



The proposed variations to the Australian Content Standard are of a technical nature, and aim to clarify the operation of the standard and give effect to its policy intent.

Variation to the Australian content standard proposed

The ABA proposes to vary the Australian Content Standard for commercial television.

'The Australian Content Standard was extensively reviewed in 2002, and the ABA is confident that the revised standard is operating well. The proposed variations are of a technical nature to clarify the operation of the standard, and give effect to its policy intent,' said Professor Flint.

The first proposed variation is to the definition of 'independent producer'. The second is to Australian first release documentary programs, bringing the provision for documentaries into line with that applying to programs counting towards the Australian transmission quota.

The third variation is to broadcasters' compliance with the standard, allowing the ABA to determine the form and times in which compliance information is provided to the ABA.

Variation 1: definition of 'independent producer'

The ABA considers a variation

to the definition of 'independent producer', section 6 of the standard is required to clarify the policy intent and range of circumstances in which 'independent producer' status can be claimed.

The intent of permitting certain production companies the status of 'independent producer' is to encourage the purchase of programs from the independent production sector. Under section 11 of the standard, which sets out the formula for calculating the drama score for an Australian drama program, programming acquired from an independent producer for a licence fee greater than a specified amount earns the higher format factor (3 points).

The proposed variation allows a production company that is a 'related body corporate' of a program supplier, licensee, or holder of a subscription television broadcasting licence, to be considered an 'independent producer' in relation to a program when it is supplying that program to bodies *other than* the body to which it is related.

For example, when a production company that is a related body corporate of a network

sells a program to that network, the format factor of 2.5 applies because the production company is not within the definition of 'independent producer'. When the production company sells a program to a network other than that to which it is related, it will be regarded as an 'independent producer', and format factor 3 applies (see scenario 1).

Format factor for affiliate licensees

Network is related body corporate to program producer

Under the proposed variation, a network affiliate could purchase programs direct from an independent producer and ob-

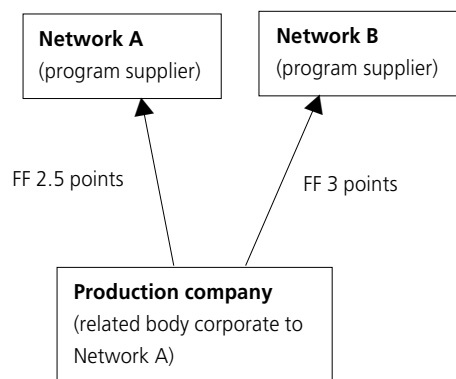
tain a higher format factor than it would if it purchased the same program from the network.

This situation would arise if the network was a related body corporate of the production company, but the affiliate was not related.

The affiliate could choose from two options in sourcing programs.

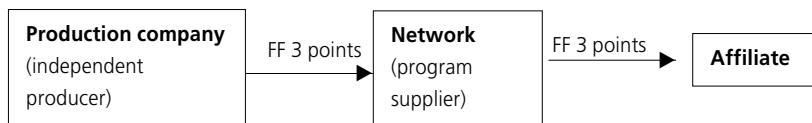
1. It could buy a program direct from an independent producer, and claim format factor 3. In order for the higher format factor to apply, the affiliate would have to pay at least \$300,000 per hour for the program.

Scenario 1





Scenario 2



2. It could buy a program from the network (program supplier), and claim format factor 2.5. This format factor would apply regardless of the price paid by the affiliate for the program.

The ABA seeks comments on this implication of the proposed variation.

Variation 2: Network purchases programs from independent producer

The ABA was asked to consider whether there was a defect in the operation of the standard in relation to the definition of 'independent producer' and network affiliates. It was put to the ABA that the current standard appeared to have the effect that, although a network could claim a format factor of 3, its affiliates were denied any preferential drama score treatment in respect of programming it supplied to them. This situation arose, it was said, where programming was supplied to a network by an independent producer, and then on-supplied

to the affiliate by the network.

The ABA considered this matter carefully and concluded that the current wording of the standard does not lead to this result. The format factor is determined by the nature of the program and the amount of money for which it has been 'acquired'. As 'acquired' is defined in the standard to mean 'acquired by a licensee, or its program supplier, under a legally binding agreement', and 'program supplier' is defined as 'a commercial television network that supplies a licensee with programs,' network affiliates have the same format factor and drama score as their suppliers. The ABA therefore considers that there is no need to vary the standard (scenario 2).

Variation 2: Broadcast hours for documentaries

The second proposed variation is to section 16 of the standard, which relates to Australian first release documentary programs.

The variation provides that documentary programs may only be counted towards the quota for Australian first release documentaries if they are broadcast between 6 am and midnight. This change brings the provision relating to documentaries into line with those applying to programs making up the Australian transmission quota.

Variation 3: Licensee reports on compliance

The third variation proposed introduces a new Part 12, which will allow the ABA to determine the form and the times in which compliance information must be provided to the ABA.

Consultation

Under section 126 of the Broadcasting Services Act, the ABA must, before varying a standard, seek public comment on the proposed variations.

For more information

More information about the proposed variation is available on the ABA's web site at www.aba.gov.au.

The ABA seeks public submissions on the proposed variation.

Submissions closing date

16 April 2004.

Written comments should be addressed to
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ABA

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or emailed to info@aba.gov.au.