



The ABA has completed two investigations into Free XTV, Backroom and Sexz. TV, adult services broadcast by satellite into Australia from overseas.

Investigation into adult satellite services concludes

The ABA has completed its investigations into Free XTV, Backroom and Sexz. TV, adult services broadcast by satellite into Australia from overseas.

The ABA found that Canal Europe Audiovisual SA, a Luxembourg-based corporation, breached the class licence conditions and code of practice for subscription narrowcasting television services by broadcasting 'X' classified programs on Free XTV and Backroom.

It also found that Magnetic Enterprises Ltd, a company based in Vanuatu, breached the code of practice for subscription narrowcasting television services by broadcasting adult programs on Sexz. TV that would be likely to be classified as 'X' by the Classification Board (Office of Film and Literature Classification).

As all of these services have now ceased broadcasting into Australia, the ABA considers the matters to be concluded.

Under class licence conditions and codes of practice for subscription narrowcasting television services, programs classified as X or RC by the Classification Board are prohibited from being broadcast in Australia.

The origin of the programming in another country, and

its transmission via satellite from overseas, does not take a broadcasting service outside the operation of the Broadcasting Services Act.

As long as the 'broadcasting service' is received within an Australian territory, and the person in control of the service intends to provide it here, the licensing provisions of the Broadcasting Services Act can be enforced against foreign persons who broadcast from outside Australia.

Class licence condition and codes of practice

Subscription narrowcasting television services operate under a class licence. Class licences are for non-mainstream broadcasting service categories and do not require individual licences. Class licences are standing authorisation for anyone to provide a broadcasting service, subject to their compliance with the conditions of the relevant class licence.

The class licence condition for subscription narrowcasting services in the Broadcasting Services Act prohibits the broadcast of 'a program that has been classified RC or X by the Classification Board' (Schedule 2 Part 7 clause 11(4) refers).

The *Australian Subscription Television and Radio Association (ASTRA) Codes of Practice Subscription Narrowcast Television Revised July 2003* (code 3.3) states that '[p]rograms that are either classified X or are refused classification (or would be if presented for classification) by the Office of Film and Literature Classification will not be broadcast by television subscription narrowcasters'.

Chronology

- 18 March 2004: the ABA initiated investigation.
 - 15 April 2004: formal terms of reference for the investigation released.
 - 6 May 2004: the ABA sent notices to parties it believed could assist the ABA.
 - 10 June 2004: the 'adult service' Sexz. TV ceased broadcasting on New Skies Satellites NV's NSS6 in Australia.
 - by September 2004: the 'adult service' Backroom ceased broadcasting on New Skies Satellites NV's NSS6 in Australia.
 - by October 2004: the 'adult services' BlueKiss and BlueKiss Express ceased broadcasting on New Skies Satellites NV's NSS6 in Australia.
- On 23 November 2004 the ABA sent its preliminary investigation reports into adult satel-

lite services to affected overseas broadcasting service providers. In keeping with the ABA's practice of observing administrative law principles of procedural fairness to those affected by a decision, the broadcasting service providers were given until 14 January 2005 to make comment on the ABA's preliminary investigation findings.

On 3 February 2005 the ABA sent copies of the final investigation report to Canal (Free XTV/ Backroom), and to other affected parties for comment, by 25 February 2005. A revised preliminary investigation report for Magnetic Enterprises Ltd (Sexz. TV) was also sent to affected parties for comment by 25 February 2005.

In February 2005 the 'adult service' Free XTV ceased broadcasting on New Skies Satellites NV's NSS6 in Australia. ☐

Investigation reports

The two investigation reports, *Investigation into Free XTV and Backroom, 'Adult Services' Broadcast by Satellite into Australia from Overseas Locations*, and *Investigation into Sexz. TV, an 'Adult Service' Broadcast by Satellite into Australia from Overseas Locations* are available on the ABA website, www.aba.gov.au/tv/investigations/projects/adult_satellite/index.htm