

AFL FOOTBALL BROADCASTS ON COMMUNITY RADIO

The ABA has decided that live broadcasts of Australian Football League matches by Melbourne radio station 3INR do not change the nature of the service from community to commercial.

In March this year, the ABA received complaints from Melbourne commercial radio stations about 3INR's live coverage of matches involving Collingwood Football Club. The commercial stations contended the provision of this type of broadcast meant that 3INR, which operates under a community radio licence, was actually providing a commercial radio service.

Subsequently, 3INR asked the ABA for an opinion under section 21 of the Broadcasting Services Act. A person who is providing a broadcasting service can seek a legally binding opinion from the ABA on the category into which the service falls.

'The ABA is of the view that 3INR's service falls within the category of a community broadcasting service, as it is provided for community purposes and is not operated for profit, or as part of a profit-making enterprise,' said Mr Peter Webb, ABA Deputy Chairman.

The ABA considered the entire operation, management, and programming of 3INR, not just the football broadcasts, in assessing whether the station's services are provided for community purposes.

The ABA found that, while the

Collingwood Football Club is a profit-making enterprise, the arrangement between Collingwood and 3INR is such that 3INR remains in control of its own services. The ABA found that the Collingwood Football Club was attempting to become involved in the community rather than realise a profit from its football broadcasts.

COMPLAINTS

In early March 1994, the ABA received complaints from Melbourne commercial radio stations 3AW and 3MP about proposed broadcasts of Australian Football League matches by Melbourne community radio stations.

The commercial stations raised a number of issues and submitted that the broadcasts would amount to the licensee of the community radio stations providing a commercial service. 3INR intended to broadcast live coverage of home and away matches involving the Collingwood Football Club, while 3RIM intended to do the same for matches involving the Footscray Football Club.


On 21 March 1994, the ABA received an application for a category opinion from community radio station 3INR. Section 21 of the Broadcasting Services Act provides that a person who is providing, or who proposes to provide, a broadcasting service may apply to the ABA for an opinion as to which category of broadcasting services the service falls into.

On 23 March, 3AW Southern Cross Radio Pty Ltd (3AW) issued proceedings in the Federal Court, under the Broadcasting Services Act, the Trade Practices Act and the Fair Trading Act. 3AW believed that the proposed football broadcasts by community stations would not be for community purposes, and that the broadcasts would be for the purpose of profit, or form part of a profit-making enterprise.

The respondents to the application were community radio stations 3INR and 3RIM, the ABA, the Australian Football League, the Footscray Football Club and the Collingwood Football Club. 3RIM subsequently decided it would not broadcast the Footscray matches.

Another Melbourne community radio station, 3WRB, indicated it intended to cover the Footscray matches. 3WRB had broadcast live coverage of Footscray matches during the 1993 AFL season.

On 25 March, Mr Justice Heerey declined to grant an injunction to stop 3INR and 3WRB from broadcasting the AFL matches.

Section 15 of the Broadcasting Services Act defines community broadcasting services as, services that are provided for community purposes; and are not operated for profit or as part of a profit making enterprise; and that provide programs that are able to be received by commonly available equipment; and are made available free to the general public ...' 

ABA TO INVESTIGATE RETRANSMISSION PROPOSALS

The ABA has commenced an investigation into requests from Imparja Television Pty Ltd, Queensland Satellite Television (QSTV), Nhulunbuy Corporation Ltd and Longreach Shire Council for permission to retransmit Imparja and QQQ television services.

Imparja Television and QSTV have put proposals to the ABA to deliver their respective television programming into parts of each other's service areas, so viewers can receive programs from

both services.

'The ABA has received a number of formal requests for permission to retransmit television services to the remote communities of Alice Springs, Mt Isa, Nhulunbuy and Longreach in the Northern Territory and far north Queensland,' said Giles Tanner, ABA Director Planning.

'The ABA is aware of the level of demand for additional services in these communities. However, the ABA is also concerned to ensure that granting per-

mission to retransmit these services does not have the effect of precluding other options for new television services which may better serve the needs of these communities,' said Mr Tanner. 'These kinds of requests would normally be considered systematically as part of the ABA's public planning process.'

The proposals for re-transmission have been made at the same time as the ABA approaches completion of its

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program. The intended amendment will also remove the word 'satellite' from the definition of 'drama program' and 'Australian drama program' to reflect the fact that the licence condition applies to all predominantly drama pay TV services, not just those delivered by satellite.

The proposed guidelines have been changed to reflect the limited scope of the current provisions and to outline the Minister's proposed amendment to the Act. The guidelines also state that the ABA will update the guidelines following the amendment to the Act.

4. New Australian drama definition

The definition of 'new' Australian drama program has been re-written to ensure that a program can not be claimed by more than one subscription television service in the same area of main reception. It also makes clear that drama programs previously broadcast on commercial or national television services are not considered 'new' Australian drama programs if broadcast by a pay TV service in the same area of main reception.

The use of the words 'first presentation' in the draft definition did not clearly reflect the ABA's intention that a prior cinema or video release would not prevent a program from being a new Australian drama program for pay TV. The re-wording of the definition now makes this clear.

Given that narrowcasting services are always limited in their appeal or reception the definition does not now exclude drama programs previously broadcast on narrowcasting television services from potentially being new Australian drama programs for pay TV. However, new Australian drama programming is not likely to appear on narrowcast services.

5. Enforcement

As suggested by the consultant's advice to the ABA, the guidelines refer to the mechanisms available to the ABA to enforce the condition on licensees who fail to comply.

The guidelines are available from the ABA. To receive a copy please contact Deborah Sims on (02) 334 7838.



RETRANSMISSION INVESTIGATION

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public planning process in remote areas. The ABA has decided to conduct an investigation before completing licence area plans for these areas because of the merit of the requests and because the demand for more services in these remote areas has already been identified.

'For example, the ABA has received expressions of interest from other independent and prospective service providers who say they wish to deliver new services into these remote parts of Australia,' said Mr Tanner.

Nhulunbuy and Longreach Councils have also applied to the ABA with proposals for extension of services into their respective areas.

To ensure the best long term outcome for people in remote Australia is obtained in line with the current planning process for television, the ABA has invited submissions from potential independent service providers in the relevant areas, from other interested parties and from the general public in the area. Submissions close on 8 July.

PLANNING

The ABA has responsibility for the planning and management of the broadcasting parts of the radiofrequency spectrum (essentially, the AM, FM, VHF and UHF frequencies). Most radio and television services in Australia are delivered using the radiofrequency spectrum.

The ABA has embarked on a national planning process for the broadcasting services bands with the object of optimising their use by broadcasters and other users, e.g. commercial televi-

sion, community radio, low power information services.

The planning process also allows the ABA to improve reception of existing national services (ABC and SBS), commercial and community services and for the introduction of new services where they are needed.

Planning decisions must balance a number of complex public interest considerations including demand and technical limitations. Thus, the ABA is conducting the planning process in an open and accountable way, by wide public consultation. Planning will progress systematically over the next two to three years Australia-wide, in accordance with planning priorities established in September 1993.

RE-TRANSMISSION OF EXISTING SERVICES (s.212)

Re-transmission of existing services is provided for under section 212 of the *Broadcasting Services Act 1992*.

Re-transmission within a licence area does not require ABA permission. However, the ABA's permission is required for re-transmission outside the originating licensee's service area.

Section 212 exempts a service provider from the regulatory regime of the Act. It also gives protection against legal action for services which do no more than retransmit programs transmitted by a commercial broadcaster.

The provision is not intended to stand in place of the planning and allocation of permanent licences.

The ABA must therefore consider re-transmission requests on their individual merits in light of its obligation to balance competing interests.

