



## Northgate Communications

### Category of service

#### Complaint

On 22 August 1997 the ABA commenced an investigation into whether or not Northgate Communications Australia Pty Ltd breached a condition of licence through its broadcast of adult erotic material.

The investigation initially examined two services provided by Northgate—Spice and Nightwatch. The ABA was concerned that, should either or both of these services be a subscription television broadcasting service, then it was possible that they may be in breach of one or other of the conditions of licence associated with these services.

In September 1997, Northgate advised the ABA that the proposed Nightwatch service would not be provided and, from 1 October 1997, the Spice service would be renamed Nightwatch. This new Nightwatch service would broadcast R classified programming. The ABA acknowledged Northgate's advice in this regard. However, the ABA continued its investigation, as the concerns remained in relation to the compliance by this new service with the conditions of licence.

#### Relevant legislation

Clause 10(1)(g) of Schedule 2 of the Broadcasting Services Act provides:

the licensee will ensure that access to programs classified as R by the Office of Film and Literature Classification is restricted by disabling devices acceptable to the ABA but **will not broadcast such an R classified program** until the ABA has completed extensive, Australia-wide qualitative and quantitative research on community standards of taste and decency in relation to the classifications for pay television and on what levels of violence and depiction of sex should be allowed, and the ABA has recommended, and **the Parliament has, by resolution of each House, approved, the broadcast of such programs;** (*emphasis added*)

The ABA submitted its report, *R Classified Programs on Pay TV*, to the Parliament in November 1994. To date, the Parliament has not approved the broadcast of such programs on subscription television broadcasting services.

The Act originally placed no prohibitions on the broadcast of X or R classified programs on subscription narrowcasting television services. However, on 27 November 1997, the Act was amended to include a prohibition on the broadcast of X classified material and a number of restrictions on the broadcast of R classified material.

These limitations were incorporated into the codes of practice for this sector, which were registered and came into effect on 12 September 1997.

#### Decision

The ABA conducted this investigation concurrently with its consideration of an application from Northgate for an opinion on the category of service for the new Nightwatch service.

On 22 January, the ABA gave its opinion, under section 21 of the Act, that this service fell within the category of subscription television broadcasting, rather than subscription television narrowcasting as claimed by Northgate.

On the basis of information provided by Northgate, including a sample tape of programming, the ABA found that the programming provided on the Nightwatch service was at the R level of classification, in accordance with the OFLC's Guidelines for the Classification of Films and Videotapes.

The ABA formed the preliminary view that, in its provision of the new Nightwatch service, Northgate had breached the requirements of clause 10(1)(g) of Schedule 2 of the Act in that it provided a subscription television broadcasting service broadcasting R classified programs.

In response to the ABA's invitation to comment pursuant to section 180 of the Act, Northgate advised that:

... effective immediately, Northgate will commence Nightwatch at 11 p.m. daily. Northgate takes this matter very seriously and would like your response as to whether a breach has occurred considering Nightwatch's new commencement time.

Northgate also advised that the Nightwatch service will be made available only after 11 p.m. (concluding at 5 a.m. the following day), and (as



# Investigations

previously) in combination with the payment of an additional subscription fee (\$6.95 on a pay-per-view basis). On these grounds the ABA formed the view that, as a result of the proposed changes, the Nightwatch service could be considered a subscription television narrowcasting service. This view is consistent with the ABA's reasoning for other similar services.

The advice provided to the ABA by Northgate about changes made to the operating conditions of the Nightwatch service did not alter the ABA's view that the new Nightwatch service being

provided by Northgate before 11 February 1998 was in breach of the licence condition set out at clause 10(1)(g) of Schedule 2 of the Act.

## **Action taken**

In view of the changes made to the service the ABA decided not to take further action with regard to this matter.

Northgate ceased providing any subscription television services in May 1998.

## Classic Hits FM, Qld

### **Category of service**

#### **Complaint**

In January 1998 the ABA received a complaint from the licensee of two commercial radio stations on the Sunshine Coast, Queensland. The complainant alleged that Classic Hits FM Pty Ltd, whilst holding apparatus licences for the provision of low power open narrowcasting services, was providing a commercial radio broadcasting service in breach of section 133 of the Broadcasting Services Act.

#### **Relevant legislation**

Section 18 of the Act states:

Open narrowcasting services are broadcasting services:

- (a) whose reception is limited:
  - (i) by being targeted to special interest groups; or
  - (ii) by being intended only for limited locations, for example, arenas or business premises; or
  - (iii) by being provided during a limited period or to cover a special event; or
  - (iv) because they provide programs of limited appeal; or
  - (v) for some other reason, and
- (b) that comply with any determinations or clarifications under section 19 in relation to open narrowcasting services.

Section 133 of the Act states:

A person must not provide a commercial radio broadcasting service unless the person has a licence to provide that service.

Penalty: 2000 penalty units (1 penalty unit equals \$110)

#### **Decision**

The ABA considered the information and found that the service being provided by Classic Hits FM did not satisfy the section 18 criteria for open narrowcasting services. The ABA also found that Classic Hits FM was providing a commercial broadcasting service as defined in section 14 of the Act, but did not have a licence to provide a commercial radio broadcasting service. The ABA therefore found Classic Hits FM to be in breach of section 133 of the Act.

#### **Action taken**

The licensee responded it would take the necessary steps to ensure that the station conforms to the narrowcasting criteria in section 18 of the Act. The licensee also intended to apply to the ABA for an opinion as to which category the changed service falls into.

Providing the licensee immediately changes the service so that it conforms to the narrowcasting criteria and obtains a section 21 opinion to this effect, the ABA will be taking no further action at this stage.

Should the licensee not seek an opinion within 28 days of the date of the report, the ABA will require further sample tapes and a full program schedule so it can assess whether the service is meeting the requirements of section 18 of the Act.

It has since come to the ABA's attention that the service will shortly be sold and that the new owner intends to change the service significantly. The ABA will continue to monitor this situation.