



The ABA has released draft amendments to the Australian Content Standard for commercial television, for public comment.

# Proposed amendments to Australian content standard

**T**he ABA has released draft amendments to the Australian Content Standard for commercial television for public comment.

The ABA is reviewing the standard in response to a decision by the High Court of Australia which found the current standard to be inconsistent with the Trade in Services Protocol to the Australia New Zealand Closer Economic Trade Agreement (CER).

'The ABA proposes changing the standard to ensure that it promotes the role of Australian television in reflecting a sense of Australian identity, character and cultural diversity, while complying with Australia's obligations under the Closer Economic Relations Trade Agreement with New Zealand,' said Professor David Flint, ABA Chairman.

The proposed standard accords national treatment to New Zealanders and New Zealand programs in accord with the High Court's decision. While there will now be

no legal barrier to the entry of New Zealand programs, the standard still retains its focus on Australian content obligations.

'Australians will no doubt still be able to see Australian programs under this standard. We understand there is an extremely strong demand by Australians for Australian programs,' said Professor Flint.

The ABA is proposing minimal changes which ensure that the standard provides a safety net for vulnerable categories of Australian programs such as children's drama and documentaries.

For children's C drama to count towards the children's drama quota, licensees or networks must pay a minimum fee of A\$45 000 per half hour for the broadcasting rights. This will ensure that broadcasters continue to make an appropriate contribution to the production of high quality children's drama programs.

The amendments reduce the time period in which adult

drama (other than feature films) must be broadcast if it is to be counted under the drama quota of the standard.

The amendments also strengthen the definition of first release programs to programs broadcast within eighteen months of completion of production.

The revised standard will be closely monitored and reviewed by the ABA after the first two years of operation.

## Review

The ABA is in the final stages of a review of the program standard for Australian content on commercial television. The review is in response to a High Court ruling on 28 April 1998 which found the ABA's current standard to be inconsistent with the Trade in Services Protocol to the CER.

In July 1998, the ABA released a discussion paper seeking comment in relation to its review. The proposed standard reflects the ABA's

consideration of views expressed in submissions and consultative meetings.

## Draft standards


In drafting the amended standard the ABA has preserved the structure of the current standard. The requirements of the standard are expressed in terms of obligations to broadcast Australian programs. However the proposed new standard allows that these obligations may be decreased by the extent to which equivalent New Zealand programs, Australia/New Zealand programs and Australian official co-productions are broadcast by the licensee.

The ABA seeks comment on its amendments to the standard and consequential changes to the Children's Television Standards. The ABA seeks feedback on the following proposals.





## Proposals

- Introduce separate and equivalent creative elements tests for Australian and New Zealand programs and recognise programs that have a mix of Australian and New Zealand creative elements.
- Include a provision in the standard giving the ABA discretion to disallow a program that meets a creative elements test but has significant non-Australian or non-New Zealand content.
- Not adopt any form of on-screen test in the revised standard.
- Remove the 10BA gateway from the revised standard.
- Retain Australian official co-productions as a gateway in the revised standard.
- Increase the documentary subquota from 10 to 20 hours a year, but make no changes to drama or children's drama subquota.
- Make no changes to the transmission quota.
- Introduce a requirement that for children's C drama programs to count towards the children's drama quota, licensees or networks must pay a minimum fee of A\$45 000 per half hour for the broadcasting rights.
- Reduce the time period in which adult drama (other than feature films) must be broadcast if it is to be counted under the drama quota of the standard. The time band would be reduced from 5.00 p.m. – 12 midnight to 5.00 p.m. – 11.00 p.m.
- Define first release programs to exclude back catalogue material by requiring that programs other than feature films are broadcast within eighteen months of completion of production.
- Place no specific limits on subsidised programs.
- Include telemovies previously broadcast on pay TV as eligible first release drama.
- Tighten the definition of documentary to exclude sports coverage and light entertainment programs.
- Redraft the definition of sketch comedy to make clear that it is comprised of individual sketches.
- Include specific criteria relating to the creative elements test for animation.
- Include a grandfather clause for programs which comply with the current definition of Australian program, documentary program and sketch comedy program and have been acquired pursuant to a legally binding agreement or arrangement entered into before the release of the draft standard. 

**The proposed amended standard and accompanying discussion paper, along with proposed consequential amendments to the Children's Television Standards, are available on the ABA's web site at <[www.aba.gov.au/what/program/oz\\_review](http://www.aba.gov.au/what/program/oz_review)>.**

**Details on how to make a submission are included in the discussion paper.**

**The deadline for submissions is 8 December 1998.**

**The ABA has now concluded its CanWest/Ten Group investigation.**

**T**he ABA has found that Canadian company CanWest Global Communications Corporation's failure to comply with the terms of a notice to remedy a breach of the Broadcasting Services Act for a period of four months was unintentional and the breach was of a minor technical nature. The clause that was of concern to the ABA has now been removed from the relevant document.

Under the terms of the notice issued by the ABA on 4 April 1997, CanWest had until midnight on 6 April 1998 to remedy the breach which resulted from it being in a position to control the Ten network television licences. The Act says a foreign person must not be in a position to exercise control of a commercial television licence.

As a result of a series of major transactions involving the float of Ten Network Holdings, the ABA found the inclusion of a clause in a transaction document resulted in CanWest still being in a position to exercise control of the licences. The ABA has decided this breach was rectified on 30 July 1998.

In considering what action to take, the ABA noted CanWest had made significant efforts to remedy the original breach through a series of major transactions. The non-compliance with the notice resulted from the inclusion of a clause which gave CanWest veto rights over amendments

ABA concludes CanWest/Ten network control investigation