

Investigation Report No. 2518

File No.	ACMA2010/2256
Licensee	TCN Channel Nine Pty Ltd
Station	TCN
Type of Service	Commercial Broadcasting Service (Television)
Name of Program	<i>Australia's Funniest Home Videos</i>
Date of Broadcast	7 August 2010
Relevant Legislation/Code	<i>Commercial Television Industry Code of Practice 2010</i> <ul style="list-style-type: none">• Clause 7.12 (complaints handling)

Finding

- No breach of clause 7.12 (complaints handling) of the Code.

The complaint

On 11 November 2010, the Australian Communications and Media Authority (ACMA) received a written complaint about an episode of *Australia's Funniest Home Videos* (AFHV) broadcast by Channel 9 South Australia Pty Ltd, an affiliate licensee of the Nine Network, on 7 August 2010.

The complaint had been made directly to TCN Channel Nine Pty Ltd, of the Nine Network, in the first instance. Not satisfied with the licensee's response, the complainant referred the matter to the ACMA.

The ACMA addressed the complainant's concerns about the broadcast in a separate investigation (investigation report no. 2517). The present investigation examines only the complainant's concerns about the handling of his complaint. This matter is examined in relation to TCN Channel Nine Pty Ltd, being the entity to which the complainant made their complaint.

Assessment

The assessment is based on submissions by the complainant and the licensee.

Relevant Code Provisions

The *Commercial Television Industry Code of Practice 2010* (the Code) contains the following provisions that are relevant in the matter raised by the complaint:

...

Time Limits on Responses to Code Complaints

- 7.11 Subject to clause 7.15, a licensee must provide a substantive written response to a complaint that satisfies the requirements in clause 7.2.
- 7.12 That response must be made as soon as practicable, but in any case no longer than 30 working days after receipt of the complaint.

...

Complainant's submissions

The complainant alleges that he sent his complaint to the licensee via mail on 9 August 2010, and did not receive a response from the licensee.

Licensee's submissions

In a letter to the ACMA dated 14 December 2010 the licensee submitted:

...

Nine maintains a response was sent to the complainant. ...While the exact date could not be ascertained, the response was sent on or about 31 August 2010 and therefore

Nine maintains the response was sent to the complainant within the relevant timeframes.

...

A copy of the letter allegedly sent to the complainant was given to the ACMA on 13 October 2010. The letter is dated 31 August 2010 and is unsigned.

Reasons

The complainant submitted that he did not receive a response from the licensee to his complaint.

The licensee submitted that it sent a response to the complainant on or about 31 August 2010. The licensee provided a copy of its letter of response.

The delegate notes that the letter provided by the licensee is dated 31 August 2010, a date within the relevant 30 day timeframe. However, the delegate is of the view that, given the letter is unsigned and the licensee has been unable to ascertain the exact date on which it was sent to the complainant, there is insufficient independent evidence to establish that the letter was actually sent to the complainant within the relevant 30 day timeframe or at all.

In circumstances such as these where the delegate is faced with competing assertions with insufficient evidence to support one version of events over another, the delegate is unable to find that the licensee breached clause 7.12 of the Code.

Finding

The licensee did not breach clause 7.12 of the Code.

Finding

I, Jeremy Fenton, Manager, Content Classification Section, being the appropriate delegated officer of the Australian Communications and Media Authority, determine for the above reasons that the licensee, TCN Channel Nine Pty Ltd, in relation to a complaint dated 9 August 2010 about a broadcast of the program *Australia's Funniest Home Videos* on 7 August 2010, did not breach clause 7.12 of the *Commercial Television Industry Code of Practice 2010*.

Signed: -----

Jeremy Fenton

dated this day of January 2011