



Investigation Report No. 1521

File No.	2005/0733
Licensee	General Television Corporation Pty Ltd
Station	GTV 9
Type of Service	Commercial television
Name of Program	<i>Nightline</i>
Date/s of Broadcast	11 January 2005
Relevant Legislation/Code	Clauses 4.4.1 (fair and impartial presentation of news) and 7.10 (complaints handling) of the Commercial Television Industry Code of Practice 2004.

Investigation conclusion

The licensee of GTV 9:

- did not breach clause 4.4.1 of the Commercial Television Industry Code of Practice 2004 in broadcasting a news item on 11 January 2005 during the *Nightline* program; but
- breached clause 7.10 of the Commercial Television Industry Code of Practice 2004 by not providing, within the time frame required by the Commercial Television Industry Code of Practice 2004, a substantive written response to a complaint about a news item broadcast on 11 January 2005 during the *Nightline* program.

The complaint

On 23 March 2005 the Australian Broadcasting Authority (the ABA) received an unresolved letter of complaint regarding a news item broadcast by commercial television station GTV 9 Melbourne on 11 January 2005 during an edition of the late night news bulletin *Nightline*. The complainant alleged that the item in question was not presented fairly or impartially. The complainant also alleged that his original letter of complaint to GTV 9 had not been responded to.

In response to the complaint the ABA wrote to GTV 9 requesting comments and a tape of the relevant broadcast. The Nine Network (Nine) responded on behalf of GTV 9.

The program

The news item in question concerned the (then) imminent release of terrorist suspect Mamdouh Habib from the Guantanamo Bay detention centre in Cuba. The report contained excerpts from a press conference in which the Attorney General, Phillip Ruddock, made the announcement concerning Mr Habib's release, and audio of the reaction to the news from Mr Habib's lawyer and a representative of the Australian Muslim community.

Assessment

The complaint has been assessed against relevant provisions of the Commercial Television Industry Code of Practice 2004 (the Code). In assessing the complaint a video of the relevant program material supplied by Nine was relied upon, as well as comments from Nine and from the complainant.

Issue 1 – fair and impartial presentation of news (clause 4.4.1)

Relevant code provisions

Clause 4.4.1 of the Code states:

4.4 In broadcasting news programs (including news flashes) licensees:

4.4.1 must present news fairly and impartially;

Complainant's submissions

In his letter of complaint to the station, the complainant stated that:

I believe your reporter's commentary unfairly, perhaps even slanderously, inferred Mr Habib was involved in terrorist activities.

Your reporter, in explaining that the Australian Terrorist Laws were not retrospective and Mr Habib therefore will not face any charges from the Australian government on his return, gave the clear inference that Mr Habib was a guilty person.

Licensee's submissions

In response to the ABA's request for comments, Nine stated that:

The complainant's objection appears to be that "in explaining that the Australian Terrorist Laws were not retrospective and Mr Habib therefore will not face any charges from the Australian government on his return, gave the clear inference that Mr Habib was a guilty person".

We do not agree that that inference arises. The program merely states a fact in relation to the temporal application of the new Australian terrorist legislation.

It is clear from the comments that were included in the program from the Minister, Phillip Ruddock:

"It remains the strong view of United States based upon information available to it that Mr Habib had prior knowledge of the terrorist attacks on or before 11 September 2001"...

Mr Habib remains of interest in a security context, relevant agencies will undertake appropriate measures".

that Mamdouh Habib was (at the time the program was produced and broadcast) a person of interest and concern to the United States and Australian Governments.

Finding

The broadcast of the program material in question has not resulted in a breach of the Code.

Reasons

The requirement that news must be presented fairly and impartially means that news must be presented without bias. In this context licensees' presentation of news must not include editorial opinion which favours a particular aspect of the subject of the report.

For the following reasons the news segment in question was presented fairly and impartially:

- more than one side of the issue was presented. The segment featured interviews with Mr Habib's lawyer and an Islamic spokesman, as well as footage from a press conference given by the Attorney-General, Phillip Ruddock;
- the reporter covering the story did not express an opinion or take a particular position on the question of whether or not Mr Habib was involved in any way with terrorist activities;
- Mr Habib is described as a 'terror suspect'. Comments from the Attorney-General broadcast during the segment indicate that Mr Habib was suspected by both the governments of the United States of America and Australia of some form of involvement in, or prior knowledge of, terrorist activities. To describe him as a 'terror suspect' would therefore appear to be reasonable;

- although the Attorney-General's comments may infer that Mr Habib was involved in terrorist activities the reporter's comments make no such inference;
- the plight of Mr Habib had received considerable publicity in both the electronic and print media and the Attorney-General's views on Mr Habib and his imminent return to Australia were newsworthy at the time and a legitimate subject for a news item;
- the reporter states that Australian laws relating to terrorist activities were introduced 'after he [i.e. Mr Habib] was **alleged** to have committed his offences' (ABA emphasis); and
- the reporter is presenting factual material when she states that Australian laws relating to terrorist activities are not retrospective and that Mr Habib would not be facing any charges when he returned to Australia.

Issue 2 – complaints handling (clauses 7.9 and 7.10)

Relevant code provisions

Clauses 7.9 and 7.10 of the Code deal with complaints handling and state:

- 7.9 Where a Code complaint is made about material broadcast by a station within 30 days of its broadcast, the licensee must provide a substantive written response.
- 7.10 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

In his letter of complaint to the ABA the complainant stated that as at 21 March 2005 he had not received a response from Nine to his letter of complaint.

Licensee's submissions

Nine admitted that it had breached the complaints handling provisions of the Code, but that 'the time at which the complaint would have been received at Nightline was an extremely busy period where staff were heavily involved with the coverage of the Boxing Day Tsunami'.

Nine also informed the ABA that, after receiving the ABA's request for comments regarding the complaint, it provided a response to the complainant on 11 April 2005.

Finding

In not responding to a written complaint within the timeframe required by the Code the licensee of GTV 9 breached the Code.

Reasons

The complainant wrote to Nine on 12 January 2005 but a reply was not sent until 11 April 2005, well outside the 30 day timeframe required by clause 7.10 of the Code.

Nine has admitted in its letter to the ABA that it did not comply with the complaints handling provisions of the Code.

Action taken by the licensee

As stated above, Nine informed the ABA that it had written to the complainant on 11 April 2005 to apologise for the lack of a timely response. Nine also informed the ABA that:

We have counselled the relevant staff to the effect that while we appreciate that this was an extreme time for all involved it does not in any way excuse the station's obligation to respond to the complainant within the time limits imposed by the Code. We have reminded them of those processes.

It is considered that these actions address the compliance issues raised by the investigation and notes that the licensee has not been found to be in breach of the complaints handling provisions of the code since June 2002. The licensee's performance in this regard will continue to be monitored.

Decision

I, Andree Wright, Executive Manager Industry Performance and Review Branch, being the appropriate delegated officer of the Australian Communications and Media Authority, determine for the above reasons that

- the licensee of GTV 9 did not breach clause 4.4.1 of the Commercial Television Industry Code of Practice 2004 in broadcasting a news item on 11 January 2005 during the *Nightline* program; but
- the licensee of GTV 9 breached clause 7.10 of the Commercial Television Industry Code of Practice 2004 by not providing, within the time frame required by the Commercial Television Industry Code of Practice 2004, a substantive written response to a complaint about a news item broadcast on 11 January 2005 during the *Nightline* program.

Signed: -----
Andree Wright

dated this day of July 2005