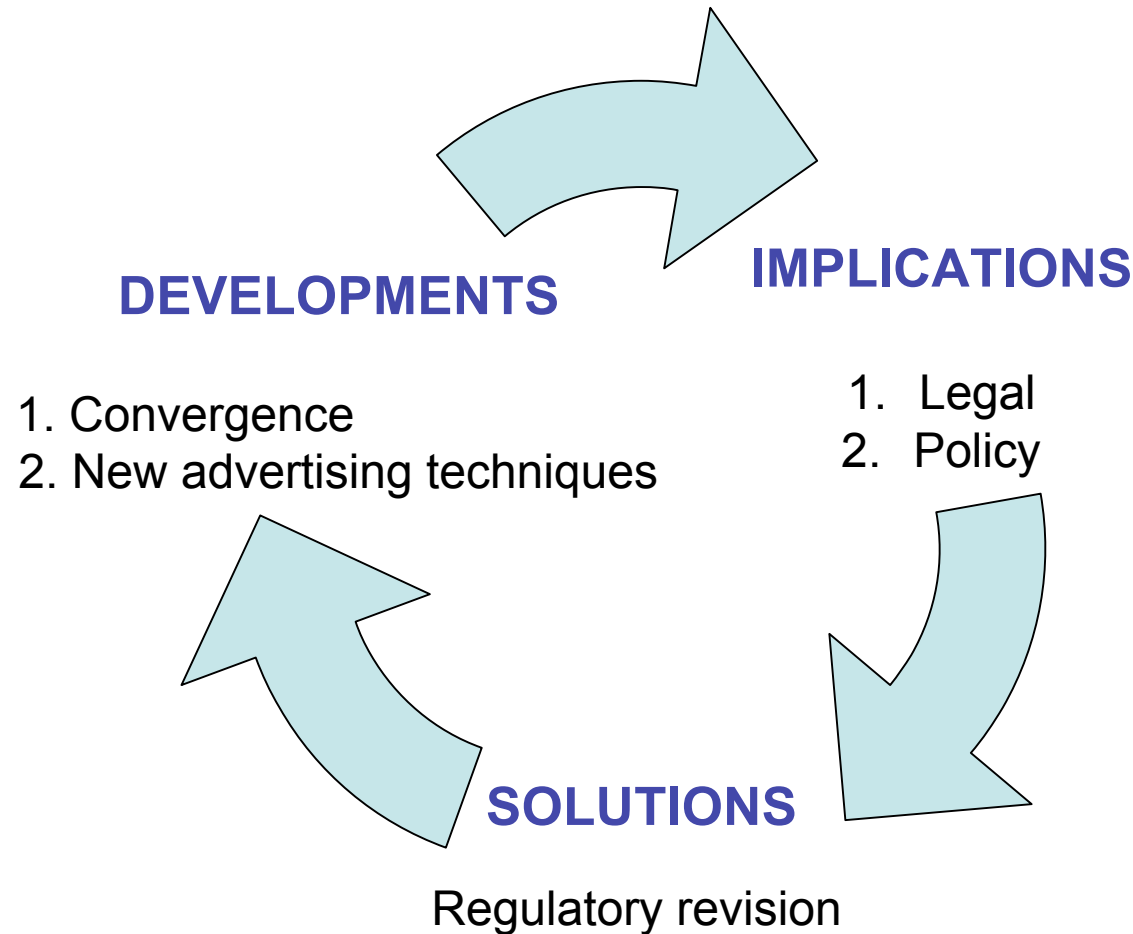




Advertising Regulation and New Media Services: How does Australia compare to the EU?

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Why look at advertising?



Developments

Technological
developments

Convergence

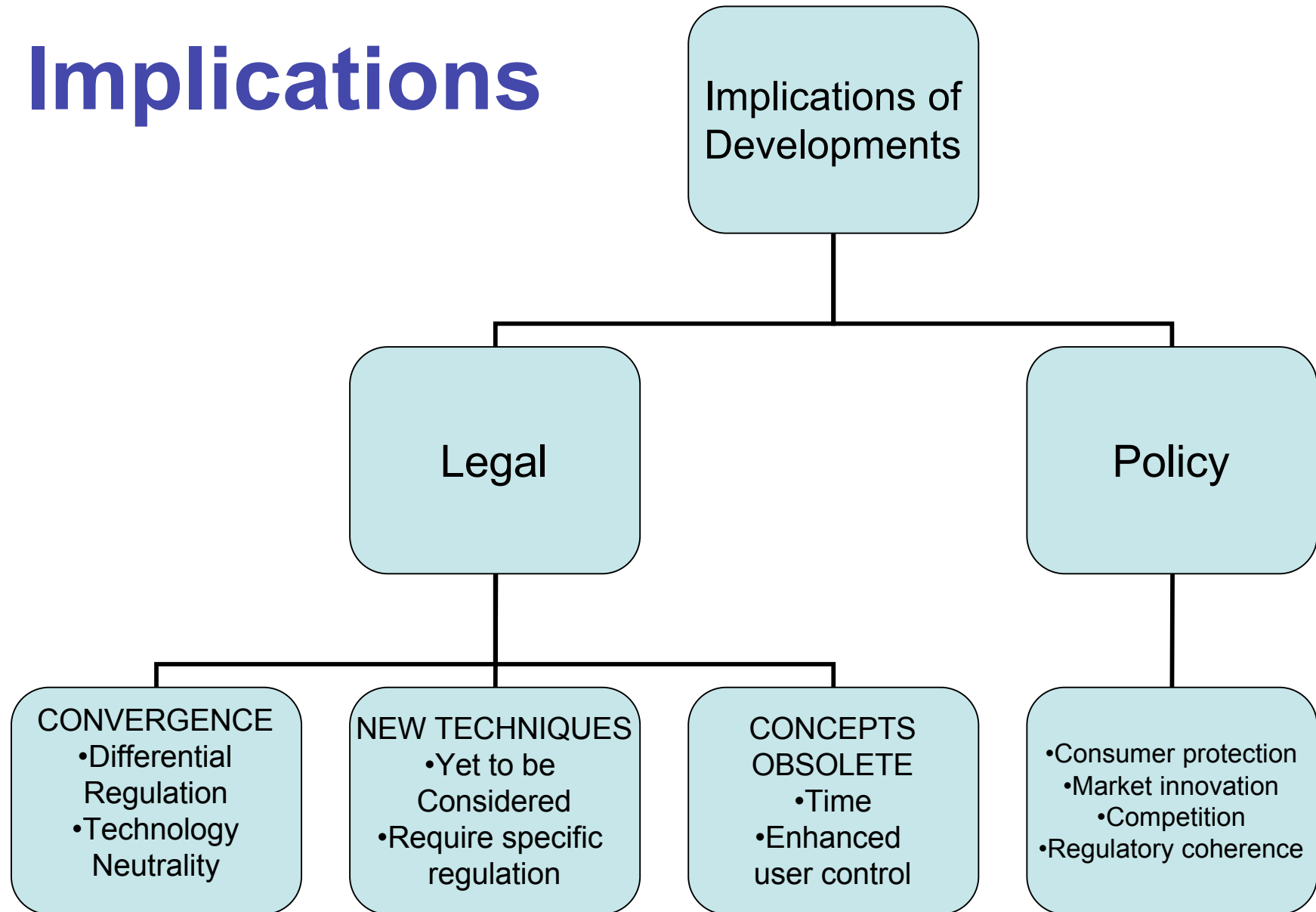
Audiovisual content available:

- over all networks
- linear / non-linear

New advertising techniques

- Split screen
- Interactive
- Virtual

Implications



Legal implications

1. **Convergence**

- Inconsistent regulation of **existing forms** of advertising
- Definitions not technology-neutral
- Differential regulation of like services according to means of delivery
- Patchwork of regulations

2. **New Advertising Techniques**

- Whether **new forms** of advertising are regulated
- Need for explicit and specific regulation

3. **Concepts Obsolete (less useful in certain cases)**

- Time: interactivity, on-demand, user control

Policy implications

1. Consumer safeguards

- Qualitative rules (classification / time zone, restricted products)
- Quantitative rules (identification, separation, insertion, amount)

2. Competition

- Level playing field
- Stimulate competition

3. Market development and innovation

- Key role of advertising in 'free to air' audiovisual sector
- Optimisation of content across platforms

4. Legal certainty

Convergence

Networks and Platforms:

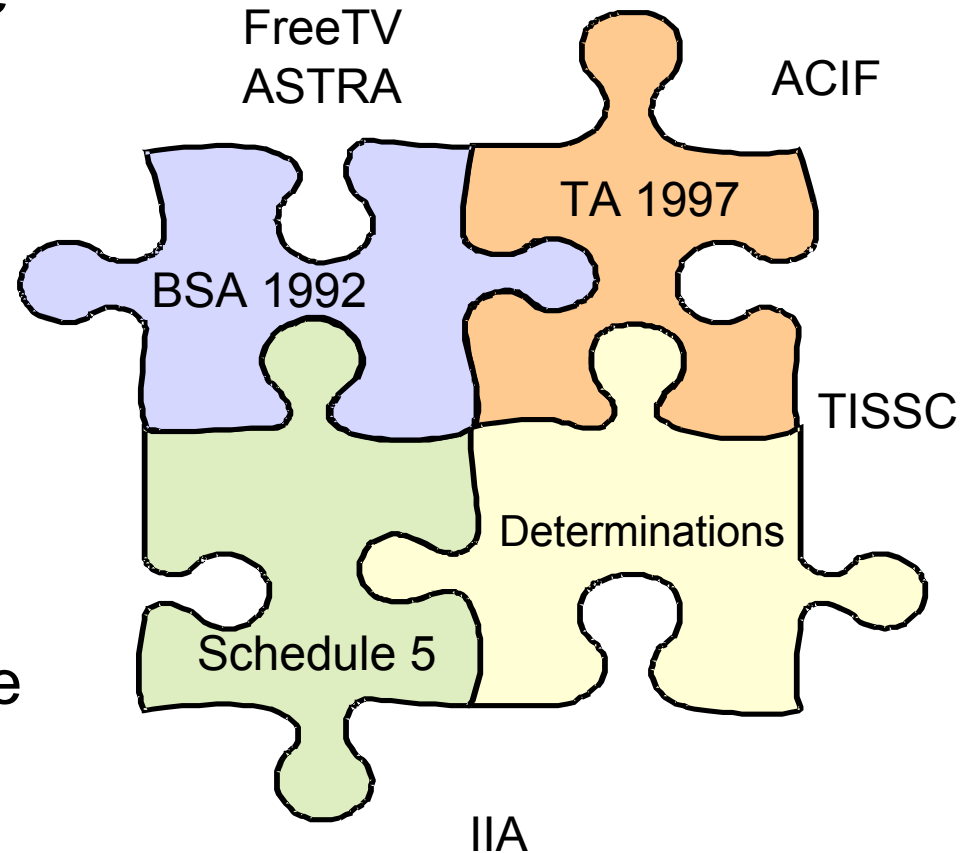
Delivering the same content

BUT

Subject to differing regulation

Australia – regulatory patchwork

- Converging marketplace
- Converged regulator
- Pre-convergence legislation
- Ad hoc, sector-specific and inconsistent advertising regulation
- Carriage / Content divide not utilised coherently



Content regulation & technology neutrality

Australian content regulation is not technology neutral:

- *Broadcasting Service Act 1992* excludes services:
 - Providing only data or text (datacasting);
 - On demand on a point-to-point basis (VOD); and
 - As determined by the Minister (internet, IPTV over the internet)
- Means of delivery determines level of regulation:
 - Movies on FTA c.f. VOD; *Big Brother* on FTA c.f. *Big Brother* streaming live over internet; IPTV over internet c.f. IPTV over proprietary network; Mobile VOD c.f. Mobile TV; IPTV over internet c.f. FTA TV ...etc
- Advertising regulation differs from network to network

TV / Radio (broadcasting service)	BSA 1992 (licence conditions + OFLC) + Codes of practice	Regulation and Codes detailed rules as to amount, identification and classification
Internet (data storage device + accessed via internet carriage service)	Schedule 5 BSA 1992 (OFLC) + IIA Code	Regulations and Codes focus on 'adult content' provisions
IPTV over internet	Outside BSA 1992 maybe TA 1997	TA 1997 Content Service Provider - Little content regulation
IPTV over proprietary network	BSA (licence conditions + OFLC) + Codes of practice	Regulation and Codes detailed rules as to amount, identification and classification
Mobile phone	Ministerial Service Provider Determinations or TISSC Code	Advertising rules limited to 'adult content' & call cost provisions
Listed carriage service (e.g. internet not coming under Schedule 5 BSA)	TA 1997 (Content Service Providers)	TA 1997 Content Service Provider - Little content regulation

See also Nick Abrahams and Glenda Stubbs, 'Legal Issues Arising from IPTV' (2005) 24(3) *Communications Law Bulletin* 14, 15.

Convergence and the EU

Television without Frontiers Directive (TWF)

Adopted in 1989

Revised in 1997

Currently under review

- Aims:
 - free movement of broadcasting services within the internal market
 - Public interest objectives
- Community coordination of national legislation in:
 - Television advertising
 - Sponsoring
 - Protection of minors

Draft Audiovisual Media Services Directive (AVMS)

Tabled on 13 December 2005

Draft currently being considered by the European Council and Parliament
Adoption in 2007 at the earliest

Proposal to modernise the TWF Directive to keep pace with rapid technological and market developments in Europe's audiovisual sector

- Interactive advertising
- Split screen advertising
- Virtual advertising

Why need to modernise TV without Frontiers Directive?

- Pace of technological progress means TWF rules devised in 1989 / 1997 have been overtaken
 - New media services now available on demand to most Europeans
 - competing with “traditional” TV programs
 - Wider choice of content, Interactivity, on-demand services, IPTV
 - Mobile web streaming...on its way
- Key issue: rules devised for one-to-many broadcasting are being rendered obsolete by the shift to one-to-one, on-demand services
 - Enhanced user control = lesser need for regulation = deregulation = fair competition / level playing field
- Differentiated regulation of same content according to mode of delivery
- Strong, competitive and integrated European audiovisual industry hampered by lack of harmonisation of rules pertaining to on demand content (the internal market)

Differentiated regulation

Is differential regulation justified?

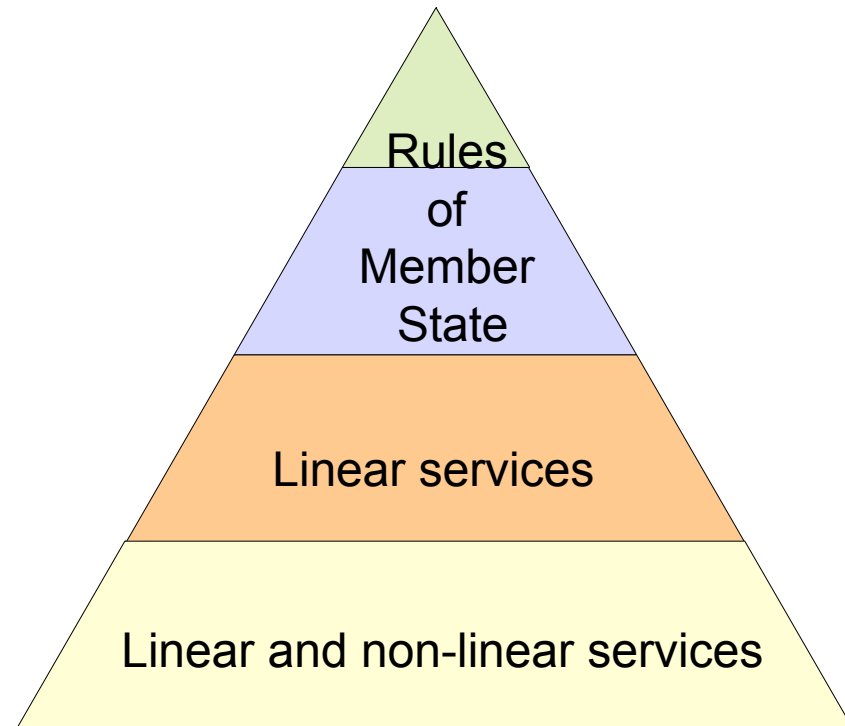
- Australia:
 - Yes: degree of influence rationale in BSA
- Europe:
 - Yes and no (push / pull)
 - Yes: enhanced end-user control means less need for regulation (EC Principle of better regulation)
 - No: where core societal values are concerned such differentiation is hard to justify

linear / non-linear

Linear	Non-linear
Push	Pull
Point-to-multipoint	Point-to-point
One-to-many	One-to-one
Streaming	On-demand
Broadcasting	Information Society Services
Scheduled	Selected not scheduled
content provider determines time of transmission	consumer determines time of transmission

EU – tiered solution

- Post-convergence legislation proposed
- Minimum basic rules apply to **all** Audiovisual Media Services (linear and non-linear services) irrespective of means of delivery or sector
- The level of regulation is determined by level of user control (higher control = less regulation)
- Not without criticism: See European Council and European Parliament; See Ofcom RAND Study ‘Assessing Indirect Impacts of the EC Proposals for Video Regulation’



EU: 2 main proposals with respect to advertising

1. **Apply rules to all** audiovisual media, regardless of means of **distribution**

Legal definitions
not to compromise
consumer protection

2. **Modernise and relax** rules applicable to televised **advertising**

Deal with developments in
technology and
the market

New Advertising Techniques

New techniques:

Yet to be fully considered by regulators

AND

May require specific regulation

Interactive advertising

- Initiated by viewer in the context of a linear program
- Viewer voluntarily enters non-linear environment
- Viewer can supply information to broadcaster via return path (true interactivity)
- Viewer can interactively explore a chosen environment as long as they wish (enhanced programming)
- IA is an ISS so is **outside the scope of the TWF**
- Program governed by TWF but Interactive Advertising governed elsewhere

Split-screen advertising

- Consists of the simultaneous or parallel transmission of editorial content and advertising content
- Two separate images are visible on the screen
- Compatible provided it is readily recognisable and kept quite separate from other parts of the program by acoustic or optical means
- Australia: network self-promotion

Virtual advertising

- Virtual 'sponsorship'
- Involves using virtual techniques / digitally generated images for inserting advertisements during broadcasts by replacing images or superimposing images where none appear
- Sports – billboards, field logos, animated (crowd placard montages, virtual mexican waves, virtual air balloons), aural (Rex Hunt) - cited by McGill and Costelloe
- *Australia: Investigation Report – ATN7 Bledisloe Cup Telecast, 11 July 1998, Virtual Advertisements (File No 1998/0509)*

Product placement

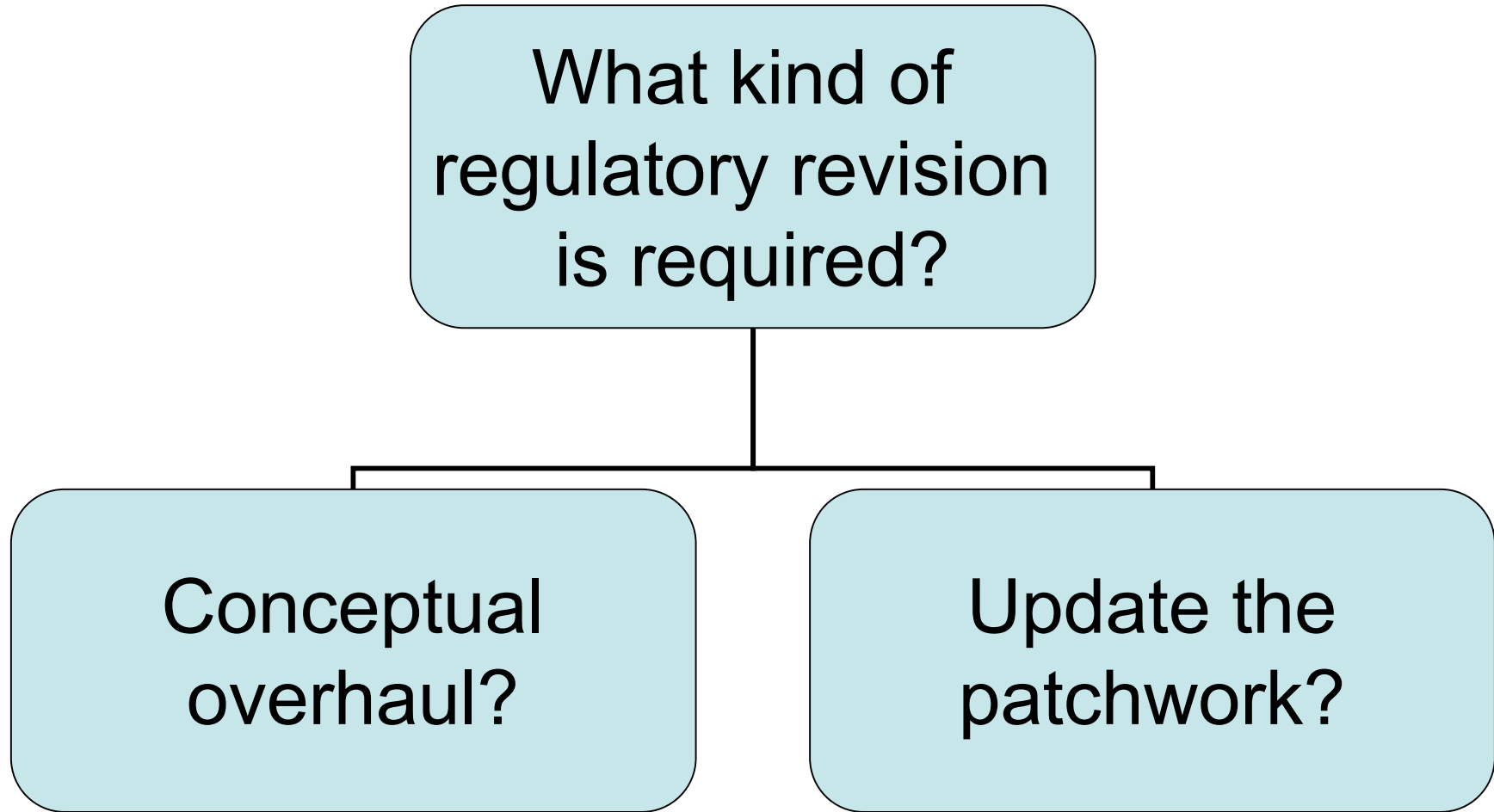
- Surreptitious advertising?
- Readily or clearly distinguishable?
- PP nonetheless a common practice
- TWF prohibits surreptitious advertising
- AVMS includes a clear legal framework for PP
- Australia: *Commercial Radio Inquiry* (2UE)

Solutions

What kind of regulatory revision is required?

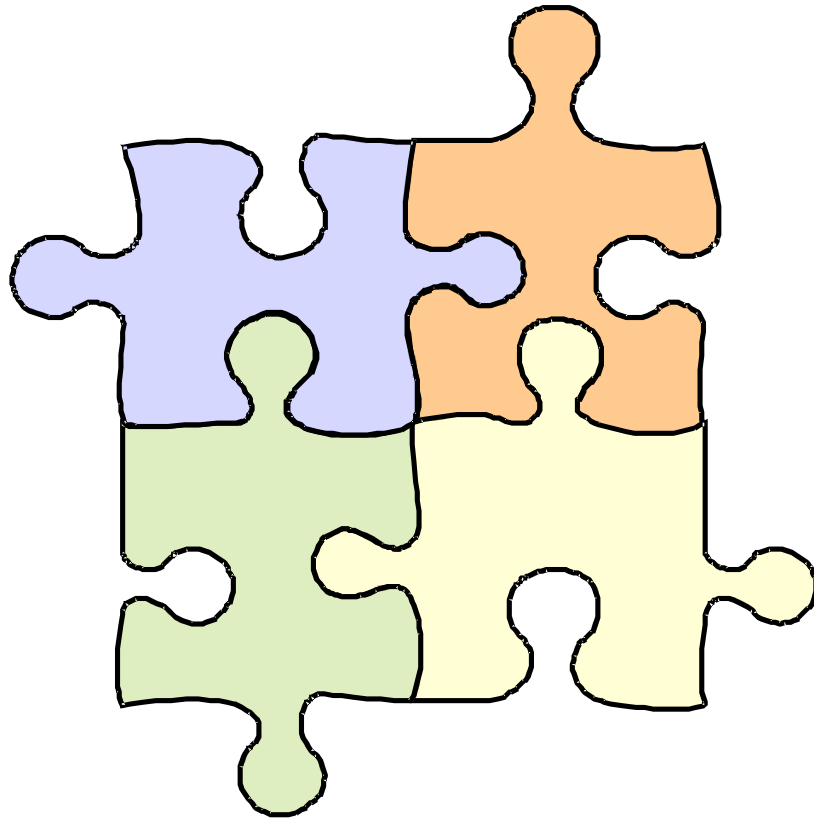
Conceptual overhaul?

Update the patchwork?

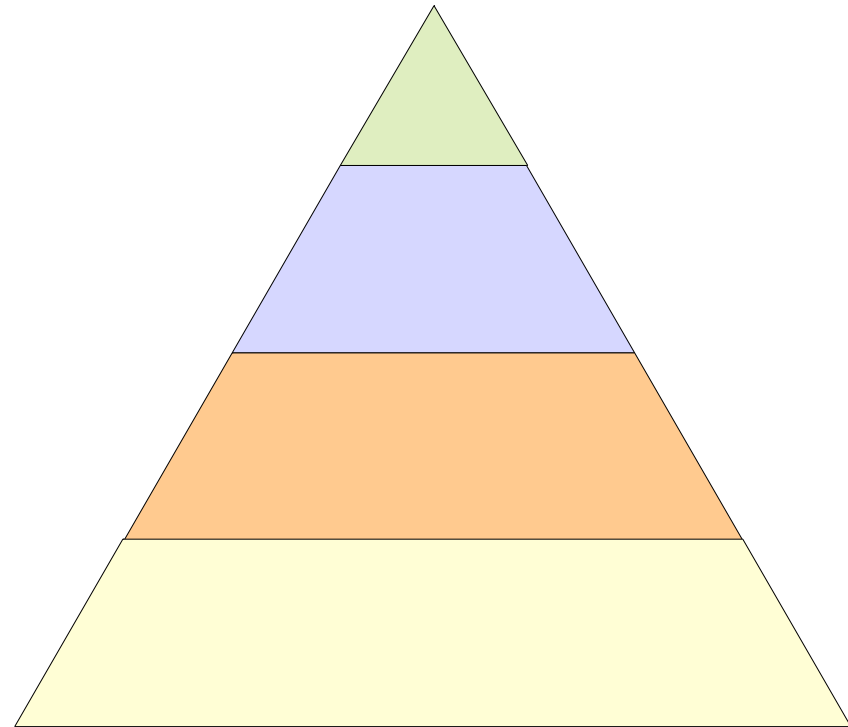


Australia compared to the EU?

Reactive / Proactive



Carriage / Content



Disclaimer

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