

## 3MP/3EE SIMULCASTING - FINAL REPORT

Following the launch of a new format for former Melbourne commercial radio service 3EE on 26 March 1994, which ended a period of simulcasting with 3MP, the ABA has decided to impose no penalty on the owners' failure to comply with its notices.

The ABA has released a report which details the reasons for the decision.

The report is in three parts. Part 1 contains the report of the investigation into whether Wesgo Ltd and Malbend Pty Ltd, complied with notices issued by the ABA on 23 November 1993. These notices directed Wesgo and Malbend to take action to cease broadcasting on the 3MP service substantially the same program stream as that broadcast on the 3EE service.

The ABA decided Wesgo and Malbend had not complied with the notices issued to them as Malbend was still broadcasting on the 3MP service substantially the same program stream as that broadcast on the 3EE service.

Part 2 of the report contains the ABA's decision on what course of action it would take in relation to Wesgo's and Malbend's failure to comply with the notices.

Part 3 of the report contains the ABA's decision (and reasons for the decision) on penalties. The ABA decided to impose no penalty in relation to Wesgo and Malbend's failure to comply with the notices issued on 23 November 1993. For copies of the report, please contact Belinda Spouncer on (02) 334 7882.



## BOCP AND TVOCP TRAINING TO CONTINUE

Government departments have relinquished administration of the Broadcast Operators Certificate of Proficiency (BOCP) and the Television Operators Certificate of Proficiency (TVOCP).

From 1 April 1994, the administration of these two certificates has been the responsibility of a steering committee, comprising of representatives from the commercial television and commercial radio industries, the ABC, the SBS, the Public Sector Union and the relevant Technical Training Institutes.

The BOCP and TVOCP courses will continue to be available from certain TAFE colleges, or by correspondence from the Royal Melbourne Institute of Technology (RMIT).

The BOCP and TVOCP Certificates will be issued by the Training Institutes and a proposed central register of certificates kept by the steering committee.

Two sub-committees have been formed, the BOCP subcommittee, chaired by Mr G Baczocho of ABC Radio, (telephone (02) 333 2643) and the TVOCP subcommittee, chaired by Mr E Hitchen of FACTS, (telephone (02) 960 2622).

Further information can be obtained from the two chairmen, or from the relevant TAFE College.

### BACKGROUND TO TVOCP

At the commencement of television in Australia, it was decided that certain technical control positions in the system should be staffed by technical personnel who held a minimum qualification. These positions were at the transmitter, in master control and at an outside broadcast. The qualification was the Television Operators Certificate of Proficiency (TVOCP). The TVOCP was

and still is incorporated into the TVI Award.

The first certificate was awarded to Stanley Graves of Sydney on 18 January 1957, along with 46 others on that day. Since then nearly two thousand technicians have been awarded the certificate.

Over the years, different government instrumentalities have administered the syllabus of the course, set the exam papers and issued the certificates. In later years they have been responsible only for the syllabus and the issuing of certificates and, as of April, these latter responsibilities will also be relinquished by the present government instrumentality, which is the Spectrum Management Agency.

An Advisory Committee has assisted the various government instrumentalities in the administration of the TVOCP.

A steering committee and two working parties, one for the TVOCP and the other for the Broadcast Operators Certificate of Proficiency (BOCP), which is an equivalent certificate for the radio broadcasting industry, have been formed from the members of the Advisory Committee, to take over the role previously held by the Spectrum Management Agency.

The working parties will be responsible for the syllabus and its updating when required. Any college can offer training for the TVOCP it is approved by the Senate Committee.

As the TVOCP and BOCP are the only technical certificates recognised throughout Australia in television, radio production and broadcasting, the Committee stresses the importance of the training that is available in the attainment of these certificates.



## NARROWCASTING FOR RADIO

Narrowcasting is a new type of service introduced by the Broadcasting Services Act in 1992. In contrast to other broadcasting services, narrowcasting services are limited in some way.

'The ABA has released a discussion paper to assist potential radio narrowcasters and other radio service providers to better understand the category definitions under the Act,' said Mr Peter Webb, ABA Acting Chairman.

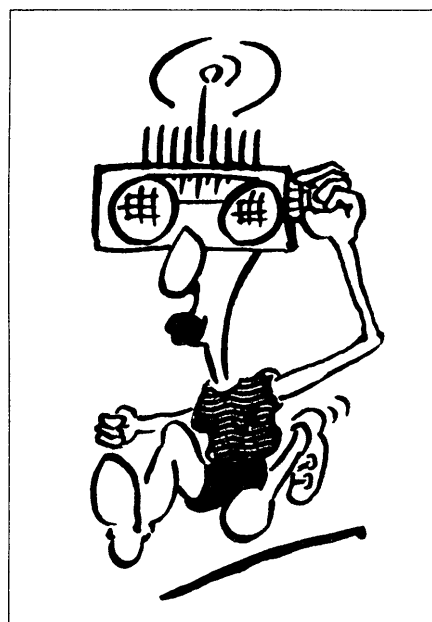
The ABA has the power to give a formal, written opinion as to which category a proposed service falls into. The category determines the licensing and regulatory regime applicable to the service, with narrowcasting services being more lightly regulated than other forms of broadcasting.

The ABA has received more than a thousand applications for transmitter licences for open narrowcasting radio services since October 1992 and has allocated licences to approximately four hundred operators.

'Music and news have been two of the most difficult program elements for the ABA in assessing categories of services because they are both common program elements in mainstream radio broadcasting,' Mr Webb said.

The paper was previously circulated to relevant industry bodies for comment and is expected to be supplemented or varied in response to any industry developments or comments received.

*The text of the discussion paper follows on pp. 9-13*



# NARROWCASTING FOR RADIO

## INTRODUCTION

One of the objects of the *Broadcasting Services Act 1992* ('the Act') is to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, information and education. Narrowcasting services, which are provided under a class licence, were introduced to help achieve this diversity.

Section 4 also contains the following statement of the policy intention of Parliament in passing the Act:

The Parliament intends that different levels of regulatory control be applied across the range of broadcasting services according to the degree of influence that different types of broadcasting services are able to exert in shaping community views in Australia.

This paper has been prepared in order to assist potential radio narrowcasters to better understand the category definitions under the Act and should be read in conjunction with other material compiled by the ABA including the *Guide to Service Providers Under Class Licences* and the facts sheet on Class Licences.

The contents of the discussion paper are important as the category a service falls into will determine the appropriate licensing and regulatory regime under the Act. If a service falls within the definition of a 'narrowcasting service', it is automatically authorised by the appropriate class licence determined by the ABA. However, if a service is more accurately described by another category definition, for example, commercial or community broadcasting, it will require an individual licence from the ABA and must comply with a different regulatory scheme. There may be penalties for providing a service without an appropriate licence. For example, if a person is successfully prosecuted for providing a commercial radio service without an appropriate licence, s.133 of the Act imposes a penalty of \$200,000.

Where the ABA receives a complaint in relation to a narrowcasting service, logging tapes may be requested from the service provider or accepted from the complainant. The ABA promptly investigates complaints received.

## ABA OPINIONS ON BROADCASTING SERVICE CATEGORIES

To give service providers certainty in this regulatory environment, s.21 of the Act allows a person who is providing, or who proposes to provide, a broadcasting service to apply to the

ABA for an opinion as to which category of broadcasting services the service falls into. In giving opinions under s.21, the ABA is required to have regard to a range of matters considered by Parliament to be relevant to each of the categories provided by the Act. The ABA may also choose to obtain professional advice on particular aspects of a service proposal if it considers it necessary in completing an opinion.



An opinion is binding for a minimum of five years if the service remains substantially the same as that described in the application or in additional information supplied further to the application.

An opinion is provided on the basis of the program proposal provided to the ABA and the circumstances in which the service is to be presented. Should the service alter or expand substantially in any way to that advised to the ABA in the application, whether in terms of programming, method of delivery, coverage or location for instance, the opinion would no longer be valid. Accordingly, where a significant change to any element of a service is envisaged by a service provider who has an existing opinion, consideration should be given to whether the service will continue to be in the same category of service despite those changes or whether a further opinion on the revised service should be obtained.

The provision of an opinion ensures that neither the ABA nor any other Government agency is able to take action against the service provider on the basis that the service falls into a different category. The minimum period of the protection, five years commencing on the date

the opinion is given, was designed to provide some commercial certainty in that it would provide a sufficient period within which to recoup the original investment in the service.

The legal protection conferred by an opinion is not able to be transferred from one service provider to another and intending service providers should be wary of treating previous ABA opinions as though they are binding precedents. Service proposals are seldom identical to one another and each ABA opinion on the category of a broadcasting service will be based upon an assessment of all relevant factors surrounding that service at the time of the application. Moreover, although it is required by the Act to create regulatory arrangements that are stable and predictable, the ABA is not legally bound to follow its own precedents and is also empowered by s.19 of the Act to determine additional criteria or clarify the existing criteria for determining the category of services.

In May 1993, the ABA implemented a policy consistent with s.210 of the Act, whereby an application for opinion provided pursuant to the Act, will be made publicly available following the commencement of the service to which an opinion relates. Section 210 of the Act requires the ABA to publish any opinion given under s.21 of the Act in the *Government Notices Gazette*. The ABA cannot publish the opinion until the service to which it relates has commenced operations. The applications for opinions on services which have commenced are available for inspection upon request from the Allocations and Renewals Section of the ABA.

## DEFINITION OF NARROWCASTING SERVICES

A narrowcast service is defined as a service whose reception is limited in one or more specified ways. Sections 17 and 18 of the Act outline the criteria applicable to subscription and open narrowcasting services respectively. Open narrowcasting services are defined as broadcasting services whose reception is **limited**:

- (i) by being targeted to **special interest** groups; or
- (ii) by being intended only for **limited locations**, for example, arenas or business premises; or
- (iii) by being provided during a **limited period** or to cover a **special event**; or
- (iv) because they provide programs which are of **limited appeal**; or

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(v) for some other reason.

It is important to note that the criteria need not always be considered in isolation. Where a service is not sufficiently limited to meet any of the matters at s.17 and 18(a)(i) to (iv) when considered in isolation, but the interaction of two or more limiting matters serve to render the service narrowcast, the ABA may consider that the service is limited 'for some other reason' [ss. 17(a)(v) and 18(a)(v)].

They must also comply with any determinations or clarifications under s.19 ('ABA may determine additional criteria or clarify existing criteria'). The ABA has not made any determinations or clarifications under s.19 to date.

Subscription narrowcasting services must satisfy the additional criterion that they are made available only on payment of subscription fees (whether periodical or otherwise). Subscriber services are also subject to a condition that subscriber fees will continue to be the predominant source of revenue for the service [Schedule 2, Part 7, subsection 11(2) of the Act].

Note that the various forms of limitation on reception specified in ss.17 and 18 are expressed in the alternative. Thus, only one limiting factor needs to be present for a service to meet the definition of a narrowcaster. If a radio service is limited because it is provided in a limited area (e.g. a stadium) or for a limited period (e.g. a week) it may be a narrowcaster even if the programming is indistinguishable from that of an ordinary commercial, or community, radio station. Similarly, a service whose programming would only appeal to a special interest group (e.g. a medical information service to doctors) may be narrowcasting even if it could be easily and cheaply received anywhere in Australia.

The standard conditions which are applicable to class licence services are outlined in Schedule 2, Part 7 of the Act and are reproduced at Attachment A of this discussion paper.[p15]

#### **MATTERS TO BE CONSIDERED BY THE ABA IN GIVING OPINIONS ON CATEGORIES OF BROADCASTING SERVICES**

The following is a commentary on the criteria referred to above. It elaborates on the matters which are to be considered by the ABA under s. 22 in giving an opinion under section s.21 of the Act. Section 22 provides guidance on those aspects of a service which determine a service's potential to influence community views. The greater that potential, the more likely it will be that a service will fall within the ambit of a more

highly regulated service category.

Section 22 provides the ABA with policy guidelines in making determinations or clarifications under s. 19 and in giving opinions under s. 21. This section asks the ABA to have regard to a number of things in making its decision. These cover a broad range of issues from geographic coverage to the social and cultural impact of programs. These criteria are a good guide for an aspirant broadcaster in deciding whether or not a proposal would fall within the class licence regime.

Music and news are two areas in particular which require more care by applicants when considering which category of broadcasting services a service falls into. This is because both are common program components of mainstream radio broadcasting services. The following commentary will include particular references to these areas where relevant.

Under s.22 of the Act, the ABA is to have regard to a number of matters in giving opinions under s. 21 of the Act. These matters are outlined below [in italics] with explanatory commentary following where appropriate.

#### **(a) *the geographic coverage of those services***



Geographic coverage may be central to whether a service is narrowcasting, as the Act specifies limited location as one of the alternatives in ss.17 and 18.

The Act provides, as examples of limited locations that they might be 'arenas or business premises'. Other locations might include hospitals, doctors' surgeries, shopping centres, schools, pubs and clubs (ss.17 and 18 relate). For instance, the ABA has provided an opinion that a service which will broadcast descriptions of sporting events has met the 'limited location' criterion

under s.18 of the Act because coverage of the service is restricted to a particular sporting venue.

Services which are narrowcast by virtue of being intended only for limited locations may be low powered services which are able to be received only within the perimeters of the specific location or may be services provided by other delivery means such as cable where the limitation is achieved not by power but by the hardware itself. The content of these services may be of broadbased appeal but the service is limited by its coverage within a specific boundary or location.

Services within business premises, which are restricted by coverage and reception, may also meet the special interest criteria under subsections 17(a)(i) or 18(a)(i), for example, a medical/health oriented service in a medical centre or specific children's educational programs in schools.

The Act does not prescribe a critical size above which the intended service area would cease to be limited and hence automatically narrowcasting, although the examples suggest a fairly small area. By contrast, the smallest existing community and commercial broadcasting services have licence area populations\* of 1700 and 9100 respectively.<sup>1</sup> Hence, a low power service with programs of broad appeal would not meet the criteria of a narrowcasting service simply because it is broadcast to a 'limited location' within an urban area as the number of people able to receive the service could be in the thousands.

The explanatory memorandum to the *Broadcasting Services Bill 1992* suggests that, in addition to arenas or business premises, 'limited location(s)' may include 'the domestic dwellings in a specified "limited" area, or suburb or isolated town'. As an example, the ABA has given a prior opinion to Telecom Australia for a pilot cable television service which is being provided to 300 households in Centennial Park. In reaching its decision on the opinion, the ABA considered that the service would only be available in a limited location to 300 households that were invited to join the pilot and were provided with the appropriate service reception equipment.

The ABA may have regard to the geographical coverage of a transmitter as well as the area the broadcaster claims it intends to serve when considering whether a service meets the 'limited location' criterion.

**(b) *the number of persons who receive or are able to receive those services***

**(c) *the accessibility of those services, including:***

<sup>1</sup>Based on 1991 census figures, the service area population of community radio service, 5RRR Woomera is 1700. The service area population for commercial radio service, 7XS Queenstown is 9 100.

- (i) whether those services are encrypted; and
- (ii) whether their availability is otherwise restricted, whether because of the high cost of the equipment required to receive those services, the controlled supply of that equipment or otherwise; and
- (iii) whether their comprehensibility is otherwise restricted;

The factors in (b) and (c) are associated in that the accessibility of a service can sometimes be indicated by the number of people who are able to receive the service.

The accessibility of a service may be affected if a special receiver, other than an AM/FM receiver, is required to receive the service. In that case, the price or the availability of the receiver may also impact on the accessibility of the service.

For instance, if a receiver can be purchased from an electronic goods retailer and the cost of the equipment is within the means of the average member of the community, it is likely that a service would be reasonably accessible to the public, even if the service is broadcast on a frequency which is outside of the broadcasting services bands. When considering the cost of special reception equipment, the ABA would want to take into account whether the equipment was specific to the service or whether it allowed the reception of a number of services not otherwise available.

Alternatively, if the equipment is only available from or by arrangement with the service provider, or the costs are such that few members of the community would be expected to own such equipment, the reception of the service may be limited.

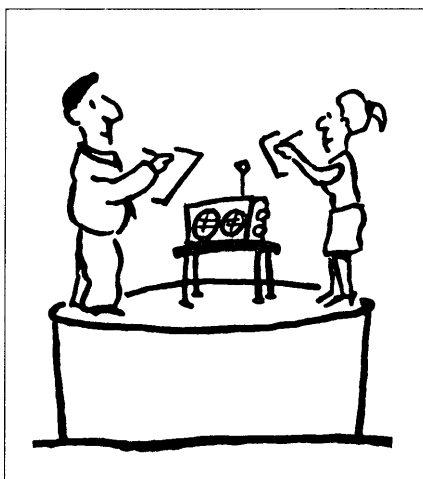
The 'comprehensibility' of the service (ss.22(c)(iii)) may be affected in a number of ways. The service may be provided in a foreign language so the audience is restricted to those who are familiar with that language. Similarly, the popularity of a service relating to a subject with a highly technical nature may be limited to those with an existing interest in or understanding of that subject.

Finally, a service with programs of broad-based appeal may still be categorised as narrowcast on the basis of its accessibility and availability.

**(d) the duration and frequency of the provision of those services, including whether those services are provided for a set period only;**

Services may be limited because they are temporary in character or by reason of being provided only at certain times of the day, week etc.

Examples of services which may be categorised as narrowcasting services because of the limited period in which they operate include services established for the duration of a special event, such as a grand prix, a festival or an expo. Narrowcasting services operating for a limited period may also broadcast for regular fixed periods which coincide with regular sporting events or activities. This would include a service operat-



ing for the duration of a football match or a race meet.

On the other hand, a service that broadcasts for a substantial part of the day, every day of the week, may not be limited by virtue of its duration or frequency.

**(e) the nature of the audience to which those services are targeted; and**

**(f) the nature of the programs being provided by those services, including:**

- (i) the level of interest in the subject matter of those programs; and
- (ii) whether those programs are directed at a specialised audience; and
- (iii) the social and cultural impact of those programs;

As the matters in (e) and (f) are closely related, being relevant to the audience and program interests of the audience, the following commentary is relevant to both subsections.

Factors which have relevance to the 'nature of the audience' may include, occupation; ethnic, racial, or language background; membership of professions, clubs and associations; age; interests; and religion. It may also include considerations of

the whereabouts of the audience, for example, shoppers in a supermarket, tourists driving through a town.

This factor will relate to the 'special interest' criterion under subsections 17(a)(1) and 18(a)(1), if the reception of the service is limited by being targeted to a specific group of people that share and represent an interest that is organised and networked. In some cases, it may even have its own perceptible culture. People identify themselves as belonging to a special interest group and can be seen to be a part of it.

A special interest group may be recognisable by a representative organisation such as a professional, sporting, cultural or other association. A special interest group may also exist without formal associations. Ethnic/language groups may represent special interest groups.

A special interest group may also comprise an audience with particular information requirements but would otherwise have no association with a group or organisation. Students with an interest in educational broadcasting services or business analysts following stock market trends and related financial information may be part of an unconnected group which shares a special interest.

However, other target audiences, such as an age demographic (or a gender) may not qualify as a special interest group. People do not necessarily share common tastes or interests, merely because they belong to a similar age grouping. A special interest group could be perceived as something a person would nominate themselves as being a part of or involved in. People would not normally describe themselves as belonging to a particular age demographic in the same way as they would identify themselves as being part of an ethnic organisation or a sporting or cultural association.

A service for young children, targeted to specific age levels may meet the 'special interest' criterion because children in particular age groups, such as pre-school or kindergarten, share common developmental attributes.

Research which supports or identifies a special interest and which provides an indication of the likely audience base, may be of assistance to the ABA in determining whether the service is directed at a special interest group.

Other program formats, though not directed at any particular special interest group, will be narrowcasting because they meet the 'limited appeal' criterion under subsections 17(a)(iv) and 18(a)(iv). In considering whether a service provides programs of limited appeal, it is useful to contrast this criterion with the definitions of

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commercial and subscription 'broadcasting' in ss. 14 and 16.

Relevantly, these provide that commercial and subscription broadcasting services 'provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public'. In effect, these words provide a benchmark for how limited the appeal of a service must be before it qualifies as narrowcast. Consideration of the target audience will be decisive in distinguishing 'programs of limited appeal' from those that 'appear to be intended to appeal to the general public'.

Mainstream broadcasting services commonly comprise a number of distinct program components which, in combination, form a broad-based service of general appeal. Equally, any assessment of a narrowcast service would consider the program elements as a whole, not in isolation. Therefore, a service which, in addition to a 'narrowcast' element, incorporates significant program components which are common to mainstream radio is unlikely to be a narrowcasting service.

As an example, a tourist information service would normally be categorised as a narrowcast service because of its limited appeal (while a tourist information service may also target a special interest group it need only satisfy one of the criteria under s.18). However a combination of other program elements, such as music or news, may alter the nature of the service such that it is no longer of limited appeal.

Frequent repetition of program content on a service will also limit the appeal of the service. For example, a tourist information service might broadcast a prerecorded tape which is repeated continuously or at specific intervals throughout the day. A service of this type is unlikely to attract a long term audience because of its repetitive nature but serves the purpose of providing easily accessible information in a relatively short period.

While narrowcasting services may provide entertainment services, programming which satisfies the 'limited appeal' criterion would not generally receive significant airplay on mainstream broadcasting services.

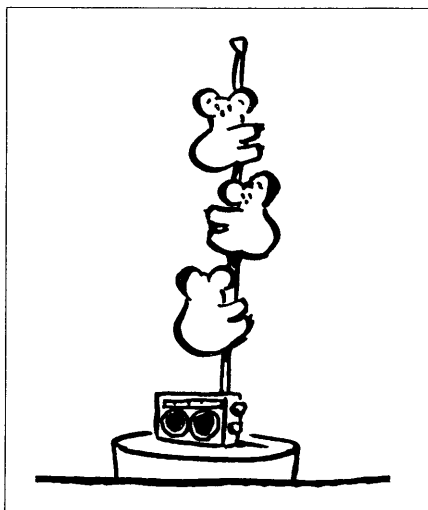
#### **MUSIC AND NEWS AS NARROWCASTING ELEMENTS**

Music and news are two program elements to which existing and potential service providers should give special attention when considering whether services are narrowcasting because they provide programs of limited appeal (ss.17(a)(iv) and 18(a)(iv)). This is because each is a predomi-

nant component in mainstream radio services. Nor generally would music or news meet the narrowcasting criterion because the reception of the service is limited by being targeted to 'special interest groups', as both elements normally have significant appeal which would be too wide and ill-defined to identify readily with any one group within the community.

This does not mean that a program format based on news and/or music programming could not fall within the narrowcasting definition. There may be exceptional cases which would meet the narrowcast definition. For instance, if it could be demonstrated that a particular sub-culture had evolved around a music style which was clearly identifiable by the fashions and lifestyle of its members, these groups might be considered to be special interest groups. In this case it would be expected that the culture of the special interest group would be reflected in the format of the service beyond the mere broadcasting of the music concerned.

It is also possible that particular forms of music in isolation **may** be of sufficiently limited appeal that a service entirely devoted to them would fall within the definition of narrowcasting.



The style and the manner in which the music is presented, and the time duration of the music tracks may also serve to limit the appeal of the service.

The ABA has already given an opinion under s.21 that a subscription radio service with a music format is subscription narrowcasting. The applicant's proposal was to provide a specialised type of 'dance music' supplemented with information about the artists and various lifestyle and fashion elements associated with the dance club scene. The music tracks were extended dance mixes with a time duration generally between five and fifteen minutes. The proposed service was to be delivered outside of the broadcasting services

bands in an encrypted form and made available only by subscription.

The ABA's opinion was that the service was a subscription narrowcasting radio service, because it was of limited appeal and because it was broadcast outside of the broadcasting services bands and required special equipment to receive it. The ABA also considered the words 'programs of limited appeal' in the context that the service was a subscription service. The applicant has subsequently commenced providing this service.

Applicants for opinions should be aware that the use of generic terms for musical styles and types of news may be unhelpful in determining whether or not a service is narrowcasting as labels may encompass a broad range of different meanings, styles and content. For instance, 'dance', 'country' and 'classical' music are all music terms which may mean different things to different people. The term 'dance music' has recently been used to describe a specialised form of music which combines elements such as 'acid', 'techno', 'hip hop' and 'house', but for other people 'dance music' connotes music from the big band era or that performed by the likes of Benny Goodman and Glen Miller.

Similarly, 'country music' is not a single music format, as it encompasses a variety of styles such as 'Bluegrass', 'TexMex', 'Zydeco' or even 'country rock'. The same can be said for music formats such as 'heavy metal' and 'jazz'. Finally, classical music is a term which includes 'renaissance', 'baroque', 'classical', 'romantic' and 'modern' styles.

Where music is a significant or predominant part of the service, the provision of a tape is useful to the ABA in determining the limited appeal of a service. Similarly, music definitions (such as 'Contemporary Hit Radio', 'Adult Contemporary' etc.) are not always sufficient or even useful as an indicator and the provision of a sample play list may also be of assistance in determining whether the music is 'narrowcast'.

Finally, the ABA will be wary of proposals that attempt to bring popular music programming within the definition of narrowcasting by imposing arbitrary limitations on the format. For example, just as age groups do not generally define 'special interest groups' within the broader Australian population, a music format limited only by being from a particular period of time is unlikely to be narrowcasting by virtue of serving a special interest group. Nor in most cases would it be of limited appeal.

Other types of narrowcasting services may use small proportions of music as a 'bridge' between program elements. For example, a racing service might use music as a filler for short gaps between races as an alternative to going off

air. However the combination of two or more program components tends to broaden the appeal of a service to the extent that it may alter its category of broadcasting service - even if each component were narrowcasting in isolation.

Similar comments apply to news as a narrowcasting format. Given that news is an integral program component of mainstream broadcasting services, it is difficult to envisage that a news service which is not substantially different to these services would meet the narrowcast criteria of 'special interest' or 'limited appeal'. A news service may be a narrowcaster where the news is targeting a specialised audience, for example, a service directed at stock market analysts and brokers that only provides world market indexes etc. It is also possible that a particular type of news may be of limited interest within the terms of the narrowcasting definitions.

Like styles of music, the word 'news' covers a range of meanings from 'hard' news such as business and financial information to 'infotainment' such as human interest stories and magazine-style news.

Of course, mainstream news or music services, along with other formats of broad-based appeal, may fall within the definition of open or subscription narrowcasting if reception is limited in some other way, for example, by being intended for limited locations, or by being provided for a limited period or to cover a special event

**(g) such other matters as the ABA thinks fit.**

The ABA has not relied upon this matter to date in providing prior opinions on categories of broadcasting services.

**OBTAINING A s.21 OPINION AND OBTAINING ACCESS TO THE BROADCASTING SERVICES BANDS**

It is important to understand that a prior opinion under s.21 does not entitle the recipient to a licence to provide a service using broadcasting services bands spectrum, or indeed to any other technical means of delivery. The categories of broadcasting service in the Act are 'technology neutral'. In other words, a narrowcasting service may be delivered by broadcasting services bands or other radio frequency spectrum, by cable or optical fibre, by satellite or closed circuit television, or by any other technical means. Intending service providers must make their own arrangements for access to a delivery system. This may include making contractual arrangements with cable or satellite system operators or obtaining a licence under the *Radiocommunications Act 1992* to operate one or more radiocommunications

transmitters.

In general, the ABA is not concerned with whether or how intending service providers obtain access to a means of delivering its service to an audience. The Broadcasting Services Act is designed to remove regulatory impediments to new services, but the onus is on intending narrowcasters to find ways of providing their service to an audience. An exception is the broadcasting services bands spectrum, which is that part of the radio frequency spectrum that has been referred to the ABA for planning. The ABA



has a discretion to make vacant broadcasting services bands spectrum available for a variety of purposes, including narrowcasting. That discretion is contained in s.34 of the Act (Alternative uses of broadcasting services bands).

The ABA is currently engaged in Australia-wide planning of broadcasting services bands spectrum following wide public consultation. In general, decisions to make spectrum available for narrowcasting will only be made when planning in a particular area is complete and the ABA has prepared a licence area plan. At this time, the ABA should have a detailed picture of the competing demands for any vacant spectrum in the area. The first plans are likely to be completed in the second half of 1994 and will concern remote Australia, including Darwin, and areas of regional southern and western Australia where there is at present only one commercial television service. Details of the ABA's planning priorities may be obtained from the addresses which appear below.

The ABA is also empowered to make broadcasting services bands spectrum available using s.34 before planning is complete. In general, it has taken the view that it should not divert resources from the public planning process by making use of s.34 before an area is planned. However, in certain circumstances it has made spectrum available for narrowcasting in advance

of planning completion.

These are:

- for community and educational broadcasting services using the vacant sixth television channel, on an interim basis until the Minister completes his review of the television broadcasting industry to assess the national benefits that would accrue if more than three commercial television broadcasting services were permitted in licence areas. This review must be completed before 1 July 1997.
- for low power radio information services using the area 87.5 to 88MHz of the FM bands .
- for high power open narrowcasting services using certain vacant AM radio channels, for which no further engineering work is necessary before they are allocated, on an interim basis until completion of broadcasting planning in those markets. Channels will only be allocated where there is likely to be a substantial period before planning will be completed in a market. Transmitter licences under the Radiocommunications Act will be issued using a price-based allocation system.

**Note:** Adherence to any technical limitations advised to the ABA in an application for an opinion issued pursuant to s. 21 may be essential if the service provider is to continue to enjoy the legal protection in s.21. This is so regardless of whether the applicant possesses, or subsequently obtains, a licence or other technical permit with technical specifications inconsistent with the limitations advised in the s.21 application.

An opinion only remains in force where there are no substantial changes to the service as outlined in an application for opinion on category pursuant to s.21. If a service changes in some way from the proposal initially outlined in the application for opinion, you should consider whether the service would still comply with relevant criteria or whether you should obtain another opinion.

The discussion paper is not intended to be a substitute for legal advice or an opinion on category of broadcasting service. The paper was previously circulated to relevant industry bodies for comment and is expected to be revised in response to any relevant industry developments or comments received.

If you wish to obtain more information about any of the above matters, please call or write to the ABA's Head Office in Sydney or the Planning Branch of the ABA in Canberra. (details on back cover)

