



ACMAsphere

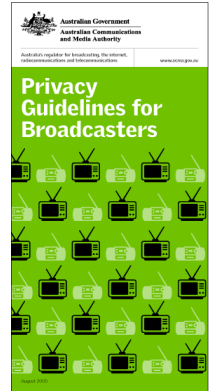
Australia's regulator for broadcasting, the internet,
 radiocommunications and telecommunications

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Privacy guidelines for broadcasters launched

ACMA has released a booklet, *Privacy Guidelines for Broadcasters*, to provide guidance to broadcasters and the public about issues relating to privacy that broadcasters might encounter in their everyday practice. In launching the guidelines in Sydney on 23 August, ACMA Acting Chair Lyn Maddock acknowledged the extensive and valuable input from all broadcasting sectors in developing the guidelines, particularly the contributions of Free TV Australia (representing commercial television), the Australian Subscription Television and Radio Association (ASTRA) and Commercial Radio Australia. An extract from her speech at the launch follows.



The booklet deals with an important issue—how to balance respect for an individual's privacy with the media's role of reporting matters of public interest. On many occasions there will be no easy answer to this question. However, we hope that these guidelines will help to raise the level of media and

public awareness about the issues.

I'd like you to consider the following two stories.

The first is a story that was broadcast on a national commercial television current affairs program about the drug taking practice known as 'chroming'.

Amongst other things, the

story included shots of young people chroming in a public park and interviews with two teenage 'chromers'. The two teenagers were identified by their first names and were clearly visually identifiable. They were described as being 14 and 15 years old.

The second story comes from commercial radio.

A caller to a talkback program said that her husband, who she named and who was known to the presenter, was having an affair with a woman. The caller then gave the full name of the woman, who was also known to the presenter, and over the next few minutes gave more personal information about her, including her marital

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Racing tips company fined for breaching Spam Act

ACMA recently fined two companies a total of \$13,200 for breaches of the *Spam Act 2003*. The companies sent out more than 50,000 commercial SMS messages marketing an investment scheme for software providing horse racing tips.

Global Racing Group Pty Ltd, based in Queensland, was issued with infringement notices for penalties of \$11,000 for sending unsolicited commercial SMS messages in breach of the Spam Act. The company arranged for the messages to be sent in a

series of campaigns targeting Australian mobile numbers between June and December 2004.

Australian SMS Pty Ltd, a specialist SMS messaging company that is also Queensland based, was contracted by Global Racing Group to send the messages. It was fined \$2,200 and gave ACMA an enforceable undertaking to abide by the Spam Act and the Australian eMarketing Code of Practice.

While an overseas operator was engaged by Australian SMS

to send the messages, the 'Australian link' provision of the Spam Act applies because companies centrally managed in Australia authorised the sending and the messages were received in Australia.

Global Racing Group advised ACMA that it has stopped sending SMS advertising. Australian SMS has also stopped sending messages for Global Racing Group and overhauled its practices to comply with the Spam Act. This includes requiring many of its customers to ensure they comply with the Act.

Under the Spam Act, commercial electronic messages must only be sent with consent

and must include accurate identifying information about the sender and a functional unsubscribe facility. SMS spam is often perceived as more intrusive than email spam.

The ACMA action follows complaints from the public about these activities.

Since the Spam Act came into force in April 2004, ACMA has required 350 businesses to amend their practices to comply. Fines totalling more than \$20,000 have been issued to five businesses, three businesses have provided enforceable undertakings; and court action is being taken against an alleged global spammer in the Federal Court in Perth.

PRIVACY GUIDELINES FOR BROADCASTERS LAUNCHED

.../Continued from page 1

status and the number of children she had. During this time, the presenter interjected with comments about the woman, including: 'she's a tart' and 'taking your old man off you—that's shocking'.

These two stories are summaries of broadcasts investigated by ACMA's predecessor, the ABA, following complaints made on behalf of the two teenagers, in the first case, and from the

breaches of the commercial television industry code of practice.

In the same period, there were 15 privacy investigations relating to commercial radio resulting in seven breaches of the Commercial Radio Codes of Practice. There were no privacy-related investigations in relation to community, national or subscription services.

These figures suggest that the level of risk of an invasion of

may be perceived by the person involved as, in effect, repeating the invasion. Obviously this will vary from case to case, but I think it's entirely understandable that people considering making a complaint that their privacy has been invaded might decide that the benefits to be gained from proceeding with the complaint might be outweighed by the potential or perceived disadvantages.

Secondly, we might expect there to be a lower level of complaints about invasions of privacy than about other matters dealt with in the media because individuals who are not directly affected are probably less likely to complain.

This contrasts with other issues of public concern relating to media reporting, such as bias or inaccuracy, which are likely to generate complaints from a range of members of the general public, not just people directly involved with the issue.

The effect of these considerations in terms of regulation is that the regulation we put in place to deal with privacy aims to address not so much the frequency of incidents as the effects.

HOW PRIVACY ISSUES ARISE

That's one side of the coin. Now let's look at the other side. Are there any situations in which an invasion of individual privacy is justified? The answer, with some qualification, is yes. Broadly speaking, the invasion of an individual's privacy can be justified when the broader public interest is served by the disclosure of the material. The qualification is that the broader public interest in reporting a story as a whole may not justify the use of particular material relating to an individual or individuals within

the story.

Let's go back to the examples I gave earlier to consider them from this point of view.

In relation to the 'chroming' story, the ABA took the view that there was a justifiable public interest in the story as a whole. It also took the view that because the chroming was going on in a public place, a park, there was no breach of privacy of the individuals involved.

However, the ABA also found that the two clearly identifiable young people featured in the story were unfairly identified. This was because they were minors, they were substance-affected when they were interviewed, and before the story went to air they had asked that their identities not be disclosed during the program.

Further, identifying the young people was not necessary to the story and their identities could easily have been hidden by pixillating their faces and removing references to their names and ages.

For these reasons, the ABA found that there had been a breach of the commercial television code of practice.

I should also note that since this investigation was finalised, a new clause about children's privacy has been added to the commercial television code of practice in relation to news and current affairs reporting.

Licensees are now required to exercise special care before using material relating to a child's personal or private affairs in the broadcast of a sensitive matter concerning the child, and to seek parental consent before broadcasting information about, or identifying, a child unless there are exceptional circumstances or an identifiable public interest reason not to do so.

In relation to my second

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woman alleged to have been having the affair in the second.

They illustrate the types of privacy issues we as regulators consider and illustrate the tensions between public interest and private interest. And they are examples that lead to the concern often expressed in the community about privacy and the media.

COMMUNITY CONCERNS

Research conducted by the ABA on three separate occasions since 1999 suggests that privacy is an issue of interest and concern to the community, both generally and in relation to the media. Concern was higher in relation to television than it was to radio.

These findings are in line with the level of complaints to the ABA about alleged invasions of privacy.

Between 1996 and 2004, the ABA investigated 67 privacy-related complaints relating to commercial television programs. These resulted in 21

privacy by the media is probably not great.

However, when a person's privacy is violated, the effects can be serious, and there may be considerable harm caused to the person concerned. This can potentially go beyond serious embarrassment to harassment and exclusion from, or detriment to, local social life and work opportunities.

And when an individual's privacy is invaded by the electronic media, the harm is done when the broadcast takes place. And unlike reports involving, say, factual errors, this harm can't be undone by an apology or a correction.

There's another factor we need to take into account when considering the numbers of complaints about privacy issues. I think we need to be cautious about assessing the level of community concern solely on the basis of the frequency of complaints. There are a couple of reasons for this.

Firstly, making a complaint about an invasion of privacy

example, from commercial radio, it's pretty clear that there was no public interest factor involved. In this case, the ABA found that the material naming the complainant and alleging that she was 'the mistress' of the caller's husband and was 'playing up with him', was an invasion of the complainant's privacy. The ABA also found that the broadcast, without consent, of information about the complainant's family was an invasion of the complainant's privacy.

Both findings resulted in breaches of the Commercial Radio Codes of Practice.

PURPOSE OF THE GUIDELINES

So where do ACMA's *Privacy Guidelines for Broadcasters* come in?

The main purpose of the guidelines is to discuss, and provide guidance about, a range of issues relating to privacy that broadcasters might encounter in their everyday practice and, therefore to help them avoid potential problems in the area of privacy. They don't mandate behaviour and broadcasters can argue the case about specific situations.

However we hope that, particularly in light of the co-operation of the industry in the development of the guidelines, they will be a real contribution to helping educate broadcasters about their obligations as set out in the various codes of practice.

The core notion found in the privacy provisions of the various codes is that material relating to a person's private affairs should not be used without the person's consent, unless there is an identifiable public interest reason for the material to be broadcast.

[breakout]

The guidelines tease out some

of the key issues in making this judgment, including: the difference between public and private conduct, the use of publicly available personal information, the position of public figures and what constitutes the public interest.

And they have been developed in close liaison with the industry associations so that is clear that we all have the same understanding of obligations with regard to privacy issues.

We would also expect that the guidelines will contribute to raising the level of public awareness about privacy matters and the electronic media.

Because privacy usually only becomes an issue of concern for members of the public after a problem has arisen, our hope is that a greater level of awareness about privacy issues amongst broadcasters will lead to fewer situations in which the privacy of individuals is unjustifiably intruded on.

ROLE OF ACMA

I want to now turn briefly to the role of ACMA as the Australian media regulator, with some comments that flow from the approach we have taken with privacy. I see the process of developing and implementing the privacy guidelines as a good example of the way ACMA intends to operate in the future.

In broad terms, ACMA's aim, insofar as it relates to broadcasters, will be to ensure that the regulatory framework within which broadcasters operate meets the social and cultural objectives of the Broadcasting Services Act without unnecessarily inhibiting innovation and competition in the broadcasting industry.

Two key factors in achieving this aim will be education and enforcement.

ACMA will do its best to continue talking with the industry and the public about the framework within which broadcasting services operate. Of course, broadcasters have their obligations too, and under the Broadcasting Services Act they are required to take direct responsibility for their relationship with their viewers and listeners. The development of codes of practice and the associated complaints process is an example of this.

However, ACMA can contribute to a greater level of awareness and understanding of the obligations of broadcasters and the rights of viewers and listeners. The development of the privacy guidelines is an example of the way in which this can work.

Then there is the question of enforcement.

ACMA will manage compliance with the regulations in a way that is outcome oriented, encourages efficiency, allows innovation, and is fair and consistent.

However, if industry fails to meet its obligations ACMA will

be anticipated by regulators.

Insofar as this does not produce problems of compliance with the legislation, this means that regulators have to be prepared to:

- respond quickly and in a flexible manner, and
- minimise the extent to which any regulatory intervention inhibits the development of industry and the broadcasting marketplace.

We are committed to doing that.

For industry's part, we expect broadcasters to act responsibly in relation to the expectations of the general community and to work co-operatively with ACMA to develop an environment in which broadcasters can get on with their business while at the same time fulfilling the requirements of the legislation.

In the final analysis, what the community, broadcasters and ACMA wants is a diverse and stable media industry that is able to entertain, inform and educate Australian audiences.

I look forward to working with you over the next few

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act decisively by taking enforcement action when necessary, and at a level that is appropriate to the problem.

ACMA is well aware that the broadcasting industry, and, I would think, the community at large, expects government and the regulator to recognise that in today's rapidly changing media and communications environment, business has to be able to move quickly and in directions that may not always

years to ensure that this is what is provided.

The *Privacy Guidelines for Broadcasters* are on the ACMA website at www.acma.gov.au (go to Radio&TV > Content regulation > Guidelines > Privacy). For a free printed copy, contact ACMA on telephone 1800 226 667.