



**DAVID KIRK
CEO, FAIRFAX MEDIA
ADDRESS TO THE AUSTRALIAN PRESS COUNCIL
10 MAY 2007**

Thank you and good afternoon.

I am delighted to have been invited to address the annual meeting of the Press Council.

You perform an indispensable role on several fronts:

- Protecting and defending a free press in Australia – essential to the functioning of our democracy.
- Providing an authoritative, expert forum where complaints about media coverage can be judiciously examined – outside the legal system, with expertise and dispassion. The Press Council is a safety valve that helps curb the appetite for Government intervention and control of the media.

I wanted to discuss several things with you today:

First, where Fairfax Media is headed – and why. As this audience is on the front lines of issues of importance to our industry, I do want you to appreciate how we are reshaping ourselves as a digital media company in the 21st century.

Second, I want to make some remarks on broadband policy in Australia, for one very simple reason: Broadband is as much a pillar of press freedom in Australia as anything else affecting our future.

Third, I want to discuss press freedom specifically, and the need for us to be vigilant always, and to work together.

With respect to Fairfax Media:

A year ago, at an investment bank forum, I presented an overview of our company in which I said that Fairfax has one of the strongest positions – in print and online – among our peers anywhere in the world.

The events of the past 12 months have further reinforced that view.

A year ago, media deregulation was pending legislation. Today, it is law.

A year ago, our name was John Fairfax Holdings limited. Today, it is Fairfax Media.

A year ago, the prospects of a merger with Rural Press were not on the horizon. Today, with our historic merger complete, Fairfax Media is Australasia's largest, integrated metropolitan, regional and rural print, online and digital media business, with an enterprise value of around \$10 billion.

A year ago, I would have discussed two pillars of our strategy: defending and growing our newspapers, and rapid growth is our digital media business.

Over the past year, we have added a third pillar: building Fairfax Media into a digital media company.

The first part of my presentation this morning, therefore, will discuss these three pillars and what we believe are Fairfax Media's great strengths.

I then want to turn to a discussion of pending regulatory issues on broadband policy and its importance to our future, and then move to issues of press freedom.

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I now want to turn to some pending regulatory issues on broadband policy.

A year ago, I said in another forum:

ONE OF THE MOST CRITICAL COMPONENTS OF MEDIA POLICY IS IN FACT TELECOMMUNICATIONS POLICY WITH RESPECT TO THE INTERNET. BROADBAND IS AN INTEGRAL PART OF FAIRFAX DIGITAL'S FUTURE. VIDEO ON BROADBAND WILL BE AN INCREASING DRIVER OF GROWTH – AND WE WILL BE A LEADER IN VIDEO ON BROADBAND FOR OUR WEBSITES.

THEREFORE, WE URGE THE GOVERNMENT TO ENSURE THAT THERE ARE THE MOST AGGRESSIVE POLICY SETTINGS IN PLACE TO PROMOTE BROADBAND DEPLOYMENT.

Unfortunately, policy settings have been stalemated due to the deadlock between Telstra, the Government, and the ACCC.

The status quo is holding us back.

And the status quo is nothing to be proud of. According to the OECD, Australia is 17th out of 30 countries in the number of broadband subscribers per population.

And among OECD countries, Australia has the highest percentage of broadband customers – 35 % – accessing download speeds of 256k or less.

This ultra slow pace of deployment of true broadband in regional and rural Australia is undercutting the growth – and our participation in that growth by virtue of our merger with Rural Press – of e-commerce and digital media services in rural and regional Australia.

Why is this important to the members of the Press Council?

Broadband is the printing press of the 21st century. And just as the printing press should never be licensed by the Government, so broadband must exist in a regulatory structure that ensure it an open medium, with open architecture, and free flowing highways to carry news, information, and entertainment.

There are three major public policy goals with respect to broadband.

First, ubiquitous deployment. Everyone should have access to download speeds consistent with their needs – which for me means something more than 2 megabits per second – and there should be the capacity to continually upgrade this.

Second, level playing field access. An access regime should be in place that is simple, transparent, and treats all content providers equally, be they voice, data or video providers. In particular the carrier – the telco – should have no access advantage or opportunity to cross subsidise between its content business and its carriage business.

And third – price. Prices should be appropriate, which to me means marginally above the cost of return on investment of the new capital required to deliver the ubiquitous broadband the country needs. Importantly, prices should not be set at a price which allows for an incumbent natural monopoly telco to receive the full, “exchange to the home”, cost of installed copper – most of which is most likely already written off.

All businesses face costs of technology change – ours certainly does – and where incumbent telcos demand that competition authorities regulate prices to allow them to get a return on new capital and old capital that technology has to some extent bypassed, they are asking for a holiday from reality that we would all laugh at, were they anything but natural monopolies that could, by not investing, hold the country to ransom.

International experience shows that there are two ways to achieve the rapid deployment of high speed broadband.

In small countries where backbone telecommunications infrastructure is a natural monopoly, government ownership or regulation has dealt with the market failure of the incumbent telco defending its installed network by not rolling out broadband.

I am not a proponent of state ownership of assets and therefore the key for me is appropriate regulation. Singapore and South Korea are examples of effective regulation resulting in rapid, high speed broadband deployment. And in the UK, regulated “even playing field” access to the unconditioned local loop – the last bit of copper to the home – provides for strong competition and lots of broadband.

In large markets, such as the United States, deregulation and the fostering of competition has delivered multiple fibre optic and mobile networks at appropriately low prices, which drive rapid, ubiquitous uptake.

Clearly Australia, a very large country with only 20 million people, needs effective regulation and in particular the approach to pricing I outlined earlier.

How this issue is resolved will define Australia’s economic growth and competitiveness over the next two to three decades. It is no less critical than industrial relations reforms, or changes to the tax system, or what is done with infrastructure for other parts of the economy, such as ports and roads.

Firm and vigorous access rules must apply to dominant providers of broadband capacity. This is an elemental rule of competition regulation and it is as relevant today as ever before.

There must be no retreat on full and fair access to broadband capacity provided by dominant carriers.

If Australia does not have an aggressive policy of broadband deployment and open access, then it is the same as putting a lid on the proliferation of media voices and diversity in this country.

We as an industry have a vital stake in the outcome of this issue.

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Lastly, turning to issues of press freedom:

The agenda is large.

Australia, by all international benchmarks, is becoming less free in terms of our media.

There is an increasing resort to suppression orders.

We have new laws on sedition.

We do not have a shield law to protect journalists from reckless prosecution by governments over our sources when wrongdoing is exposed.

Our freedom of information laws are but a shell of what was first enacted in 1982 by the Commonwealth.

Fairfax Media is deeply concerned about these trends. We cannot have a vigorous and rigorous democracy unless we have a vigorous and robustly free press.

Therefore, we were proud earlier today to join with our colleagues at News Limited, the ABC, Free TV Australia, Commercial Radio Australia and SBS to form a new coalition to preserve, protect and promote press freedom in Australia.

We intend to open a front in Canberra to advance our common cause on these issues.

And to educate the public – because the vitality of our democracy is directly related to the freedom of the press we enjoy in Australia.

To give you a sense of my growing disquiet about these issues, and why we joined the coalition announced today, let me focus on one of the new laws passed by Parliament in response to 9/11 – laws that protect our national security, but which also have the effect of constraining, if not chilling, our fundamental mission of reporting on the news.

After the London bombings, Parliament enacted the Anti Terrorism Bill 2005. (These things don't have very creative names.) This was the third in a series of ever more sweeping laws addressing the war on terrorism and ASIO's powers to combat terrorism.

First let me be clear: Fairfax Media supports the war on terrorism and the need for the strongest intelligence and law enforcement to protect Australians at home and abroad.

But we also need to protect the fundamental values that the terrorists want to destroy as well.

Last year, the nation's leading publishers – Fairfax, News, West Australian Newspapers, AAP, and the Press Council – joined to express strong opposition to several provisions of the Anti-Terrorism Bill.

What was of grave concern to us was that journalists have now been put at direct risk of detention under this legislation – simply for doing their jobs.

The new law empowers an AFP officer, *without* a warrant, to require any person to produce documents, based on the suspicion that they may assist the investigation of a terrorist offence.

While the Explanatory Memorandum states that, "Care has been taken to ensure sensitive material [such as that held by journalists] can not be obtained under the new notice to produce regime," this assurance is clearly superseded by the plain language of the new law itself.

By affording journalists no protection against requests for information that will go to the core of their professional responsibility, ethics and values – their pledge to their sources to protect them against disclosure – this legislation places all journalists in Australia on the front lines of law enforcement efforts in the war on terror.

This is an impossible position for us, and may lead – needlessly – to demands by the authorities to identify sources and turn over notes and documents received in confidence from their sources.

This law also makes it a criminal offence, punishable by 2 years imprisonment, for anyone to disclose that they have been given a notice to produce documents or information by the AFP.

We can't even publish that the Government wants our notes.

This law also makes it a criminal offence, punishable by 5 years imprisonment, to report that a preventative detention order has been made in relation to a detainee or any information conveyed by the detained person during that contact.

This may actually impede law enforcement. The reporting of crimes often leads the public to identify persons of interest, or suspicious activity, to the authorities. Gagging the media undercuts the police and the war on terrorism.

The prohibition on reporting information conveyed by a detained person is especially problematic in instances where abuse may have occurred. This silencing of the press undercuts the laudable protection in the new law that detained persons not be subject to “cruel, inhuman or degrading treatment.”

My concern, quite simply, is that we as a country cannot preserve our democracy if we destroy the institutions that serve our democracy.

We wanted to find some middle ground on this issue – a balancing of these two critical values: protection of both society and a free press.

We asked the Government to provide a shield law for journalists – not to exclude them from requests to produce information to the authorities on terrorism, but to establish a process in which the Government would have to make a proper showing, before a magistrate, that information in possession of journalists was absolutely essential to the law enforcement need, that such

information was unavailable from any other source, and that compelling such information was in the public or national security interest of Australia.

In other words, if the Government is going to come after journalists for the information they have, then they should do it only as a last resort.

We don't have a First Amendment in this country, and so while the practices of over two centuries can give us a sense of pride and comfort about our democracy and the free press that we have, our liberties are fragile – particularly in a time of terror and challenge.

We therefore need to be vigilant about these things. Indeed, the 5th annual Reporters Without Borders Worldwide Press Freedom Index – one of the key benchmarks of global press freedom – lists Australia as 35th in the world, behind Latvia, Bosnia and Herzegovina, South Korea and Ghana, among others. The 2007 Annual Report said that, “The Australian government has continued to beef up its arsenal of anti-terror laws, some of which represent a threat to journalists’ capacity to protect their sources of information and to freedom of expression.”

I am afraid that there will be, at some point, subpoenas to our journalists to hand over their notes and sources on their reporting on terrorism – and that this is more likely than not to occur because it is easy for law enforcement authorities to conclude that journalists may well have this information – even if they do not.

So we may see some tests of this authority in the future.

While we want to protect our freedom, it seems to me that we also have to exercise that freedom responsibly.

Our freedom is not unfettered.

Restraint can never be disregarded.

The government often knows when we are working on important stories. It is almost always essential on such stories to seek the views and if possible obtain comment from Government officials.

From time to time we are asked not to publish – to withhold publication because it could harm Australia’s national security interests.

And we have often withheld publication in the national interest.

These are not easy questions, but I think it is important that we have an open discussion – a continuing dialogue – on these very important issues.

They affect nothing less than the future of our Australian democracy.

Thank you.