



community information material or community promotional material, then the statutory exemption contained in clause 2(2) may not apply.

In this case, the ABA is of the view that the classifieds do not fall within clause 2(2)(a) of Schedule 2 of the Broadcasting Services Act and are not exempted from the prohibition on advertising.

In this context, the ABA is satisfied that the relevant community be defined by reference to the particular geographic area served by 5YYY, particularly those members of the community who reside in the Whyalla region.

The radio classifieds are placed by individual members of the community, rather than commercial traders.

The ABA is of the view that whether the information contained in an advertisement is community information (or community promotional material) or not depends on the content of the advertisement and not the intention of the person who procures the advertisement. It is an objective test which considers whether the broadcast itself provides community information, regardless of the subjective intention of the broadcaster or individual procuring the advertisement.

The content of and the needs met by the classifieds on 5YYY were in no way

different from classifieds broadcast on commercial radio or placed in newspapers. Classifieds are aimed principally at meeting the need of the seller to obtain a purchaser for his wares, regardless of the nature of the goods or whether the seller is a private individual or seeking buyers as part of a profit-making enterprise.

The classifieds on 5YYY would have been broadcast in direct competition with the classified advertising placed on commercial radio or newspapers.

The classifieds were not directed at the community as a community, rather they were more likely to be of interest to the individuals within that community pursuing their individual interest.

ABA is therefore not satisfied that the classifieds constituted 'community information material or community promotional material'.

Decision

The ABA is of the view that the classifieds referred to by the complainant constitute advertisements as they do not fall within the terms of clause 2(2)(a) of Part 2 of Schedule 2 of the Act.

In addition, they were not sponsorship announcements as they did not contain the relevant sponsorship announcement tag.

Accordingly, the classifieds broadcast by 5YYY were broadcast in breach of clause 9(1)(b) of Schedule 2 of the Act which provides that a licensee will not broadcast advertisements.

Action taken

This is the first time the ABA has investigated such a matter and therefore sets a precedent for community broadcasters.

The ABA proposes to take no action in relation to the breach because:

- it would be the first occasion in which the licensee has been found in breach of this provision; and
- at the time of the breach the licensee did not have the benefit of the ABA's reasoning in relation to the categorisation of classifieds.

However any further breaches will be viewed most seriously.

In response to the ABA's finding, 5YYY have undertaken that all classifieds broadcast on the station will carry a tag acknowledging the lodger as a supporter of community radio in Whyalla.

The ABA has provided the Community Broadcasting Association of Australia (CBAA) with a copy the ABA's full report on this investigation to assist CBAA members with compliance.

Sportsworld

Complaint

BTQ 7, Brisbane, broadcast the sports program 'Sportsworld' containing a segment about the Australian Rugby League (ARL) and the newly formed Super League, on 9 April 1995. As part of the program, there was a press conference concerning the battle for team players between the ARL and Super League. When the conference mediator, Paul Vautin, called an end to the conference a journalist said that he wanted to ask another question, and questioned Mr Vautin's decision to end the conference. Paul Vautin, when questioned, repeated that the conference was ended and called the journalist a 'fat heap of shit'.

The ABA received a letter from the

complainant on 9 June 1995 alleging that the licensee had acted contrary to the FACTS Code. The complainant was concerned that language broadcast during the program was inappropriate.

Relevant code

Section 2.10 of the code states:

2.10 Material classified 'G' must not contain any matter likely to be unsuitable for children to watch without the supervision of a parent.

2.10.3 *Language:* Mild expletives or language which may be considered socially offensive or discriminatory may only be used in exceptional circumstances when absolutely justified by the story line or program context.

The licensee's response

BTQ had considered the complaint and decided the action of the mediator had been justified because it was a major sports story which highlighted the tensions spilling over into rugby league's relationship with the media. In addition:

Segments from various interviews during the previous week with players and officials from both sides were included, to illustrate the way in which battle lines were being drawn to in the struggle of each side to gain mastery of the situation.

The press conference demonstrated the considerable ill feeling between the press and those conducting the conference. BTQ stated:



Questions were abruptly cut off and Paul Vautin announced that the conference was at an end. It was when members of the press questioned his authority to shut down the conference so abruptly that Vautin responded with the pejorative, 'You big [sic] heap of shit. [The tape showed the comment was greeted with laughter.]

BTQ also stated that their audience is well aware that rugby league is a tough sport involving tough participants, and to sanitise comments would fail to properly convey what took place.

Assessment

The program was broadcast between 9 a.m. and 11 a.m. on Sunday morning, during a 'G' classification period.


The segment in question included a number of interviews with rugby league players and officials regarding the ARL and Super League. It was clearly visible in the segment, prior to the use of the expletive, that there was a certain amount of tension at the press conference. The comments from the players and officials and the reporter's comments confirmed this.

There is nothing in the segment to suggest that this was an exceptional circumstance justifying the use of an expletive in either the story line or context. This was a pre-recorded segment, and therefore the broadcast of the expletive was not accidental. It was clearly obvious prior to the use of the word 'shit' that a certain amount of tension existed. The expletive could have been deleted and was not absolutely justified by the story line or program context.

Decision

The ABA is of the view that the licensee, Brisbane TV Limited (BTQ7), failed to comply with section 2.10.3 of the code by including a mild expletive which may be considered socially offensive when not absolutely justified by the story line or program context.

Action taken

The ABA considers that no further action is necessary as it is the network's first breach in relation to this provision, and because the network has taken this matter quite seriously by circulating the decision throughout the network and, in particular, to sports producers in each State. 

The United States Telecommunications Act was passed on 8 February 1996 and has opened marketplace competition and eased government regulation. **Alison Cook**, ABA Policy section, takes a look at the new Act and its main features.

New telecommunications legislation for the United States

The new Telecommunications Act in the US should encourage convergence and the consolidation of the telephony, cable and broadcasting industries.

It replaces the Communications Act of 1934 which was written before the advent of television and when the United States had just one telephone company.

Although the Bill went through Congress with wide support, the provisions for allocating channels for the transition to digital television had a troubled passage. At the last moment they decided that the subject of auction of digital channels warranted separate consideration.

The legislation had included provisions for the Federal Communications Commission to issue licences for digital services, initially only to existing broadcasters. Broadcasters would transmit both digital and analog programming during a transition period after which they would have been required to give up the analog channel. As congress has now put the issue on hold the method of allocation of digital channels remains open.

Some Provisions of the Act

• Restrictions on violent content

Television sets sold in the US will have an in-built V-chip which will enable viewers to block programs. The broadcast industry has one year to develop a ratings system for television programming and these ratings will be electronically coded into transmissions. In the absence of ratings, the Federal Communications Commission (FCC) will establish guidelines and recommend procedures.

It will be an offence to knowingly provide indecent material through an interactive computer service.

• **Ownership:** Television station owners will be able to expand their reach to 35 per cent of all television households.

The FCC will revise rules which limit broadcasters to one television station per market. Rules barring ownership of more than one broadcast network have been revised—a network could start a new network (but not buy an existing one).

The national limit on the number of radio stations one company can hold has been lifted and local limits will be relaxed.

The FCC will revise rules which limit cable and television companies in the same market. There will be a limit of 10 per cent cross interest between local telephone and cable companies.

• **Broadcast licences:** Broadcast licences will be granted for eight years, (previously) seven for radio and five for television. Renewal of licences will be more certain—renewal being granted if the station has served the public interest with no serious violations or pattern of rule violation. Competing applications will not be considered unless licence renewal has been declined.

• **Cable/ telephony :** Telephone companies can now provide information and video services.

Regional telephone companies will be able to provide long distance telephone services.

Local telephone companies must allow other carriers to interconnect with their facilities. They are also required to negotiate with new entrants for number portability.

Cable companies will be able to enter into telephone business and will have rate regulations lifted when local telephone companies compete.

• **Universal service:** Universal service will be defined within nine months and funding mechanisms developed.

The FCC is directed to promote access to advanced telecommunications services for schools, libraries and health care providers. 