



The ABA has decided to appeal against the recent Federal Court decision that the Australian Content Standard for commercial television is to include New Zealand programs.

ABA appeals Australian content judgment

The ABA has decided to appeal against the recent Federal Court decision that the Australian Content Standard for commercial television is invalid in so far as it does not include New Zealand programs.

In a Notice of Appeal to the Full Federal Court, the ABA has sought a review of the ruling that it was open to the ABA to determine a standard which is consistent with the Protocol on Trade in Services (the Protocol) of the Australia New Zealand Closer Economic Relations - Trade Agreement (CER Agreement).

In his judgment, Justice Davies had proposed that the obligation for commercial television stations to broadcast Australian programs could be reduced by the extent that they broadcast New Zealand programs. The ABA is of the view that such an approach could frustrate the cultural policy objective of the *Broadcasting Services Act 1992*.

The Australian Content Standard for commercial television, which was implemented in January this year, requires the transmission of Australian made programs and minimum levels of Australian

preschool programs, children's drama, adult drama, and documentaries.

Project Blue Sky, representing the New Zealand film and television production industry, challenged the validity of the standard on the basis that it was not determined in a manner consistent with Australia's obligations under the CER Agreement.

Justice Davies also ruled that the Australian Content Standard will remain in place while the ABA develops a new standard which is consistent with the Protocol of the CER Agreement. Commercial television licensees will have to meet their Australian content obligations during this period, with any claims for inclusion of New Zealand programs being considered on a case by case basis by the ABA.

The ABA has been granted an expedited hearing of the appeal in order that the court might deliver its judgment before the ABA determines the new standard.

The ABA has until 31 December 1996 to vary the Standard to include New Zealand. It will therefore seek public comment on the varied standard concurrently with its appeal.

The review

In September 1995, the ABA concluded a wide-ranging public review of the Australian content requirements for commercial television. The new Australian Content Standard and variations to the Children's Television Standards which came into effect on 1 January 1996 are the result of this extensive consultation by the ABA.

The ABA commenced its formal review of the standard applying to commercial television in July 1994. During the review the ABA released a number of papers and draft standards for comment and received both written and oral submissions from members of the broadcasting and production industries, representatives from New Zealand and the public.

Review conclusion

In its review the ABA came to the conclusion that there was a real legal impediment to the recognition of New Zealand persons and programs in the standard. The ABA took the view that it would be outside

its legal power to include New Zealand programs in the Australian Content Standard. The definition of 'Australian program', for the purposes of the Australian Content Standard, does not include programming produced by New Zealanders.

Project Blue Sky took the view that the ABA's standard contravened Australia's treaty obligations under the CER Agreement by not according national treatment to New Zealand programs.

Court decision

In his ruling of 2 August 1996, Justice Davies has made clear that the ABA cannot include New Zealand persons or programs as Australian for the purpose of the Australian Content Standard. However, His Honour said it was otherwise open to the ABA to determine a standard which is consistent with the Protocol on Trade in Services (the Protocol) of the Australia New Zealand Closer Economic Relations - Trade Agreement (CER Agreement).

