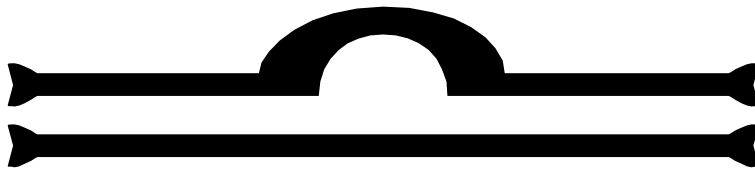Balancing Act
A review of the balance provision
in the New Zealand
broadcasting standards

A report prepared for the Broadcasting Standards Authority (BSA) by

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1   Aim and scope of this report

This report was commissioned by the Broadcasting Standards Authority (BSA) to provide some insight into the continuing relevance, or otherwise, of the standard of 'balance' as outlined in the codes of broadcasting practice for free-to-air (FTA) television, pay television and radio. I was asked to draw some conclusions in relation to this question after consulting a number of documents provided by the BSA and following my own research.

Further, this report considers the salience of the balance standard in the context of changing media usage and platform development – the shift from a broadcasting to a narrowcasting business model. As greater channel choice erodes traditional broadcast audiences and programming, does a broadcast-only code of practice retain any relevance?

2 Executive Summary

> Television is central to the consideration of issues of engagement and disengagement because it remains the overwhelmingly dominant source of news for most people. (Ofcom 2007)

The purpose of broadcasting regulation must be to protect and advance the public interest (Puttnam, 2006). Regulation must also navigate the sometimes troubled waters between necessary forms of control (over ownership, platforms and content) and the principles of free speech and editorial independence (Ronning, 2007). This requires regulatory bodies, such as the BSA, to execute a balancing act – between the public interests of citizens and the requirements of a market economy based on competition and individual choice. Such a balancing act becomes harder in a climate of change and uncertainty about the future shape of the media ecosystem (Naughton, 2006). One can persuasively argue that the 'digital revolution' has created such a climate and therefore regulatory regimes must also adapt, in order to avoid being caught in a techno-legal time gap, which renders old codes and standards obsolete, but does not have in place a system to safeguard the continuing public interest (Hirst & Harrison, 2007). The change climate is likely to be the norm for the next decade because of an acceleration in technological change; a greater consumer take-up of new technologies; new networking capabilities and more mobile devices; and re-engineered business models for 'old' and 'new' media (Foster, 2007, p. 6).

This report examines this current period of regulatory instability and should be read in the context of other initiatives and recent reports prepared on behalf of the BSA, in particular, Issues facing broadcast content regulation (Millwood Hargrave et al. 2006), The future of media regulation in New Zealand (Brown & Price, 2006), Freedoms and fetters: Broadcasting standards in New Zealand (Broadcasting Standards Authority, 2006a) and Assessment of Broadcasting Standards Authority decisions (Burrows, 2006). This paper does not replicate those studies, nor review them in any detail. Rather, it draws on these documents and on international comparisons, particularly Canada and the UK, to reach some conclusions regarding definitional issues – What is balance? – and to indicate what aspects of both Canadian and British standards regarding balance, fairness, accuracy and bias might be considered useful in the context of proposed changes in the New Zealand regulatory environment. The UK experience is of some significance as the Communications Act of 2003 was an attempt to provide a broad regulatory regime in the context of emerging digital technologies; one that would be workable in a shifting media landscape, yet retain the primacy of the public interest (Foster, 2007; Puttnam, 2006).

A report such as this cannot ignore the issue of technological convergence and the diminishing differences between 'old' and 'new' media. For example, when a newspaper hosts audio and video clips of news events and analysis on its website, should it be considered broadcasting for the purposes of these standards? Digital media platforms bring into question the very nature of current regulatory regimes and broadcast standards (Brown & Price, 2006; Millwood Hargrave et al., 2006). Within the ambit of this discussion, a 2007 Ofcom report, New News, Future News, raises the issue of audience disengagement from news as a consequence of channel and platform proliferation and its impact on 21st century citizenship. News and current affairs programming has a direct bearing on both citizenship and consumer interests. The role of regulation must therefore be to preserve and extend citizens' rights across all media platforms and to support the provision of basic information services to all consumers (Tambini, 2006). An alternative view is that the proliferation of platforms and channels has led to a growth in consumer sovereignty (Naughton, 2006, p. 46) and lessened the need for strong national regulation – a diversity of

voices and choice mitigates the need for government-mandated watchdogs. Further, there is an emerging convergence of media with telecommunications, leading to suggestions that regulation of Internet content may best be situated within a broader telecoms system (Noam, 2006). To some extent this is the model adopted in Australia with the merger of broadcasting and telecommunication regulation through ACMA (Plante, 2007). BSA members are no doubt familiar with these arguments and they form an important backdrop to the issue of standards and relevance.

The requirement that news and current affairs broadcasts be balanced may be seen as a proactive form of media regulation. However, the concept of balance has come under critique recently from many within the industry and also from academic quarters. For example, Paul Norris (Broadcasting Standards Authority, 2006b, p. 36) has argued that the pursuit of balance may 'have nothing to do with the pursuit of truth'. His colleague, Jim Tully from Canterbury University, has been even more forthright: he told the Significant Viewpoints symposium last year '…as you know I think the term balance should be dumped altogether'.

2.1 Issues considered in the preparation of Balancing Act

The following questions were contained in the brief for this report. Summative answers have been supplied and form part of this Executive Summary.

1. Why do we need the balance standard?

Balance is necessary at some level in order for audiences to make informed decisions based on a range of significant viewpoints and on an accurate presentation of available facts, arguments and commentary.

2. Is the distinction between balance and fairness strong enough?

The distinction is clear in the codes of practice and perhaps in a consensus view of the Authority. However, it would seem that among members of the public the distinction is not as obvious.

3. Should the BSA consider adopting the British concept of 'due impartiality'?

The 'due impartiality' concept is interesting as an attempt to refine the standard of balance. It does allow for issues of relative weight of opinion to be considered. However, the British formulation and rules appear overly bureaucratic and complex. The BSA should consider the concept, but with some refinement in order to make its meaning explicit and its operation less complex.

4. Should the balance standard be varied according to the genre of programming, i.e. news, current affairs, talkback, documentary or magazine-style programme?

In my view the existence of three related but varied balance standards across free-to-air, pay TV and commercial radio is anomalous. The only exception may well be for talkback radio, though this is an arguable proposition. Moving to a due impartiality model may allow for a closer alignment of the standards. Further, it is necessary to consider how a balance standard might be applied across other and multiple platforms, often under the same editorial command chain.

5. How should the BSA define/monitor balance when genres are mixed within one programme format? In such circumstances does the concept of balance only apply to 'controversial issues of public importance'?

The balance provision should only apply to controversial issues of public importance. This report recommends that a new provision – the public interest test – be included in future codes as a way of making this clearer to audience members and potential complainants.

6. Has the process of convergence – resulting in news and current affairs being available via the Internet – made (or has it the potential to make) the concept of balance irrelevant?

This is a key issue that takes up the greater proportion of this report. In the view of the author there is no simple 'yes/no' answer. Greater complexity in the media ecosystem inevitably means complexity in relation to regulation, including the balance standard. A detailed answer to this question depends on many variables, including levels of media literacy; the global environment (given that content can be generated offshore) and the ways in which audiences interact with new media platforms – the 'diversity of voices' argument. Further research into these issues may well be necessary to inform the Authority on this question.

7. Is it fair to expect providers to provide a range of significant viewpoints given that consumers can now select from a range of perspectives those which best match their personal bias?

This question, too, is complex and multi-faceted. The talkback genre again provides one model and one answer: phone-in hosts are not currently expected to be balanced in their approach and part of the argument for this is that listeners' calls and the variety of channels create enough diversity to ensure a balance is reached over time. The author is not convinced of this argument.

On the other hand, platform proliferation may well provide the required diversity. On balance, there is not enough evidence to answer this question in the negative. In a decade there may have been enough development and change that the answer will be a firm 'no'.

8. Is the availability of alternative sources of news and current affairs a valid defence for not providing balance in a broadcast item?

Complexity rules here too. At the moment, the answer may well be 'no'. There is not enough local data yet available on New Zealanders' media habits to provide evidence to support this idea.

2.2 Conclusions

Whatever future shape the broadcasting codes of practice take, the key driver for regulation is that it must demonstrably serve the public interest (Fairbairn, 2006, p. 86). This is perhaps the only constant in the evolving media ecosystem. This may well involve a larger role for the public in the development of regulation, rather than them remaining as passive recipients. In opening this report I noted that several participants in the Significant Viewpoints symposium argued that balance is no longer a relevant concept in broadcasting regulation, and the reasons for this argument have been canvassed in the preceding pages. Paul Norris noted during the discussions (Broadcasting Standards Authority, 2006b, p. 40) that if balance is to be retained, then the 'standard would have to be rewritten'. In part, he argued, this need arises because the application of the current standard across the entire broadcast output of any one station or network is a

difficult task and a 'nightmare' for the BSA to police. I find myself having some sympathy for this position.

The definitional issues raised in this paper will need to be addressed in any comprehensive review of the standards and should, perhaps, be part of any legislative review of the Broadcasting Act 1989. There is some room for confusion in the current standards, in particular between the concepts of fairness, balance and accuracy. Each has some bearing on the other and there is also significant overlap between them, as others have noted (Broadcasting Standards Authority, 2006b). A shift to the British concept of 'due impartiality' may address these definitional issues, but, as the report notes, without adequate research and care in drafting a due impartiality standard, such a change could result in an overly complicated code and may not resolve any current dilemmas of the definition, purpose and applicability of the balance standard.

The challenge, argues Naughton, is for regulatory systems to adapt. Given the pace of change and the existence of a techno-legal time gap, regulators cannot wait for, or rely on, market mechanisms to provide adequate guarantees of democratic access to information. A well-informed society must also be media literate. The British Communications Act (2003) also requires the broadcasting regulator (Ofcom) to be a champion of media literacy. It may well be timely to consider such an expanded role for the BSA.

On the other hand, it may be that media literacy is growing exponentially, without the need for more government intervention. Charles Leadbeater (2006) argues that the explosion of consumer-generated content is itself a product of greater media literacy and is breaking down the old 'industrialised media' model. A corollary of this is that the need for legislative regulation monitored by a government-mandated agency may also be declining. Leadbeater's suggestion is less regulation and more space for low-cost social media to expand; but he does imagine an important role for public broadcasting, which seems at odds with his laissez-faire approach. He concludes that the rise of 'commons-based media' may well 'encourage greater freedom, democracy and possibly justice', without the need for strong regulation (Leadbeater, 2006, p. 274).

This may well represent an ideal, but it is, in my view, a long way off. It may be that global and local media are trending in that direction, but it is not yet time for regulators to completely remove the hand from the tiller. There remains a strong public interest rationale for content regulation in both current broadcasting and future narrowcasting environments. The key strategic issues for the BSA to consider are the scale, scope and design of regulation that takes into account the greater potential diversity offered by new media platforms and new content genres (Foster, 2007).

2.3   Draft Recommendations

The author was asked to supply recommendations for the Authority to consider in relation to the balance standard. The enclosed recommendations take this as a starting point and consider balance in relation to definitional issues (What is balance? Is it adequate?); international experience (particularly Ofcom's standard of 'due impartiality'); and the changing media ecosystem (the transition from broadcasting to a narrowcast environment).

The following recommendations, based on the report, are for consideration by the Authority. The recommendations are not designed to be comprehensive and many are simply a suggestion that further work be done prior to any legislative or regulatory changes.

2.3.1 Consistency of codes across all media

- If the balance standard is to be retained in the BSA's Code of Practice, then it should be rewritten to be consistent across all broadcast media. There is no apparent justification for variations in this standard across radio, FTA and PT operators. The exceptions may be talkback radio and 'authored' documentaries.

- If the requirement for a 'period of current interest' provision in the balance standard is to be retained it should be clearly defined in relation to specific contexts – for example, the period of an election campaign – or in relation to average news cycles.

- The BSA may wish to consider a closer and more detailed examination of the Canadian system of regulation which requires a higher degree of self-regulation and co-regulation by and of the industry. In particular, the BSA might consider the Canadian approach of equitable presentation of diverse viewpoints over a series of programmes, rather than the current 'period of current interest' provisions.

- When framing a balance standard for broadcast codes, consideration should be given to providing a reasonable definition of 'significant viewpoints'. Such a definition might include a phrase relating to the variety of viewpoints relevant to an issue that could have a public interest aspect.

- The BSA may consider a closer alignment of the wording of the balance standard in relation to broadcast media platforms. For instance, there seems little ground to consider news and current affairs programming supplied by FTA and pay television providers as substantially different in form, or content. The FTA standard appears to be the strongest one of the three codes and may therefore be the most appropriate. However, the context of talkback radio still requires additional coverage.

2.3.2 The Ofcom standard of due impartiality

- The British Ofcom standard of due impartiality may provide an appropriate template for changes in New Zealand broadcasting codes of practice, but the complexity and bureaucratic wording should not be adopted without further discussion and amendment. The contextual qualifications provided in the Ofcom Broadcasting Code are also worthy of consideration, but they do not provide a simple solution to issues of complexity and judgment in relation to complaints under the standards. The BSA may wish to consider commissioning a further study of the Ofcom due impartiality standard, in particular an evaluation of complaints resolution as a body of data becomes available.

- The BSA might examine the British rules of due impartiality, in particular rule 5.9 as a template for changes to the Radio Code. The British code has a much stronger provision for balance in relation to talkback radio and the requirements for presenters to maintain 'due impartiality'.

2.3.3 Public interest test

- In relation to 'controversial issues of public importance' (in all three codes) it may be worthwhile to insert a clause promoting the public interest test as a threshold for complaints. This may well provide greater clarity around issues that come under the Authority's complaints resolution processes.

2.3.4 Regulation of emerging platforms

- The BSA may wish to commission further research on the issue of broadcast standards and regulation in an environment of increasing convergence (both technological and commercial) between formerly distinct silos of print, radio, television and online news and current affairs providers.

- In relation to the previous point it may be worthwhile for the BSA to consider further research into the diversity of voices and viewpoints now available across both mainstream (traditional) and non-mainstream media, including broadcasting and narrowcasting forms and mobile delivery platforms. Current research and scholarly debate appear to be divided between those who favour a view that consumer-generated content provides a greater diversity of voices and thus lowers the threshold needed for regulation and those who argue for greater protective regulation, such as national 'firewall' provisions around content.

- In light of the above, the BSA and the government must consider a strategic and coherent response to the proliferation of new platforms, specifically those that have a television-like service. The Authority may also wish to consider if it should adopt a consistent or case-specific form of regulation in relation to streaming content and download content.

2.3.5 Promoting a consumer interest and media literacy

- The BSA may consider aligning its Community Advisory Panel structure more closely with the regulatory and complaints procedures as a way of bringing consumers into the process of dispute resolution and discussion of future regulatory regimes. This may also be an effective tool for promoting a culture of greater media literacy (see next recommendation).

- Media literacy is increasingly seen as an important tool for promoting both citizenship and the public interest in the context of media and platform diversity. As part of a review of the Broadcasting Act 1989, the BSA might well consider broadening its mandate to include the promotion of media literacy as a core function. Such a new function may well be incorporated into the objectives of the Authority alongside improving stakeholder engagement.

3 Introduction

A key question considered in this report is one posed by the Broadcasting Standards Authority itself, in the foreword to the November 2006 report, Significant Viewpoints, a record of the debate at a symposium convened to consider the balance standard:

> 'Balance' is a journalistic principle often debated but rarely defined. Is it still relevant to broadcasting today, or has it become outmoded in the 21st century?

The symposium generated considerable discussion and several conflicting points of view. For example, the New Zealand Broadcasting Minister, the Hon Steve Maharey, argued that the proliferation of electronic news sources – with text, images, audio and video – available over the Internet might increase the need for regulation in order to preserve media accountability. In sharp contrast, the head of the New Zealand Broadcasting School, Paul Norris, was among those who argued that balance is ill-defined and might best be replaced by the concept of 'due impartiality', as has occurred in Great Britain.

The lack of clear definitional statements, when discussing or interpreting balance, is highlighted by three contexts that represent a challenge to the standard in the New Zealand broadcast media. The first is the concept of 'period of current interest' – a time frame that may vary from issue to issue and medium to medium. The second is the definition of a 'controversial issue of public importance' – who should define controversy in this context? This report also considers the issues that arise in relation to the content standard of balance in a climate of rapid and ongoing change in New Zealand's media ecosystem. A number of questions posed to the researcher in the brief for this report relate to this issue – in particular, it is important to summarise the issues as seen from the perspectives of those who might be described as 'digital optimists' (who see a rosy future) and the 'digital pessimists' (who can see only gloom and doom). As in many things, there is a middle ground position of cautious and strategic engagement. The BSA is in the fortunate position of not having to make hasty decisions and being able to learn from international experience.

4 What is balance?

> Are 'fair' and 'balanced' the same thing, are they complementary, or are they a synonym for objectivity? (Don Rood, cited in Broadcasting Standards Authority, 2006b, p. 47)

The concept of balance in news and current affairs is, indeed, a 'media minefield' for journalists, editors and the public (Price, 2007). Recent research by the BSA on audience perceptions of balance, fairness and bias in news and factual programming shows that there are many and diverging viewpoints about what might constitute a balanced report and when the issue of balance becomes important (cited in Broadcasting Standards Authority, 2006a, p. 32). In an analysis of recent BSA decisions, Burrows (2006, p. 5) notes that there is overlap between standards and that it is sometimes difficult to separate 'fairness' from 'balance', or either from questions of 'accuracy'. Burrows (2006, p. 6) also notes that in some cases the standards appear 'like mere headings' and the guidelines seem 'rather more like rules'. In reading these reports it becomes clear that there is a definitional question that must be resolved prior to any determination of the value of balance as an enforceable standard. However, attempts to define balance in a journalistic context are difficult, complex and fraught with argument.

A simple dictionary definition of balance may provide a logical starting point: 'a state of equilibrium'; 'harmony in the parts of a whole'; and 'to compare the relative weight, importance, etc' (Collins Australian Internet-linked dictionary, 2004, pp. 113-114).

When discussing balance in broadcast factual programming, the first and second of these statements must be placed alongside the important time frame – the period of current interest. Once this is done a workable definition might be that

> balance is achieved in news and factual programming when a state of equilibrium between competing significant viewpoints is reached within the defined period of current interest.

In operational terms, this would require the broadcaster(s) to ensure that all significant viewpoints are represented during the current interest time frame in order to achieve a 'state of equilibrium', which would allow audiences then to weigh for themselves the relative merits of the arguments presented. The catch here is twofold: news rarely, if ever, reaches a state of equilibrium; indeed, such an ideal goes against the very grain of what defines news. Secondly, there are problems in defining a period of current interest.

4.1 The BSA's interpretive framework

The BSA's own interpretation of the balance standard is also relevant to definitional clarity. According to the Authority's chair, Joanne Morris, balance is about giving audiences 'the bigger picture' in order to provide context and relevance for 'the more particular information that is being presented' (cited in Broadcasting Standards Authority, 2006b, p. 23). Further qualifications that come into play in BSA determinations include judging each matter on its merits and taking into account any 'reasonable efforts' by the broadcaster to present significant viewpoints.

The third definitional statement – a comparison of the relative importance of a significant viewpoint and the weighting this is given in a news or current affairs broadcast – introduces

further elements of uncertainty and value judgment. Such a definition might work easily in the context of an election campaign (see below), but it is problematic when considering what Price (2007) calls 'issue-balance' and 'allegation-balance'. A determination of 'issue-balance' may well rest on deciding if the sources used are broadly representative of prevailing viewpoints and that they have been given adequate time to explain their position. Determinations of 'allegation-balance' will require a critical evaluation of the validity of the allegation (burden of evidence); the presentation of arguments that may tend to verify or challenge the allegation; and the opportunity presented for an adequate right of reply. Importantly, the concept of balance does not imply that broadcast items cannot be critical.

In a discussion of journalism ethics, the concepts of balance and fairness are often related contextually. At the same time, they are invariably seen as problematic. In the experience of the BSA, fairness is often the standard invoked when a dispute arises about an individual or organisation's reputation; while balance is the standard in controversial matters of public interest (Broadcasting Standards Authority, 2006a, pp. 33-34). The BSA has also taken the view that balance is not a necessary requirement if programming is clearly labelled as editorial comment (usually applicable in radio, rather than television).

4.2   Balance: more than the sum of all facts

News reporting and current affairs programming are more than placing a sum of available facts in front of an audience. If that were the case, then complete accuracy would be the only applicable benchmark. Presented with all available facts an educated public would be in a position to decide its own attitudes to the issue. However, journalism is also about selection and interpretation. Balance and fairness in this situation would require the programme-maker or journalist to resist any pressures to include or omit relevant information that may alter the news angle taken on a story. This is not always an easy task as time and other constraints in a busy newsroom necessitate quick decision making, often under deadline pressures. In this sense the very real conventions of news reporting – the application of a narrative structure to often ambiguous events in order to provide some coherency to the report – may mitigate against the application of balance in any particular instance (Hirst & Patching, 2005, p. 38)

4.3   Balanced is not the same as fair

Balance is often also discussed alongside the concept of 'fairness' (Burrows, 2006), which relies on a relationship of trust between the producers and consumers of news and the clear presentation of factual information (Ofcom, 2007). A 1997 review of the Australian code of ethics for journalists noted that fairness is a concept that includes 'impartiality, context and completeness' (MEAA, 1997, p. 25). However, fairness goes beyond an accurate portrayal of facts into the realm of competing opinion (Tanner, Phillips, Smyth & Tapsall, 2005). While 'balance' does not make an appearance in Tanner et al., fairness and bias are treated together. Fairness is seen to be applicable to the reporter's relationship to both audience and sources: it encompasses 'choice and emphasis in the representation of competing views on an issue' (Tanner et al., 2005, p. 75). At one level this is a question of access – who is an available, credible and reliable source? – but it is also a question of how the journalist or programme-maker frames the story; who they choose to promote as a source; and how they interpret the facts from within their own world view. This level of ideological complexity is reflected in journalism ethics textbooks and in scholarly writing on the topic:

the question of bias and balance is primarily one of journalistic ideology, and we can

therefore talk about 'balance' as being the fair representation of both sides of an argument, or conflict, and 'bias' as a definite propensity to favour one side over another. (Hirst & Patching, 2005, p. 37)

Journalism scholar Helen Sissons makes a similar point in relation to balance:

All journalists can make sure they balance their stories by explaining as many of the arguments involved as possible. And if you are accusing someone of something, they should be allowed to respond. (Sissons, 2006, p. 13)

The right of reply is a clear element of fairness that relates to reputation. Balance is a structural issue dealt with during the construction of the news item or programme. The world view of the reporter is also a very real factor in determining news angles and news values. So too is the editorial line adopted by the media organisation – Fox News is a well-known example and there are others. Audiences don't seem to mind privately owned print media expressing a viewpoint or editorial position consistent with the values of the owners. This is clear in relation to newspapers and magazines, but the cultural expectation is that there is no proprietorial viewpoint expressed through commercial FTA television, while for public service television there is a strong view that no editorial viewpoint is appropriate. (These issues are dealt with more completely below in section 5.2.) The current radio code also has a more lenient approach to balance in relation to proprietorial commentary and opinionated presenters. Authored content may also become more common as the number of television-like and radio-like services grows on broadband and other narrowcast platforms. These emerging issues may require the Authority to consider ways to manage consistency across the various codes.

4.4   Is balance past its 'use-by' date?

Finally, it is worth noting that there are arguments from some commentators, media executives and academics that the balance standard is out of date and could very well be removed; perhaps replaced with a greater emphasis on fairness; or, alternatively, using the British standard of 'due impartiality' (Ofcom, nd, pp. 24-29). The Authority is well aware of these suggestions, particularly as they were aired extensively during the Significant Viewpoints discussions in 2006 (Broadcasting Standards Authority, 2006b). As the Broadcasting Act 1989 and the BSA's standards are currently under review, some consideration should perhaps be given to a more detailed review of the alternatives; for example, subsuming balance under the fairness standard (Burrows, 2006).

4.5   A period of current interest:
how long is a piece of string?

Defining what this period is, is like deciding how long is a piece of string. (Don Rood, cited in Broadcasting Standards Authority, 2006b, p. 50)

The BSA standard for balance in radio and free-to-air television contains the proviso that it should be seen to occur within a 'period of current interest', though this is not mentioned in the pay television standard. A simple definition of this time frame is 'while it's still a live issue' (Price, 2007). The requirement places further strain on the value judgement required of BSA members. There is also some concern that it places an undue burden on frontline journalists and editors who are working under tight deadline and resource pressures. There is no clear time frame that can be pointed to as a gold standard. As Don Rood notes: 'It may take hours, days or weeks

for the entire story to be revealed, or unravelled', which makes it difficult to put any kind of 'clock' time frame on a period of current interest. It depends, ultimately, on the issue – how controversial it is and the level of public interest.

In some instances – for example, election campaigns – one could reasonably argue that the period of current interest is from the date an election is called until the close of the polls on voting day. The BSA does have a separate standards code for election broadcasts; 'election programmes' are defined in the code as 'excepted' from the balance requirement. Legislation currently before Parliament to quarantine election campaign funding may also have implications for the time period in which electoral programming might occur. It is beyond the scope of this paper to comment fully on this development. However, it is sure to be of interest to the BSA in the coming months as the national election looms closer.

In relation to the coverage of elections, Helen Sissons (2006, p. 77) makes the point that balance does not necessarily mean giving all candidates 'an equal number of lines or minutes in every story published'. It may well be that a formula, based on previous election results or the percentage of votes estimated might go to a candidate based on opinion polling, might provide a more effective method for calculating what constitutes balance in this context.

Elections present a reasonably straightforward scenario – there is a clear beginning and end point that define a period of current interest. However, it is not so simple to define this time frame in relation to ongoing matters of public interest. It is the nature of the news media that issues come and go, usually in response to a 'spot news' incident, such as a public announcement or newsworthy event. In such cases the period of public interest may be determined by a number of factors, singularly or in combination. For instance, reporters and editors often lose interest in an issue after a period of time; they move on to the next story or a more newsworthy event occurs that demands their attention. These rhythms of the news cycle may signal a natural end to a period of current interest, at least as far as the community of journalists is concerned. However, declining news interest in an issue does not automatically mean that the public interest has declined, or that all possible significant viewpoints have been canvassed.

Outside the parameters of set-piece news events it is difficult to establish when a period of current interest might end. The start point is easier to define – the period begins when an item, issue or event is first presented in a news broadcast or current affairs programme. The BSA might consider commissioning further research on the issue of news cycles in relation to this question. Such research could begin with an examination of recent adjudications in the context of the time frame in which the issue was 'live' in the media, and the number, types and tone (favourable or unfavourable, for instance) of items broadcast within that period. Other factors that could impact on determination of a period of current interest might include the availability of sources representing a range of significant viewpoints that have a bearing on the issue and some assessment of their weight and merit relative to all possible sources and to those whose views are canvassed.

A period of current interest is also problematic in the context of Māori broadcasting and cultural norms.

> For us, balance and fairness comes out of years of experience in being able to debate questions and views robustly over a number of years. (Tawini Rangihau, cited in Broadcasting Standards Authority, 2006b, p. 52)

Immediately the balance concept runs into a cultural issue: what is a period of current interest in Māori culture? Tawini Rangihau made the point that on a slow news day non-current controversies from within Maoridom are likely to get a run in the mainstream news – without contextualisation and often without providing significant contrasting viewpoints.

4.6   Whose viewpoints are significant?

The final definitional issue in relation to the wording of the balance standard is the question of what constitutes a significant viewpoint. This has been touched on above in relation to a reporter's choice of sources and angles represented in a news story or broadcast programme. However, it is a relevant issue that deserves a little more discussion.

It is useful again to begin with a simple definition – at least in the sense that this can help exclude what is not considered significant in the context of broadcast standards. In its ordinary meaning, significant is 'having or expressing a meaning', 'having a covert or implied meaning', 'important or momentous' (Collins Australian Internet-linked dictionary, 2004). The first two may be discounted as being far too broad, but 'important or momentous' may help frame the significance of viewpoints in the news, at least from a theoretical perspective. It is clear that important points of view – either because the source is a prominent public figure, or because the opinion of a less well-known person is highly relevant for some other reason – should be routinely canvassed as part of the news media's public interest obligation. The public is entitled to know what prominent and qualified people may say on a subject of controversy or interest. Similarly, the views of less prominent actors in the news drama could also be important and significant if they provide a perspective of interest and relevance to the audience. However, the news is not produced and consumed in this perfect world where there is equilibrium between the public interest and the 'ideological spectacles'(Grattan, 1991) often worn by journalists and editors in the newsroom.

Instead, significant viewpoints, at least in the eyes of the news media, tend to gravitate around a 'sphere of consensus' with the outer boundaries contained within a sphere of 'limited controversy' (Hallin, 1994). Within these limits the opinions that tend to dominate and gain currency through frequent circulation are those of official sources, prominent business and political figures and safe experts; most of whom seldom cross the boundary into what Daniel Hallin calls the sphere of 'deviance'. There is an inevitable and necessary process of filtering, or what journalism scholars have called 'gate keeping', in the news process (Woodward, 2002). This process reinforces consensus viewpoints and limits access from sources whom the gatekeepers deem to be less important, or who are socially marginalised for structural and other reasons from the news agenda.

On any given day the process of gate keeping goes largely undetected and unremarked. A media-literate audience may be aware of it as a certain background irritation, but as individuals, or even groups, they may not feel sufficiently aggrieved to take any action. For less savvy media consumers the workings of the newsroom remain a mystery and the news itself seems no more or less than something to be taken at face value. Under different circumstances, such as when a news item is of direct concern, an individual may be prompted to complain privately to friends, or on a rare occasion to formally raise the matter with the Authority. An even greater level of concern may be generated if a broadcast item is controversial and/or impacts on a larger class of viewers. It is therefore worthwhile to briefly examine the threshold of controversy, or what the codes of practice describe as a 'controversial issue of public importance', as this is more likely to trigger a significant complaint.

4.7 Controversy? What controversy?

> **controversy**: dispute, argument, or debate, esp[ecially] one concerning a matter
> about which there is strong disagreement and esp[ecially] one carried on in public or
> in the press. (*Collins Australian Internet-linked dictionary*, 2004, p. 348)

The two elements from this definition that need to be satisfied in relation to the standard of
balance are 'strong disagreement' and 'carried on in public'. A third element that can be added is
the 'public interest test': Is the matter of material interest to the public constituted as citizens
(Puttnam, 2006, p. 126)? Put another way: does the matter under discussion, about which there is
strong disagreement, have the potential to impact on the public in relation to their interests and
potentially on their decision making in relation to an issue of concern? This is an important
qualification that relates to the philosophy of the news media as the fourth estate that performs a
'watchdog' role over public life – in a sense as a representative of the public's collective interests
in relation to matters of governance, commerce and social mores.

There is often strong disagreement in public forums about the relative merits of sporting teams or
individuals; or of celebrity 'role models'. Who's a better singer 'K-Fed' or Justin Timberlake?
Are the Highlanders a better defensive team than the Crusaders? Who's got the better legs,
Angelina Jolie or Paris Hilton? However, these are not questions that pass the simple public
interest test. On the other hand, a question about which political party has a better policy on
interest rates, defence, immigration or housing affordability may well determine the outcome of
an election and definitely has a strong public interest angle.

As the guardian of the public interest the news media has a responsibility to provide accurate, fair
and balanced reportage of issues and to provide a range of opinion canvassing a variety of
attitudes. It does so within the constraints of the newsroom and the gate keeping function outlined
above, and thus, decisions about what constitutes a controversial issue of public importance and
who represents relevant and significant viewpoints and how much time they should be given over
which news cycles are taken quickly and with imperfect information. This is perhaps a set of
circumstances that all interested parties must learn to live with.

4.8 Who should decide what is balance or bias?

> That is what I believe my function is – not to be balanced, but to be unbiased. It is to
> distinguish between bias and informed attitudes or informed opinions. (Keith Hunter,
> cited in Broadcasting Standards Authority, 2006b, p. 75)

Keith Hunter was speaking at Significant Viewpoints as a documentary maker, but his argument
is valid to short-form journalism and current affairs broadcasting too. Journalists may have one
opinion of their function; the public may see it very differently.

In his opening remarks to the Significant Viewpoints symposium, Minister Maharey suggested he
was speaking as a media consumer and that legislated standards are a response to public concerns
about balance, accuracy, bias and fairness in the media. He noted that people featured in news
broadcasts might complain of bias when their version of events or issues is not represented; he
added that the production of news requires reporters and editors to exercise their own value
judgements in deciding what is and what isn't a story (Broadcasting Standards Authority, 2006b,
pp. 12-13). This raises the issue of who is in the best position to judge or evaluate the degree of
balance or bias in a broadcast item.

There are three possible answers to this question: the regulators, the audience or the producers. There may well be a fourth – which is a combination of regulators, audience and producers. This appears to be the favoured position in nations like Canada that have a strong tradition of co-regulation and industry self-regulation. However, it perhaps also requires strong consumer advocacy in forums where these issues are decided.

4.8.1   Is media literacy one solution?

> Consumers should know about something as important as the media and have a 'critical' relationship with what they see, hear or read. By 'critical' I do not mean negative. I mean consumers should be asking themselves basic questions, such as, who owns the media outlet and what views are they trying to get across to me? (Maharey, 2006, p. 13)

Media literacy promotes the idea that educated consumers and citizens can make informed decisions about media content based on a good understanding of how the media operates and what its cultural/social effects might be on a given individual or population (Puttnam, 2006, p. 130). The corollary argument is that greater levels of media literacy would obviate the need for external regulation of broadcast standards. While there is some merit in this approach and its laissez-faire sentiments are appealing to some, the reality is that it may take generations for media literacy to reach the level necessary to replace the need for a regulatory regime. Minister Maharey suggested that he would prefer to see some level of media accountability – through the workings of the 'fourth estate' – rather than have news professionals abrogate their responsibilities in favour of 'leaving a media-literate audience to sort out what is and is not right' (Maharey, 2006, p. 15).

The BSA has taken some interest in the concept of media literacy and a July 2007 report, Media Literacy Information in New Zealand, offers the following operational definition:

> Media literacy is the ability to access, understand, analyse, evaluate, create and communicate information in a variety of contexts and formats, including print and nonprint, in order to empower citizens to control their relationship with the media. (Comrie, Vaccarino, Fountaine & Watson, 2007, p. 14)

However, this report also notes that New Zealand is a long way behind its international peers and faces tough decisions and issues in relation to developing a national media literacy strategy. In general, it would be reasonable to argue that the government and the BSA should not vacate the field in the near future in the hope that media literacy might improve in the short term.

4.9   A culture of complaint: is the regulation framework of broadcast standards still relevant?

It requires a certain degree of what we might call 'social capital' for someone to lodge a complaint with the Broadcast Standards Authority. Broadly speaking we can define social capital in this context as the intellectual and material resources to mount a case. A review of recent cases by John Burrows indicates that the current practices for dealing with complaints appear to be fair and consistent with the standards. However, Brown and Price (2006, p. 35) note that the regulatory regime in New Zealand is still largely reactive and complaint-driven. It is beyond the scope of this report to canvass these issues widely. Suffice to say that this may be addressed by a

revision of the standards and a public education campaign aimed at increasing media literacy over time.

I note that reports commissioned by the Ministry for Culture and Heritage and the BSA (Brown & Price, 2006; Millwood Hargrave et al., 2006) canvass the provisions for content regulation in the context of both broadcasting transmission and the rapid digital advances made in both broadcasting and narrowcasting technologies. These issues are touched on briefly below in section 5. The report by Millwood Hargrave et al. notes the growing international trend towards co-regulation and self-regulation, particularly with regard to new and emerging media platforms such as broadband and mobile delivery that require greater levels of audience responsibility in the negotiation of content.

It is also worth noting that an impression exists – rightly or wrongly – that people only tend to complain about balance in relation to items broadcast about themselves, or interests they represent. As Richard Harman put it, individuals and organisations may use a complaint 'as a lever whereby they can get themselves into the news'. It is beyond this report to comment on the accuracy of this view, but such a deliberate attempt at manipulation of the news agenda would be beyond most private individuals and, in my view, most news organisations would be too smart to be fooled by such a ploy.

4.10 Can the 'Fourth Estate' cope?

If media literacy is about informed audiences being able to critically discern balance and bias (among other issues), the fourth estate is about a responsible and critical media that can hold public officials and public figures accountable for their actions. It is an historically determined role of the news media to 'seek out the truth and tell the facts without bias' (Maharey, 2006, p. 15). However, as a conceptual framework for understanding the 21st century news media it is perhaps past its 'use-by' date. There is a central contradiction in the fourth estate model – the dialectic between public interest and private profit in the market-oriented business context of the news media (Hirst & Patching, 2005). This is manifest in many ways – the most obvious is the gap between 'the goal of being objective' and 'the subjective views of those who bring us stories'(Maharey, 2006, p. 16).

The rise of convergent media – Internet news portals, blogs and social networking – has further complicated the issue of the fourth estate and its continuing or diminishing relevance to 21st century audiences. Some gate-keeping fourth estate-style journalism does occur on the worldwide web, but these voices are now competing with millions of others – the so-called 'citizen journalists' – who are largely unregulated and even beyond the scope of current regulatory regimes either nationally or internationally (Brown & Price, 2006). There are two distinctly opposite views emerging around the growth in consumer-generated content. On the one hand the digital optimists believe that there is a parallel growth in media democracy and that control is shifting from producers to consumers (see, for example, Brown & Price, 2006, pp. 14-19). On the other side is a bubbling disquiet that instead of raising democratic standards and pushing the old media to lift its game, user-generated content is creating a 'cacophony', not a symphony of new voices, leading to a dumbing down of culture and politics (see, for example, The cult of the amateur, Keen, 2007). When audiences are confronted with almost infinite choice and can surf between traditional 'old' media news outlets and the more brazen and opinionated 'amateurs' of the blogosphere, it raises an interesting and multi-faceted question: who, where, when, how, what and why are the regulators? The answer is best approached by raising another question:

Should the role of the BSA be a whole lot broader? If so, how would you do that in practice? (Maharey, cited in Broadcasting Standards Authority, 2006b, p. 18)

This is not an easy question to answer as it requires a thoughtful and carefully considered response. That it is being raised at this time is a clear indication that regulation of non-traditional broadcast, and even narrowcast, content is on government agendas. To date the government has taken the path of least resistance, deciding not to move the BSA into the regulation of Internet content. However, as Brown and Price (2006) note, the provision of broadcast-like content on the Internet does pose problems for regulators both nationally and globally. To begin fleshing out a reasonable response to this dilemma first requires an understanding of the pace of change in both technology (rapid) and legislative or regulatory responses (often much slower).

5 The 'techno-legal time gap' and content regulation

> Historically, broadcasting regulation has hinged on the idea of broadcast bandwidth as a scarce, and powerful, resource…Those assumptions are fading as audio and video content shifts to the Internet. (Brown & Price, 2006, p. 8)

The 'techno-legal time gap' is the time that elapses between the introduction of a new technology, product or service into the marketplace and the implementation of effective guidelines and principles to regulate their use (Hirst & Harrison, 2007). The rapid development of both broadcast and narrowcast technologies over the past decade (the convergence of the computer, the telephone and television) has exacerbated the time lag issue for the new media platforms (Fairbairn, 2006).

Convergence has created a new set of issues for the BSA (see Millwood Hargrave et al., 2006 for more detail) as the once hard-wired distinctions between television and the Internet have been blurred and prove to be increasingly permeable (Brown & Price, 2006). The brief accepted for the writing of this report explicitly sought a response to the issues generated by media convergence:

- Has the process of convergence – resulting in news and current affairs being available via the Internet – made (or does it have the potential to make) the concept of balance irrelevant?

- Is it fair to expect providers to provide a range of significant viewpoints given that consumers can now select from a range of perspectives those which best match their personal bias?

- Is the availability of alternative sources of news and current affairs a valid defence for not providing balance in a broadcast item?

A social phenomenon that accompanies technological convergence is the rising popularity and availability of so-called 'user-generated content'. At a time when a wire service from the Reuters news agency is available in an online virtual world (Second Life) and video-blogs (vlogs) are as common as personal diaries, the ability of audiences to customise and self-select a news service, or any other type of factual programming without recourse to the traditional media gatekeepers, calls into question the relevance of a regulatory regime that only covers broadcast media. This is particularly pertinent when that medium is losing audience share and credibility in the eyes of many.

5.1 Yes, but is it broadcasting?
Cross-media platforms and content standards

What do we commonly understand to be the broadcast media today? Obviously, we must include free-to-air television and radio services, whether publicly or privately owned. With a market penetration of over 40 per cent of New Zealand households, we might also include pay TV in the definition of broadcasting. However, there is some argument as to whether Internet transmission of audio or video signals is broadcasting. Rycroft (2007) suggests that Internet transmission should be included as it has the potential to reach a mass audience. The take-up rates for home broadband in many western nations may tend to support such a proposition. The regulation of media content is 'very challenging' in the digital world; news and information is instantly and always available from websites located in any part of the world.

Some national regulatory bodies, such as the Canadian Radio-television and Telecommunications Commission (CRTC) have chosen not to attempt regulation, arguing that new media formats and platforms are 'vibrant, highly competitive and successful' without the need for further regulation (Rycroft, 2007).

The BSA's current position – distinguishing between streamed and downloadable content – may fall within the acceptable definition of what constitutes a broadcast, but it is at best a halfway house. Content that is streamed in a real-time simulcast (alongside a broadcast programme) comes under the BSA, but not the same content viewed on the Internet at any other time. In any review of the legislation this issue should be dealt with. This will not be easy, as governments must strike a balance between meeting policy objectives (such as standards) and not hindering the development of technological and cultural forms that may have significant social and cultural benefits. (This is canvassed in Millwood Hargrave et al., 2006, pp. 54-60.) However, there is a question mark around the sustainability of this distinction in the face of growing media convergence. Is it appropriate that the Press Council administer complaints about newspaper websites, while downloadable audio and video files may be classified by the Office of Film and Literature Classification, and the BSA may deal with complaints only about streaming content (and on the Internet only that which is simulcast)? – resulting in all three bodies having limited jurisdiction over varied pieces of content appearing in the Internet environment.

5.1.1 Print and broadcast media:
is the difference still relevant in the Internet age?

Historically, in western free market nations a philosophical and practical distinction has been made between the broadcast and the print media. Regulation of print content is, for the most part, left to the self-regulating values of the market; for example, in New Zealand and comparable nations by a Press Council. As Don Rood pointed out during a discussion at the Significant Viewpoints symposium, this places an added legislative burden on broadcasters that is not shared by the print media (Broadcasting Standards Authority, 2006b).

Three clauses of the New Zealand Press Council Principles are relevant to a discussion of balance in broadcasting. The first is 'accuracy', which states that publications should be 'guided at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commission, or omission'. The second is 'comment and fact', which states that publications should, 'as far as possible', make proper distinctions between reporting of facts and conjecture, passing of opinions and comment. The third is 'advocacy': 'A publication is entitled to adopt a forthright stance and advocate on any issue' (New Zealand Press Council, nd). Taken together, these three principles encompass the concept of freedom of the press and also make clear that the right to set editorial direction is a function of ownership.

Thus we have a situation in which regulation of the print media is governed by a self-enforced set of guidelines that enshrine the right of editorial independence and uphold accuracy as a principle on which fairness and balance are based. Self-regulation is a function of the market which, imperfect as it is, supporters would argue is the right mechanism for ensuring that competing media outlets do not stray too far from the standards. Critics would disagree and suggest that de facto commercial self-regulation is not in the public interest (Rycroft, 2007). On the other hand, governments have made it their business to regulate broadcast content according to more stringent guidelines.

Conceptually, the argument for this distinction rests on the assumption that the airwaves and broadcast frequencies are a publicly owned good and therefore the public interest requires government regulation. The argument that these resources are 'scarce' has also long been advanced as a reason for a more 'hands on' regulatory regime for broadcast media. The public good, in such frameworks, is seen as a social and civic responsibility of broadcasting and the reason why the public might expect a high level of accountability. Regulation (or increasingly self-regulation or, at best, co-regulation) is seen as necessary to 'balance the right to free expression with the right of communities to determine their local and national interest'. In terms of the market, such co-regulatory regimes are based on a 'healthy cooperation between industry and public interest' (Grainger, 1999). However, the print media, which has been traditionally privately owned, much like any other commodity-producing business, is left to devise and enforce standards that are seldom referred to government agencies for oversight or adjudication.

In my view, this media-specific distinction rests on unchallenged assumptions about the fairness of the market and, in particular, ideological constructions of the 'free marketplace of ideas'. In this formulation it is presumed that the economic checks and balances of competition will ensure that there is a balance of viewpoints presented in the print media. While this idea has a strong hold on regulators, on journalists, editors and proprietors and among sections of the news-consuming public, there is little evidence that the market does in fact facilitate a great diversity of viewpoints. Certainly, it is difficult to sustain the argument that market mechanisms provide a greater amount of balance – or more certainty that balance will be achieved over time in the marketplace of ideas. The scholarship of media political economy has, for many years, forcefully argued that concentration of ownership reduces the diversity of voices (for example, McChesney, 2000; Mosco, 1996) creating a situation which is antithetical to greater levels of accountability and balance.

Aspects of this 'marketplace' solution to the issue of balance in broadcasting are also carried over into the BSA's varying standards for balance as expressed in the various media-specific codes.

Standard 4 of the Free-to-air Television Code of Broadcasting Practice provides guidelines for dealing with balance in order to facilitate the presentation of 'significant [and different] points of view either in the same programme or in other programmes within the period of current interest' (Broadcasting Standards Authority, 2004a, p. 5)

A similar standard in the Radio Code of Broadcasting Practice differs in significant ways. The standard itself is written identically to the FTA code, but the guidelines acknowledge media-specific differences in the following terms:

- 'respect the rights of individuals to express their own opinions'

- an 'appropriate introduction' is made at the start of the programmed item

- listeners are given a 'reasonable on-air opportunity' to question or rebut statements 'within the period of current interest'.

Significantly, radio broadcasters may also 'have regard to the views expressed by other broadcasters or in the media which listeners could reasonably be expected to be aware of' (Broadcasting Standards Authority, 2004b, pp. 3-4).

These guiding principles alter the meaning and application of the balance standard in relation to radio. They perhaps go some way to answering some of the concerns raised in relation to the FTA

code. They also begin to express some of the principles that may be applied in the realm of converging media delivery platforms. It is feasible to argue that there is no significant difference any more that would prevent similar 'relaxed' guidelines applying to FTA broadcasters. There may be an emerging argument that the existence of programme-related websites hosted by TV companies may well provide for some interactivity and the expression of audience opinion, therefore meeting the requirements for balance over time.

5.2 Is radio different?

> It's not our job in the talkback segments of our format to create balance. (Bill Francis, cited in Broadcasting Standards Authority, 2006b, p. 67)

When he made this statement, Bill Francis was a key figure at Newstalk ZB, but it is a common view in relation to talkback radio. Balance is one of the radio code standards, but the guidelines appear to give some leeway with regard to talkback: '[an] opportunity for listeners to ask questions or present rebuttal within the period of current interest' (Broadcasting Standards Authority, 2004b, p. 4). It could be deduced that in this case the period of current interest is the programme itself. However, I tend to think that the claim that balance is not required of talkback is a cop-out clause for commercial radio broadcasters. From my experience of listening to commercial talkback and my academic interest in the area, it is safe to say that it presents a limited range viewpoints and not too many of them are at odds with those of the presenter. Significant Australian research into talkback radio confirms this view (Mickler, 1998; Mickler & McHoul, 1998). It serves the interests of the broadcasters to hold to the view that talkback provides a forum for wide-ranging discussion when in fact it only caters to an 'already decided' audience. As Bill Francis also pointed out: 'we happily go along with a more conservative (or right-wing) approach from many of our hosts because, purely and simply, that's what works'. In other words, the commercial reality of the talkback formula demands demagogues and hot air. Francis again on how 'balance' is maintained through talkback: 'their [opposing] view may be rubbished by the host, they may be cut off early, but they do get to air and they do help create balance'. This is not balance; it is a form of mob rule.

Case study research conducted by the BSA shows that there is a widely held view that radio talkback is a distinctive genre in which the balance standard may have a lower threshold (Shanahan, 2006). Talk radio is widely perceived to be a form of entertainment, rather than informational broadcasting, and a number of participants in the Shanahan case study were open about supporting the business interests of the network owners. Interestingly, there is an attempt by some participants to put measurable limits around the 'period of current interest': 'where balance is examined across the week or month rather than show by show or event by event' (Shanahan, 2006, p. 49). Interpretations of balance also tend to be more relaxed than in the FTA environment and individual presenters are not held to being accountable for balance within their own programmes. Radio Live Director of Programming, Mitch Harris, told Morris Shanahan that while 'it is impossible to be balanced all the time', the 'network as a whole' is balanced, but not necessarily individual programmes (cited in Shanahan, 2006, p. 49). This relaxed interpretation may be the result of the less onerous balance clause in the radio code, as mentioned above.

5.2.1 Is pay TV different too?

The Pay Television Code of Broadcasting Practice (Broadcasting Standards Authority, 2006b, pp. 6-7) is substantially different from that applying to FTA television broadcasters. The standard itself appears to be less rigorous or demanding, as the following comparison shows:

Balance standard in FTA Code	Balance standard in Pay Television Code
In the preparation and presentation of news, current affairs and factual programmes, broadcasters are responsible for maintaining standards consistent with the principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest.	News and current affairs content dealing with controversial issues of public importance should be balanced, with significant sides to issues presented in as fair a way as possible.

The onus on FTA broadcasters is clearly heavier than the responsibility for balance expected of their PT cousins. This is also borne out by a study of the guidelines appended to the standard in each code. In the FTA code there is a requirement that programmes dealing with controversial or political material 'must show balance and impartiality'. There is no equivalent guideline in the PT code. Both codes acknowledge that in 'factual content' that is presented 'from a particular perspective' there is some leeway. However, a difference emerges here too. The PT code refers to the standard of 'fairness' (P7) as a principle applicable in relation to balance (P6). This leeway is not accorded to FTA broadcasters. Burrows (2006, p. 4) has noted the 'unfortunate' differences between the standards that apply to radio and television broadcasters.

5.2.2 The revised radio code balance standard

The author was asked to comment briefly on the draft Standard 4 Controversial Issues – Viewpoints of the revised Radio Code. The key changes occur in the opening sentence and in the guidelines. In terms of the principle, the draft removes any element of requirement ('broadcasters are required to maintain standards consistent with…'), but maintains the standard of making 'reasonable efforts, or give reasonable opportunities' for the presentation of opposing views. The draft guideline (4a) sets the terms for an assessment that a 'reasonable range of views has been allowed for' and provides four points for consideration. One of the draft guiding points appears to replace 4b(i) of the current code, regarding an announcer's introductory comments, as follows:

4b(i) An appropriate introduction to the programme	4a the programme introduction

In the context of media convergence and in light of the BSA's obvious desire to both strengthen and simplify the administration of standards, I feel there is no strong justification for maintaining

a distinction between radio, FTA and Pay TV codes. However, the Ofcom Broadcasting Code does provide a template for some potentially useful extensions to the new radio code that would be applicable to talkback. Rule 5.9 of the Ofcom code covers the personal views of presenters and 'chairs of discussion programmes'. There are three key points from this code that the BSA Board might consider in relation to revision of the radio standard on balance:

- '…alternative viewpoints must be adequately represented either in a programme, or in a series of programmes taken as a whole'

- '…presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for [balance]'

- '…presenter phone-ins [talkback] must encourage and must not exclude alternative views' (Ofcom, nd, p. 27).

Ofcom rule 5.13 is of particular interest here as it applies only to radio and radio-like services.

> 5.13 Broadcasters should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy…
> (Ofcom, nd, p. 28)

These requirements are clearly stronger than those proposed in revised Radio Code standard 4. In the context of a revision of all the codes and consideration of adopting the concept of 'due impartiality' (see below, section 6.2) it may well be worthwhile considering these stronger clauses. They may well be resisted by the radio industry, but I think they may be welcomed by audiences. However, I have recommended that a wider code revision may consider adopting the British approach of one code that has application across all media platforms with specific additional clauses and exemptions as appropriate for radio, television, etc.

5.3 The relevance of standards in the digital age

> …content standards regulation will also need to be overhauled…a decision will be needed about the regulation, if any, of internet-based content…the rationale for special regulation of broadcast content is diminishing—there is more choice…the content consumed may have much less impact…than did radio and TV in a limited channel world. (Foster, 2007, p. 12)

In an age of media convergence and platform proliferation there is a fundamental question about the relevance of monitoring standards, including balance. As Bill Ralston mentioned at Significant Viewpoints, with a multitude of voices you can have a balance of views represented very quickly across the period of 24 hours which tends to mitigate any individual broadcast item that may have been unbalanced because it was incomplete. A constant news clock without real deadlines can achieve a state of almost equilibrium through the necessity of filling a constant news 'hole'. However, it is also important to contextualise this ideal within the very real limitations of budgets and resources that inhibit the news-gathering abilities of most newsrooms. It is not impossible to think of a situation where an unbalanced report is merely repeated throughout the 24 hours, simply because the resources are not available to do any follow-up with other sources that might provide balance.

The issue of relevance of the broadcasting codes in the digital age has been canvassed in other recent reports (Brown & Price, 2006; Millwood Hargrave et al., 2006). Each of them contained

detailed analysis and some suggestions for change. Having read those reports I am broadly in sympathy with their analysis and conclusions. There is probably a continuing need for some forms of regulation, particularly of public investment in broadcasting and to protect the public interest as a foundation of democratic societies – a balance of public and private interests in a market economy (Brown & Price, 2006). There is also a need for protective regulation in relation to harmful and inappropriate content (Millwood Hargrave et al., 2006). Issues of national sovereignty in a global media world and the correlative problems around regulating content that originate from overseas servers are also pertinent. In learning to deal with the complexities that arise in this situation, the BSA needs to be strategic in its thinking and holistic in its approach. Any knee-jerk attempt to deal with single issues and causes may well create further problems – such as new and emerging techno-legal time gaps and ethico-legal paradoxes that are today unforeseen. An evolutionary and flexible approach is required to avoid legislative, legal and regulatory pitfalls.

Around the world, in comparable media ecosystems (particularly the UK, Australia and Canada) there is an ongoing debate about the continuing relevance of content standards. In a recent report to the UK Department for Culture, Media and Sport, Robin Foster argues that current regulatory models may be 'costly, ineffective or both' in relation to new media environments of greater choice, on-demand platforms and global media markets. He concludes that there is a 'strong case' for moving to a system of 'individual responsibility' and 'opt-in' voluntary codes that would apply to content providers and aggregators whether broadcast or online (Foster, 2007, p. 13). Voluntary codes, devised in consultation with the industry, are likely to be weaker and less enforceable than codes with a legislative mandate. These are the issues for the Authority and the government to consider in formulating change scenarios.

6 International comparisons

One of the issues this review was asked to consider is the possibility that New Zealand might adopt a system of standards and regulation similar to the British 'due impartiality' clause. In responding to this request it is relevant to provide a quick overview of comparable national requirements around balance, bias and fairness. Both the Millwood Hargrave and the Brown and Price papers have canvassed some international comparisons. Their work is not to be repeated here. Each of these reports examines countries that may well be seen as models of best practice and relevant for any change considered in New Zealand.

The consensus model in some countries appears to be one of co-regulation in which the industry devises a self-regulatory code in consultation with stakeholders, and in which government agencies, like the BSA, have some greater or lesser oversight role. Two models emerge as appropriate for consideration – the 'broadcasting-centric model' and 'converged content regulation model' (Millwood Hargrave et al., 2006). New Zealand has not yet adopted the converged content model and the Millwood Hargrave report concludes with a series of questions that are yet to be fully answered. The Brown and Price report examines the Australian experience of convergent regulation and concludes that it is still problematic, but Brown and Price are also critical of the European Union model which sought to bring the regulation of broadcast-like content over any platform under one regulatory regime. Neither of these reports focused primarily on the issue of balance in news and information programming, though both touched on it. Brown and Price provide some useful recategorisations of standards that are of value in this discussion. Of interest is the concept of 'misleading material', which would include 'inaccurate news and current affairs' and 'unethical news or current affairs'.

Also of interest is the concept of 'anti-democratic practices' which embraces misleading election coverage and a 'narrow range of viewpoints' (Brown & Price, 2006, pp. 28-29). These are mentioned here as they have some bearing on an interpretation of the 'due impartiality' standard discussed below.

6.1 Canada

Paul Norris (Broadcasting Standards Authority, 2006b) provided some background to the Canadian situation in his contribution to the Significant Viewpoints symposium and it is worth recapping briefly his observations. The regulatory body with oversight of broadcasting content standards in Canada is the Canadian Radio-television and Telecommunications Commission (CRTC) under the legislative umbrella of the Broadcasting Act 1991. Like the recently constituted Australian Communications and Media Commission (ACMA), the CRTC has carriage of both media and telecommunications regulation (Cohen, 2005b). Canada also has a Charter of Rights and Freedoms that guarantees free expression and a free media (Miller, 2006). This charter applies to the decisions of the CRTC, but not to the private broadcasters' own standards body, the Canadian Broadcasting Standards Council (Cohen, 2005b). The CRTC guidelines are voluntary and key regulatory functions are left to industry bodies to manage and enforce. There is no direct mention of news and current affairs programming in the Broadcasting Act; the only thing that is directly regulated by legislation is political broadcasts during an election period. This requirement applies to programmes, advertising or announcements and mandates time be given 'on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum' (Broadcasting Act 1991 (1987)).

There are several voluntary Canadian self-regulatory codes of conduct for broadcasters which, since 1991, have been administered by the industry body, the Canadian Broadcast Standards Council (Cohen, 2005a). The CBSC's mandate gives it oversight of the Canadian Association of Broadcasters' Code of Ethics; the Radio Television News Directors Association of Canada's (RTNDAC) Code of Ethics; and the Canadian Association of Broadcasters' (CAB) Code of Ethics. Complaints are managed by dialogue, but as a last resort the CBSC has adjudication panels to hear grievances. Adjudication panels have an even split of industry and public representation and the Council is funded by member contributions (Cohen, 2003).

The RTNDAC Code of Ethics covers balance briefly in its preamble: '…report independently about matters of public interest and to present a wide range of expressions, opinions and ideas'. An article in the code covers 'authenticity': '…represent news and public affairs without distortion…editorials and commentary will be identified as such' (Radio Television News Directors Association of Canada, nd).

The Canadian Association of Broadcasters' code was established by private radio and television network proprietors and managers. A founding principle is recognition that commercial broadcasting serves the public interest, but does so to make a profit. Clause 5 – News requires accuracy and fairness and that news broadcasts are 'not editorial' in nature. It states that news should not be broadcast for the purpose of 'furthering or hindering either side of any controversial public issue'; rather, it says that audiences should 'form their own conclusions' and that analysis and comment should be identified. A further clause (Clause 6 – Full, Fair and Proper Presentation) places the responsibility on broadcasters to respect these principles. Clause 7 – Controversial Public Issues recommends that time be allocated 'with due regard to all the other elements of balanced program schedules, and the degree of public interest in the questions presented' (Canadian Association of Broadcasters, 2002).

The state-run broadcaster, the Canadian Broadcasting Corporation, has its own Journalistic Standards and Practices that recognise 'accuracy', 'integrity' and 'fairness' as guiding principles; the 'balance' principle is detailed and extensive. Paul Norris mentions the Canadian Broadcasting Corporation's internal code for journalism which has an independent Ombudsman to adjudicate on complaints. In terms of this code balance is achieved when there is 'equitable treatment of relevant points of view'. It is also worth noting that the CBC code uses the 'weight' and 'significance' definition of balance and equitable coverage:

> Equitable…means fair and reasonable, taking into consideration the weight of opinion behind a point of view, as well as its significance or potential significance.
> (Cited in Broadcasting Standards Authority, 2006b, p. 32)

The CBC Radio Canada code also deals with the concept of balance over time, suggesting it should be achieved 'within a single program, or otherwise within an identifiable series of programs' (cited in Broadcasting Standards Authority, 2006b, p. 32). The specific guideline for a single programme suggests that, when dealing with a controversial issue, a programme should 'give adequate recognition to the range of opinion on the subject' to fully inform the audience. The guideline for a series of programmes specifically states that it must 'not adopt an editorial position supporting one side or another on a major controversial question'. Continuing programmes, such as news and current affairs, must 'present a balanced overall view of controversial matters'. It also requires journalists and editors to provide balance across 'the general flow of ideas prevalent in our society' and to avoid a 'cumulative bias or slant over a period of time' (Canadian Broadcasting Corporation, nd). This is a different concept from New

Zealand's 'period of current interest' in that it does not specify a time frame for the life of the issue, rather a period covered by a series of programmes.

According to the then chair of the CBSC, Ron Cohen, the self-regulation of private broadcasters works because they 'own' the code and because they are aware that failure may cause the government to intervene (Cohen, 2005b, p. 9). On review, the Canadian system of self-regulation of private broadcasters appears to be effective. However, the codes of practice are detailed and lengthy. They provide a good example of a working public interest test in relation to balance, fairness, accuracy and bias. It is not within the scope of this paper to provide a detailed history and critique of the Canadian system, but such a study may be valuable to the BSA.

6.2   The United Kingdom

> Unarguably, rules on due impartiality have contributed to the high level of trust accorded to television news by users, compared to other news outlets such as newspapers. (Ofcom, 2007, p. 59)

The British regulator Ofcom's approach to broadcast regulation (radio and television are treated together) relies on increasing commercial competition and licensing as a key instrument of effect (Ofcom, nd, p. 4). Under the Communications Act 2003, Ofcom is obliged to take into account a number of conditions including:

- the degree of harm or likely offence

- the size and composition of audiences

- the expectations of the likely audience

- the likelihood of accidental exposure

- notification of changes to scheduled programming

- the desirability of maintaining editorial independence (Ofcom, nd, p. 6).

While not specific to the 'due impartiality' standard, these conditions are broadly applicable and provide some guidance to the regulators, audiences and broadcasters. In addition, Ofcom issues non-binding guidance bulletins.

The principle of due impartiality is enshrined in the Communications Act 2003, but it is historically linked to the early days of UK television when there were only two outlets and political bias was a real fear. Due impartiality is covered under section 5 of the Ofcom Broadcasting Code and clear definitions are given as to the meaning of the clause. Impartiality is defined as 'not favouring one side over another' and due is defined as 'adequate or appropriate to the subject and nature of the programme'. Thus the application of due impartiality can vary according to circumstances as set out in the guiding principles outlined above. A number of specific rules are included, which insist on accuracy and impartiality in news; the timely correction of mistakes; and the use of politicians as news presenters. There are also special impartiality rules for news and information programmes; these take a bit of work to decipher.

6.2.1 Discussion of the 'due impartiality' rules in the Ofcom Broadcasting Code

> The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach are signalled to the audience. (Ofcom, nd, p. 24)

The import of these provisions is to exclude the views of the person providing the broadcast service from any programme that discusses 'matters of political and industrial controversy and matters relating to current public policy' (Ofcom, nd, p. 25). The inclusion of 'industrial controversy' in this rule appears odd from a New Zealand perspective. Why not include 'scientific' or 'religious' or other specific types of controversial issues in this clause? These rules (5.3-5.13) appear overly complex and bureaucratic.

Rule 5.3 says 'no politician may be used as a newsreader, interviewer or reporter…unless, exceptionally, it is editorially justified'. This is strange as the 'unless' clause renders the rest of it fairly meaningless. The judgement about editorial justification should rest with the news organisation, but this is the ground on which a complaint based on 5.3 will be judged.

Rule 5.4 begins, 'Programmes in the services (listed above) must exclude all expressions of the views and opinions of the person providing the service…' This rule seems to prohibit authorial comments by programme presenters in news and current affairs.

Rule 5.5 'Due impartiality…must be preserved on the part of any person providing a service…within a programme or over a series of programmes taken as a whole.' This is followed by a dense paragraph explaining the phrase 'series of programmes taken as a whole'. It is worth noting that a series might include 'a drama and a debate about the drama', 'a strand', 'a cluster' or a 'season…on the same subject'.

Rule 5.6 '…editorially linked programmes…should normally be made clear to the audience on air'. This may be difficult, particularly when typically audiences may wander in and out of a 'strand', 'cluster', 'series' or 'season'.

Rule 5.7 '…Views must also be presented with due weight over appropriate timeframes'. This is a straightforward rule that echoes the weight argument about balance presented above and the concept of 'period of current interest'.

Rule 5.8 [my paraphrase] Any potential or possible conflict of interest involving reporters or presenters that might impact on impartiality must be made clear to the audience. This seems a sensible rule.

Rule 5.9 This is a complicated rule about how and when it is appropriate for presenters and reporters to express a view on controversial issues. It is similar to the concepts of authorial documentaries in the New Zealand FTA code, but is extended to cover 'chairs of discussion programmes'. 5.9 also requires adequate representation of alternative viewpoints in the single programme, or series. An additional clause is interesting: '…presenters must not use the advantage of regular appearances to promote their views…Presenter phone-ins must encourage and must not exclude alternative views'.

Rule 5.10 'A personal view or authored programme or item must be clearly signalled to the audience at the outset'. Talkback hosts are exempt from this rule.

Rules 5.11 to 5.13 are additional points about matters of political and industrial controversy or matters of policy. 5.12 mandates that a 'wide range of significant views must be included and given due weight'. Rule 5.13 is specific to radio and has been dealt with above in section 5.2.2.

This brief outline indicates the complexity of the due impartiality rules in the Ofcom code. The inclusion of the clause used to head this section adds to the complexity and, one can presume, to the difficulty of making determinations under this section. To date there has been little academic discussion of the Ofcom code in journal articles. The author has only been able to locate one or two useful reviews of the Ofcom code from the British professional media. This makes it difficult to form a judgement as to whether the code is being successful, or about its popularity. Two Ofcom publications released in 2006-2007 contain some research data of relevance.

British media analyst, David Graham, in a 2004 column argued that Ofcom should 'take a harder look at the gap' between what he called a 'constrained definition' of due impartiality and the needs of an 'informed democracy'. Graham argues for programmes that 'get to the bottom of a complex issue', which may well involve giving a particular viewpoint greater weight, rather than the balanced alternative of being 'fair to all parties' (Graham, 2004). He suggests that the newspaper model of having clearly demarcated op-ed pages might be a model to consider for broadcasting. This is, to some extent, the de facto position today with talkback radio, but Graham extends it by arguing that it might also apply to television programming where: 'it gives us a continuous chance of testing our own opinions against those of others'. However, his appears to be a lone voice. Research presented in Ofcom's own publications tends to suggest that the due impartiality rules are effective and have strong stakeholder support. Having said this, the data indicates that both accuracy and impartiality are marginally less important to the public in 2006 then they were in 2002; public trust in news outlets fell by a similar proportion during the same period (Ofcom, 2007, pp. 65-67). A 2006 report into current affairs television also sought viewers' responses to issues of balance and impartiality. It found that older and male viewers tended to favour balanced programming, while younger audience members 'were more accepting of partial programming' and appreciated 'strong, polarised opinion' (Ofcom, 2006, p. 30). While not conclusive, such audience research might indicate that in a convergent media world that offers consumer choice of material and platform, traditional notions of balance and bias may be waning in importance and relevance.

6.2.2 Summary of material on 'due impartiality'

There is not a substantial volume of published research material available from the UK on the due impartiality rules; thus it is not appropriate to draw too many conclusions on the current data. The Ofcom Broadcasting Code has been in operation for less than five years and one might expect a review in the near future. Scholarly research may also be available soon as interest in how the rules have been operating grows and the volume of decisions pertinent to the due impartiality clauses becomes a valid empirical source of data.

On the available evidence it seems fair to suggest that the due impartiality rules are complex and overly bureaucratic in their wording. Precedent decisions from Ofcom may well provide interpretive paradigms, but it was beyond the scope of this paper to analyse Ofcom decisions in any detail. Despite their apparent complexity, the due impartiality rules may provide a workable template for New Zealand regulators to consider. Building on the British experience it should be

possible to refine and simplify the concept of due impartiality into a workable code of practice. However, such a change will not remove the need for BSA members to provide guidance and value judgements in relation to complaints resolution. The Ofcom code contains a number of detailed qualifying clauses pertaining to the operation of the due impartiality rules that leave them open to contextual interpretation on a case-by-case basis. There appears to be no 'magic bullet' solution to this vexed issue of contextual relevance and applicability.

7 Conclusions

> Regulators need to start with a focus that sees the public not just as prime
> beneficiaries of regulation, but as co-producers of it. (Mayo & Cullum, 2006, p. 95)

Whatever the future shape of broadcasting codes of practice, the key driver for regulation is that it must demonstrably serve the public interest (Fairbairn, 2006, p. 86). This is perhaps the only constant in the evolving media ecosystem. This may well involve a larger role for the public in the development of regulation, rather than them remaining as passive recipients. In opening this report I noted that several participants in the Significant Viewpoints symposium argued that balance is no longer a relevant concept in broadcasting regulation, and the reasons supporting this argument have been canvassed in the preceding pages. Paul Norris noted during the discussions (Broadcasting Standards Authority, 2006b, p. 40) that if balance is to be retained, then the 'standard would have to be rewritten'. In part, he argued, this need arises because the application of the current standard across the entire broadcast output of any one station or network is a difficult task and a 'nightmare' for the BSA to police. I find myself having some sympathy for this position.

The definitional issues raised in this paper will need to be addressed in any comprehensive review of the standards and should perhaps be part of any legislative review of the Broadcasting Act 1989. There is some room for confusion in the current standards, in particular between the concepts of fairness, balance and accuracy. Each has some bearing on the other and there is also significant overlap between them, as others have noted (Broadcasting Standards Authority, 2006b). A shift to the British concept of 'due impartiality' may address these definitional issues, but, as the report notes, without adequate research and care in drafting a due impartiality standard, such a change could result in an overly complicated code and may not resolve any current dilemmas of the definition, purpose and applicability of the balance standard.

The provision of a regulatory framework – whether based on balance, or due impartiality – must realistically take into account questions of media ownership and diversity of outlets. Throughout the postwar period (from the 1950s), there has been a growing concentration of media ownership at local, regional, national and global levels. The impact of this trend is apparent in all traditional media and may well continue across new media platforms – the consolidation of social networking sites (MySpace and YouTube in particular) into the hands of existing multinational media conglomerates is an indication of this. As others have noted, this precipitates new dilemmas for national regulators: how can offshore providers be compelled to comply with national standards unless a national 'firewall' is available? Such a protective barrier is inimical to the pressures and benefits of globalisation, as well as difficult to design, operate and manage (Brown & Price, 2006). In Europe it has led some to question the continuing relevance of national borders in the face of global media markets (Hieronymi, 2006). The European Parliament has attempted to find a trans-national solution to this problem. While this report has not considered these developments, New Zealand may well benefit from closely monitoring such trends. Therefore, organisations like the BSA need to strategically consider how national regulation can remain effective and not create a multi-tier system with major logical and operational loopholes. The Ofcom approach is to develop robust regulation that can anticipate future developments and changing market conditions (Puttnam, 2006). It is a lesson of importance for the BSA.

One idea that has appeal in relation to shifting the emphasis of the balance standard is provided by Richard Harman: 'diversity of voice is actually the fundamental philosophy behind balance'.

In a media-saturated environment that develops a range of niche broadcasters and online outlets for news and information, perhaps this is safeguard enough. John Naughton describes the growth of audience awareness as 'the couch potato bites back':

> In blunt terms, the asymmetry of the old, push-media-dominated ecosystem looks like being replaced by something much more balanced. (Naughton, 2006, p. 47)

Today this is still conjecture, rather than fact, and digital pessimists would argue back that the explosion of user-generated content is not a substitute for balanced and regulated professionally produced media content. The challenge, argues Naughton, is for regulatory systems to adapt. Given the pace of change and the existence of a techno-legal time gap, regulators cannot wait for, or rely on, market mechanisms to provide adequate guarantees of democratic access to information. A well-informed society must also be media literate. The British Communications Act 2003 also requires the broadcasting regulator (Ofcom) to be a champion of media literacy. It may well be timely to consider such an expanded role for the BSA.

On the other hand, it may well be that media literacy is growing exponentially, without the need for more government intervention. Charles Leadbeater (2006) argues that the explosion of consumer-generated content is itself a product of greater media literacy and is breaking down the old 'industrialised media' model. A corollary of this is that the need for legislative regulation monitored by a government-mandated agency may also be declining. Leadbeater's suggestion is less regulation and more space for low-cost social media to expand; but he does imagine an important role for public broadcasting, which seems at odds with his laissez-faire approach. He concludes that the rise of 'commons-based media' may well 'encourage greater freedom, democracy and possibly justice', without the need for strong regulation (Leadbeater, 2006, p. 274).

This may well represent the ideal, but it is, in my view, a long way off. It may be that global and local media are trending in that direction, but it is not yet time for regulators to completely remove the hand from the tiller. There remains a strong public interest rationale for content regulation in both current broadcasting and future narrowcasting environments. The key strategic issues for the BSA to consider are the scale, scope and design of regulation that takes into account the greater potential diversity offered by new media platforms and new content genres (Foster, 2007).

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