



# 'Better gay sex', Channel 31

## **Complaint**

In January 1996 the ABA received a number of complaints about a program broadcast on 15 January 1996 on Channel 31 Sydney entitled 'Better Gay Sex'. The program was broadcast by South Pacific Network Pty Limited ('SPN') on the sixth channel, which was being used at the time to provide a community television service in Sydney on a trial basis. The complainants felt that the program, which dealt with the sexual practices of homosexuals and contained explicit visual and aural material, was grossly offensive and pornographic. The video of this program had originally been classified 'R' for sex education purposes by the Office of Film and Literature Classification.

## **Background and relevant legislation**

In September 1992 the House of Representatives Senate Committee on Transport, Communications and Infrastructure recommended that, pending the completion of a ministerial review into the television broadcasting industry (due by 30 June 1997), the nominally spare 'sixth' television channel be made immediately available for community access television on a continuing trial basis.

As there is no provision for the ABA to issue licences for temporary community television services, the ABA has issued apparatus licences to suitable community broadcasting groups in various parts of Australia to provide their service under a class licence. Because services provided under class licences are in some way limited in their appeal and/or audience reach they are subject to minimum levels of regulation.

There is currently no code of practice applicable to class licences, which are also not subject to restrictions on the broadcast of R rated material. The *Broadcasting Services Act 1992* sets out the

only conditions applicable to broadcasting services provided under a class licence one of these states that a person providing a broadcasting service under a class licence will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory.

Under the *Radiocommunications Act 1992* (Radcoms Act) Community Television Sydney Limited (CTS) was issued an apparatus licence in March 1993 for the purpose of providing an open narrowcasting service, one of the five categories of service able to be provided under a class licence. Under the Radcoms Act, the licensee of an apparatus licence may authorise other persons to operate a transmitter under the licence. In December 1993, CTS and SPN entered into a contract and agreed to provide transmitter equipment for CTS in return for access to broadcast time. However, in October 1995 CTS wrote to SPN terminating this contract and directed SPN to cease any transmissions on Channel 31. Despite this direction SPN continued to telecast its programs. In November 1995 the Spectrum Management Agency, the relevant statutory body charged with issuing apparatus licences and overseeing authorisations to operate transmitters, advised SPN that in its view the authorisation from CTS to SPN to operate the transmitter for Channel 31 had been withdrawn in October 1995.

At the time of the broadcast of 'Better Gay Sex' CTS held an apparatus licence issued by the SMA to cover the period 27 February 1995 to 28 February 1996. This licence specified the transmitter site as 349 Pacific Highway, Artarmon. This is the transmitter which SPN, which did not have an apparatus licence, was using at the relevant time.

## **Decision**

Regarding the content of the program 'Better Gay Sex', the ABA determined

that the broadcast of this program was not an offence under any Commonwealth or State Act or any other law of NSW. The ABA also determined that there was no applicable code of practice at the time of broadcast.

Regarding the actual transmission of this program however, the ABA determined that the service provider, SPN, failed to comply with a condition applicable to services provided under a class licence in that it used the broadcasting service, known as Channel 31, in the commission of an offence against another Act (the Radcoms Act) by knowingly operating a transmitter, otherwise than as authorised by an apparatus licence, without reasonable excuse.

The ABA also noted in its investigation report that, although there is no condition placed on services provided under a class licence regarding the broadcast of R rated material, this type of material is unsuitable to be broadcast by providers of community television services under class licences. In its report the ABA strongly encouraged providers of community television services to broadcast material in accordance with the classifications and restrictions which apply to commercial television broadcasting services.

## **Action taken**

At the time that the ABA's investigation report was finalised, 18 October 1996, SPN was in liquidation. The ABA therefore wrote to the liquidator of SPN seeking comments regarding what action the ABA should take as a result of its findings in relation to the broadcast by SPN of the 'Better Gay Sex' program. The liquidator declined to comment and as SPN was in liquidation the ABA decided to take no further action. The ABA would, however, take note of this breach when considering any future application by SPN for an apparatus licence.