



Community radio station 4ZZZ

Complaint

The ABA received a written complaint regarding a program broadcast by community radio station 4ZZZ on 27 January 1996. The complainant alleged that both the complainant's name and organisation were mentioned in a derogatory manner during the program and that the station had not made a logging tape of the program.

Relevant legislation

Clause 5 of Schedule 2 of the *Broadcasting Services Act 1992* states that:

(2) If a broadcaster broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address, a statement, a commentary or a discussion, the broadcaster must cause a record of the matter to be made in a form approved in writing by the ABA.

(3) Subject to this clause, a broadcaster must retain in his or her custody a record so made for a period of:

- (a) 6 weeks from the date on which the matter was broadcast; or
- (b) if a complaint has been made about

the matter for 60 days from the date on which the matter was broadcast;

or for such longer period as the ABA, in special circumstances, directs in writing.

Compliance with these requirements is a condition of licence.

Decision

The ABA found that 4ZZZ had not maintained logging tapes for the program in question, due to the fact that on the day of broadcast the logging equipment was inoperative and the announcer, being unaware of this, did not make a back-up tape of the program. Accordingly the ABA found that the licensee of 4ZZZ, Creative Broadcasters Limited, had breached the above licence condition in that it had failed to make or retain a record of matter broadcast. However, due to the unavailability of a tape of the program the ABA was unable to form any opinion in relation to the program's content.

The licensee informed the ABA that it had taken several steps to ensure, as far as possible, that a similar breach would

not occur in the future. These steps included:

- a compulsory staff meeting to inform all current staff of the requirements in relation to keeping a record of broadcast material;
- the installation of a new logging system which incorporates an emergency alarm to indicate any failure of the logging system;
- the inclusion in the Announcing Co-ordinator's job description of requirements to personally oversee the change over to a back-up system in the event of a breakdown of the main logger and to ensure that each announcer follows the back-up procedure whilst the main logger is down; and
- the distribution of back-up procedure documentation to all announcers.

Action taken

As a result of these steps the ABA decided not to take the matter further. The ABA informed the licensee that it would be monitoring 4ZZZ's compliance with the Act, and may take serious steps if future breaches its community radio broadcasting licence conditions were determined. The ABA also informed the licensee that it may request copies of log books and program tapes at any time in the future.

Tourist radio narrowcaster

Complaint

The ABA received a written unresolved complaint from the Community Broadcasting Association of Australia (CBAA) regarding the operations of Tourist Radio Pty Ltd, the licensee of a low-powered open narrowcasting radio service operating from Katoomba in the Blue Mountains area of NSW. The CBAA alleged that Tourist Radio Pty Ltd, operating under the call-sign 2KKK, was in breach of the licence conditions applicable to a low-powered open narrowcasting service. The allegation was that 2KKK was transmitting from a site different to that specified in its apparatus licence and was providing a service at a transmitter power exceeding that allowable under the technical conditions applicable to low-powered services.

The apparatus licence for 2KKK specifies the licensed site as Katoomba Council and specifies that the transmitter power shall not exceed 1 watt.

Relevant legislation

Compliance with the technical specifications of an apparatus licence is a condition of apparatus licence as per s.107(1)(e) of the *Radiocommunications Act 1992*. Any breach of a condition of an apparatus licence, may be an offence in terms of s.113 of the *Radiocommunications Act*:

A person must not, without reasonable excuse, knowingly or recklessly contravene a condition of an apparatus licence.

Under clause 11(c) of Schedule 2 of the *Broadcasting Service Act* it is a condition of each narrowcasting service

licence that the person will not use the broadcasting service in the commission of an offence against any other Act.

Assessment

Planning engineers from the ABA measured the field strength of the 2KKK signal they found the transmitter power was 0.3 watts over that specified by its apparatus licence and also that the site of the transmission facility was slightly different from that required by the apparatus licence. Following a request from the ABA in October 1995, 2KKK immediately rectified both problems.

Decision

The ABA found that 2KKK failed to operate a radiocommunications device in accordance with the technical



specifications referred to in its apparatus licence. Its transmitter power exceeded that specified in the apparatus licence. Its transmitter site differed from that which was specified in the apparatus licence. A breach of a condition of an apparatus licence may be an offence in terms of s.113 of the Radio-

communications Act. The ABA found that 2KKK used the broadcasting service in the commission of an offence against the Radiocommunications Act and thereby breached the condition of its narrowcasting service class licence set out in clause 11(c) of Schedule 2 of the Broadcasting Services Act.

Action taken

As the breach was not significant, was immediately remedied and as 2KKK is now operating in accordance with its technical specifications, the ABA does not intend to take action against the licensee in this particular instance.

Community radio station 2REM-FM

Complaint

On 13 June 1995 the ABA received a letter of complaint that the community radio station, 2REM-FM over a two day period, 30 and 31 May 1995, had breached the *Broadcasting Services Act 1992* in three ways:

- 1 2REM-FM had broadcast advertisements which did not contain acknowledgments recognising sponsorship or sponsorship tags of the station;
- 2 2REM-FM had broadcast advertisements in excess of time limitations as defined under the Act; and
- 3 2REM-FM had not kept the lawfully required recordings of the broadcasts.

Concerns were also raised in the complaint about advertisements that were produced by the nearby commercial station 2AY being broadcast on 2REM-FM, without permission. As this issue concerns copyright and therefore does not fall within the ABA's jurisdiction, the ABA did not assess it.

Relevant legislation

Clause 9 Schedule 2 of the Act prohibits advertisements on community radio:

the licensee will not broadcast advertisements, and the licensee will not broadcast sponsorship announcements otherwise than as mentioned in subclause (3) ...

Clause 2(1) Schedule 2 of the Act provides:

2(1) For the purposes of this Schedule, a person is not taken to broadcast an advertisement if:

- (a) the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and
- (b) the person does not receive payment or other valuable consideration for broadcasting the advertising matter.

Tagged sponsorship announcements

are permissible on community radio:

2(2) For the purposes of this schedule (other than paragraph 9(1)(a), the broadcasting by a community broadcasting licensee of:

- (a) community information material or community promotional material; or
- (b) a sponsorship announcement that acknowledges financial support by a person of the licensee, whether or not the announcement:

(i) specifies the name and address of, and a description of the general nature of any business or undertaking carried on by the person; or

(ii) promotes activities, events, products, services or programs of the person; or

(c) material that announces or promotes the service provided under the licence, including material (whether by way of the announcement or promotion of activities, events, products, services or otherwise) that is likely to induce public support, whether financially or otherwise, or to make use of, the services provided under the licence

is not taken to be the broadcast of an advertisement.

Assessment

The ABA found, on assessing tapes provided by the complainant (as no tapes were available from 2REM-FM), that advertising material originally broadcast on radio station 2KY had been re-transmitted on 2REM-FM. In considering the material the ABA took into account clause 2 (2) of Schedule 2, in terms of whether the material could be classified as a community-related promotion, whether financial support was acknowledged, and whether the material promotes a service provided under the licence.

Decision

1: broadcasting of advertisements

The ABA found that between 4 p.m. and 6 p.m. on 30 May 1995 2REM-FM broadcast 15 advertisements that were not 'tagged' in contravention of clause 9(1)(b) of Schedule 2 of the Act. On 31 May, between 7 a.m. and 9 a.m., the station broadcast a further 11 advertisements in breach of the same provision.

2: time limitations

Clause 9(3) Schedule 2 of the Act states: 9(3) A community broadcasting licensee may broadcast sponsorship announcements that run in total for not more than 4 minutes in any hour of broadcasting.

When the transmission time of the advertisement was calculated in the assessment period, the ABA found that 2REM-FM had breached clause 9(3) of Schedule 2 of the Act.

3: logs

The ABA also found that in failing to keep a record of material broadcast on those days 2REM-FM had contravened clause 5(3) of Schedule 2, which requires a broadcaster to retain a record of broadcast.

Action taken

The ABA has required that 2REM remedy the breaches by implementing appropriate procedures to clearly identify sponsorship announcements, and by introducing logging equipment to ensure that records were kept of broadcasts.

The legal requirements relating to sponsorship announcements are now a regular item for discussion at presenters' meetings at the station.