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Protecting Public Interest on Commercial Radio

Submission to the Commercial Radio Standards Review

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Introduction

This paper has been prepared in response to the *Review of commercial radio standards – Options paper* prepared by the Australian Communications and Media Authority (March 2011). This paper in particular addresses the issue of ensuring fair and accurate coverage of matters of public interest.

Problem Statement

As was illustrated by the “Cash for comments” more than a decade ago, there is a recurring and understandable tension between the public interest in ensuring fair and accurate coverage of matters of public interest and the commercial interests of media businesses.

Public interest requires that:

- Citizens be provided with accurate and balanced information on current political and social issues
- Citizens be provided with this information in a context that assists their understanding of the issues
- Presenter, sponsor and other contributors’ opinions and views be clearly identified as such
- Attempts to sensationalize or emotionally bias information be avoided
- Citizens’ freedom of choice to choose the media they consume be matched with effective “true to label” descriptions of the media options available.

Commercial interests require that:

- Media businesses have freedom to trial and pursue various media options to attract and maintain audiences

- Media businesses have freedom to commercialize these audiences either directly through subscriptions or indirectly through advertising/sponsorship
- Media businesses have certainty of regulation to reduce their commercial risk
- Media businesses have as low cost as possible regulation to reduce their indirect expenses
- Media businesses have equivalent regulation certainty and costs to other competing media businesses/technologies to ensure an equivalent competitive position

The challenge is to ensure effective, efficient and appropriate regulation to balance these respective needs.

Current Position

The current position, reflecting the current standards/regulatory approach, is wanting in a number of aspects:

- It imposes some unnecessary regulatory costs on media businesses
- It does not recognize the potential of the internet to achieve some of the requirements both more effectively and efficiently
- The disclosure requirement appears to have resulted in part at least in compliance in form rather than substance
- It over-relies on public complaints as the trigger to initiate regulatory action

- It has not precluded biased and unbalanced presentation of information on matters of public interest
- It has not assisted commercial radio consumers to readily distinguish between news, analysis, opinion and advertising

The Advertising Standard

The key issues for this standard are the regulatory failures identified in the Options paper, vis:

- “...determining whether consideration has been provided for the particular advertisement can be more difficult.”¹
- “...there is evidence that, in some circumstances, live reads cannot be readily distinguished by radio listeners – even by those who are frequent listeners.”²

The ACMA proposed response for both issues is supported. In regard to “integrated advertising” the key public interest principle is that it is readily distinguishable from non-advertising content. It would be preferable if the industry was allowed the freedom to determine how it achieved this goal, with regulatory prohibition or prescription a last resort in the event of industry failure to do this effectively.

The choice of regulatory instrument/ approach to achieving these goals could be usefully pursued as follows:

- Articulate the principles that need to be followed (as included in the options paper), with these principles consistent with those applied to other commercial media

¹ Options paper, page 10.

² Options paper, page 6.

- Alter the Advertising Standard to ensure it is effective in achieving these principles
- Challenge the industry to establish an adequate industry code and associated proactive compliance code that could replace the Advertising Standard
- The ACMA periodically undertake its own research to ensure that the reasonable listener is able to easily distinguish advertising from non-advertising material

The Disclosure Standard and fair and accurate coverage of matters of public interest

Neither the current standard, nor the proposed changes, address all the critical matters that can undermine commercial radio's fair and accurate coverage of matters of public interest.

“The object of the current Disclosure Standard is to ‘encourage commercial radio broadcasting licensees to be responsive to the need for fair and accurate coverage of matters of public interest by requiring the disclosure of commercial agreements that have the potential to affect the content of current affairs programs’.”³

This Standard does not however address the practice of radio presenters to cover matters of public interest in an unbalanced or inaccurate manner for reasons other

³ Options paper, page 20.

than those associated with third-party commercial agreements. In particular it does nothing to address the practice of “personality” presentations of information that bias or sensationalize their coverage in order to build or mobilize their audiences.

Commercial agreement disclosure

The ACMA's proposed responses to its identified deficiencies in the Disclosure Standard in regard to commercial agreement disclosure are generally supported, save for:

- The Standard should apply to all public interest material whenever broadcast – thus coping with change in media practice and programming over time and avoiding uncertainty and costs for all involved in managing additional definitions such as ‘factual’, ‘current affairs’ and ‘infotainment’
- Licensees should be required to be responsible under the Standard for any commercial agreements with the licensee irrespective of whether a relevant presenter has an interest in the licensee company⁴ – otherwise an additional ‘benefit’ to the presenter could easily be hidden in licensee/presenter remuneration arrangements
- The lack of consideration as to how the editorial independence model would be assessed in practice to ensure that soft forms of influence were not present
- The proposed relaxation of the form of disclosure⁵ should be balanced by a post-implementation periodic investigation that a reasonable person remained able to readily identify the disclosure

⁴ As proposed in Options paper, page 25.

⁵ As proposed in Options paper, page 29.

Editorial standards to combat other influences

In addition regulation is required to address the lack of fair and accurate coverage of matters of public interest due to other factors. These include the understandable pressures on presenters to want to build and engage with their audiences through biased presentations and sensationalizing of matters of public interest.

In this respect these paramount public interest concerns need to be balanced with consumer freedom and the need to impose as little a regulatory burden as possible on licensees. This suggests the appropriate regulatory approach is to require commercial radio (and other media producers) to adopt and support 'true to label' media product descriptors for all programs dealing with matters of public interest – with transparency about the editorial standards media producers, presenters and licensees need to support.

The approach proposed is for the ACMA to set out editorial principles and practices that need to be in place to support programs which use different editorial labels such as 'news', 'current affairs/analysis', 'opinion/column', 'talk-show/panel/forum'.

As much as possible these editorial principles and practices should be consistent across all media platforms so that their application to commercial radio supports rather than hinders a level playing field.

The following editorial principles and practices are presented as illustrative.

1. For all coverage of matters of public interest
 - a. Separation of news, current affairs/analysis, opinion and interactive discussion that is readily identifiable by a reasonable person
 - b. Each video, audio or other media recording or quote utilized is given with its context and time/date or identified as non-current library/background footage
2. For all 'news' labeled segments
 - a. Factual presentation of current news items within a balanced context without opinion
 - b. News producer provides details of its filtering process of potential news items both in brief at time of presentation and in detail on its program website
 - c. All pre-recorded news items are time-stamped such that this is readily identifiable by a reasonable person
3. For all 'current affairs/analysis' segments
 - a. Any presenter/commentator relevant conflict of interest, affiliation or previously articulated significant viewpoint in regard to the item be explicitly identified
 - b. Item includes a clear and balanced presentation of context
 - c. The research information and further references gathered to produce the item provided on the program website
4. For all 'opinion/column' segments

- a. Any presenter/ commentator relevant conflict of interest, affiliation or previously articulated significant viewpoint in regard to the item be explicitly identified
 - b. The credentials and expertise of the opinion/column maker/ presenter in regard to the item is clearly described both within the segment and on the program website
 - c. The research information, including a clear and balanced presentation of context, and further references gathered to produce the segment provided on the program website
5. For all ‘current affairs/analysis talk-show/panel/forum’ segments
- a. As per ‘current affairs/analysis’ above, plus
 - b. Approach as to how guests/ panelists/ contributors from the public for the segment are selected or filtered described briefly as part of the segment and in detail on the program website
6. For all ‘opinion/column talk-show/panel/forum’ segments
- a. As per ‘opinion/column’ above, plus
 - b. Approach as to how guests/ panelists/ contributors from the public for the segment are

selected or filtered described briefly as part of the segment and in detail on the program website

Such requirements could be met by incorporation in either a new Standard or revised Industry Code, but the core principles should be articulated by the ACMA (after due consultation) to ensure they are applied as consistently as possible across all media, and should be supported by regular investigation as to whether the goals are met so that a reasonable person can readily identify the different types of coverage of matters of public interest.

Compliance Standard

While many of the arguments for the ACMA proposal to remove this Standard are accepted, there remains the strong risk that the current compliance culture will dissipate should the Standard be removed without adequate replacement.

An adequate counterpoint to the removal of the Standard might be a positive incorporation in each license of each licensee’s requirement to support the public interest goals of the Broadcasting Act and to report in its Annual Report and in any annual report to ACMA how it ensures it meets this goal.

Conclusion

The review is timely and welcome. The identified proposals are broadly supported, but leave a gaping hole in the protection of public interest.

This can be rectified by adding in a requirement for commercial radio to adopt and support ‘true to label’ media product descriptors for all programs dealing with

matters of public interest – with transparency about the respective editorial standards the media producers, presenters and licensees then need to support.

These editorial principles and practices should be consistent across all media channels to ensure a level playing field as far as regulatory burden is concerned.