of Electronic Media*. Cambridge: Polity Press.

- Buckingham, D., H. Davies, K. Jones and P. Kelley (1999) *Children's Television in Britain: History, Discourse and Policy*. London: British Film Institute.
- Calfee, J. (2003) 'Advertiding Bans, Restrictions and Controls: Do They Work?', speech at 'Obesity and Children: Possible Causes, Possible Solutions and the Role of Advertising' seminar, Advertising Standards Authority, 5 March; at: www.asa.co.nz/food_symposium/Jack_Calfee.htm (accessed 30 March 2003).
- 'Capturing Kids: Selling to Children, Teenagers and their Parents' (1999) proceedings of the IIR seminar, Auckland, 11-12 October.
- Davies, M.M., O. O'Malley and B. Corbett (1998) 'Channels to the Future: Children's Views about Broadcasting Provision', pp. 109-15 in S. Ralph, J. Langham Brown and T. Lees (eds) *What Price Creativity?* Luton: University of Luton Press.
- Edling, A. (1999) 'TV Advertising and Children: Ethics and Public Policy', paper presented at the Food Advertising Unit/Children's Programme Conference, London, 23 November.
- Given, J. (2003) *America's Pie: Trade and Culture after 9/11*. Sydney: UNSW Press.
- Goonasekera, A., Huang Chan Zhu, L. Eashwer, B. Guntarto, S. Bairaj-Ambigapathy, J. Dhungana, Lin Ai-Leen, A. Chung and V.T.M. Hanh (2000) *Growing Up with TV: Asian Children's Experience*. Singapore: Asian Media Information and Communication Centre.
- Herman, E. and R. McChesney (1997) *The Global Media: The New Missionaries of Corporate Capitalism*. London: Cassell.
- Howell, R. (1999) 'Should our Children be Spared Ronald?: No Says Rupert Howell'. *The Guardian* 22 November: 9-
- Jenks, A. (1996) *Childhood*. London: Routledge.
- Kantrowitz, B. and P. Wingert (1999) 'The Truth about Tweens', *Newsweek* 18 October.
- Kelley, P., D. Buckingham and H. Davies (1999) 'Talking Dirty: Children, Sexual Knowledge and Television', *Childhood* 6(2): 221—42.
- Kline, S. (1993) *Out of the Garden: Toys and Children's Culture in the Age of TV Marketing*. London: Verso.
- Kunkel, D. (1999) 'Children's Television Policy in the United States: An Ongoing Legacy of Change', *Media International Australia* 93: 51-64.
- Laybourne, G. (1993) 'The Nickelodeon Experience', pp. 303—7 in G. Berry and J. K. Asamen (eds) *Children and Television*. London: Sage.
- Laybourne, G. (1995) 'This is Nickelodeon', presentation to the First World Summit on Children and Television, Melbourne, 14 March.
- Licensing Now!* (1998) November/December (TVNZ Enterprises).
- McBeth, R. and M. Snowden (1998) *Local Content Provisions In Television: Background Documents and Discussion*, report. Wellington: Screen Producers and Directors Association.

- Maharey, S. (2003) 'Advertising and Public Service Broadcasting', speech by the Minister of Broadcasting, 18 March; at: www.beehive.govt.nz (accessed 26 March 2003).
- Ministry of Health (2003) at: www.moh.govt.nz/moh.nsf/wpg_Index/Forum-Index (accessed 20 February 2003).
- Minow, N. (1995) *Abandoned in the Wasteland: Children, Television, and the First Amendment*. New York: Hill and Wang.
- Nickelodeon (1998) *Tools and Rules! Marketing Information for Partners*. Wellington: TVNZ Enterprises.
- Norris, P., B. Pauling, R. Zanker and G. Lealand (2003) *The Future of Public Broadcasting: The Experience in 6 Countries*, report. Wellington: New Zealand On Air.
- Pecora, N. (1998) *The Business of Children's Entertainment*. New York: Guilford Press.
- Qvortrup, J., M. Bardy, G. Sgirtta and H. Wintersberger (eds) (1994) *Childhood Matters: Social Theory, Practice and Politics*. Aldershot: Avebury/Vienna: European Centre.
- Rydin, I. (ed.) (2003) *Media Fascinations: Perspectives on Young People's Meaning Making*. Goteborg: Nordicom at Goteborg University.
- Schneider, C. (1987) *Children's Television: The Art, the Business, and How it Works*. Chicago, IL: NTC Business Books.
- Seiter, E. (1993) *Sold Separately: Children and Parents in Consumer Culture*. New York: Rutgers University Press.
- Smith, N. (2003) 'Food Industry Battles Ad Ban', *National Business Review* 1 February: 1.
- Snoddy, R. (2001) 'A Kiwi Guide to Bad TV', *The Times* 7 December.
- Stemers, J. (1999) 'Selling Children's Television Ancillary Rights in Youth and the Global Media', paper presented at Youth and the Global Media, 29th Broadcasting Symposium, University of Manchester.
- Twinn, I. (1999) 'Opinion: Resist EU Threat to Children's Advertising', Reuters News Service, 22 March (accessed 23 May 1999).
- Wiggs, G. (1999) 'The Boundaries of Commercial Speech', paper presented at the World Congress of the World Federation of Advertisers, Seoul, 23 May; at: www.asa.co.nz (last accessed 20 September 2004).
- Zanker, R. (1999) 'Kumara Kai or the Big Pac Mac', *Media International Australia* 93: 91-102.
- Zanker, R. (2002) 'Whar Now? A New Zealand Children's Television Production Case Study', PhD dissertation, Waikato University.
- Zanker, R. (2003) 'Tracking the Global in the Local: On Children's Culture in a Small National Media Market', pp. 77-95 in C. von Feilitzen and U. Carlsson (eds) *Children, Young People and Media Globalisation*, The UNESCO International Clearinghouse on Children, Youth and Media. Nordicom: Goteborg University.