

Guide to the Children's Television Standards 2009

MAY 2011

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Introduction

Guide to the Children's Television Standards 2009

The Australian Communications and Media Authority (the ACMA) determined the Children's Television Standards 2009 (the CTS 2009) on 24 August 2009. The substantive obligations in CTS 2009 came into effect from 1 January 2010.

The ACMA has developed the *Guide to the Children's Television Standards 2009* (the guide) to assist licensee broadcasters to comply with the provisions of the CTS 2009.¹ The guide has also been developed to assist the public to understand licensees' obligations by providing examples that illustrate the practical operation of the CTS 2009.

This publication is intended to provide guidance to the public and licensee broadcasters on the way in which the ACMA may interpret new, amended or particularly complex provisions in the CTS 2009.²

Hypothetical examples and case studies of issues which may arise are included for guidance only. The ACMA approaches all investigations into compliance by having regard to the material facts of the particular case, and the relevant provision/s of applicable legislation or legislative instruments.

Background

The ACMA is required under section 122 of the *Broadcasting Services Act 1992* (the BSA) to determine standards relating to programs for children, that must be observed by commercial television broadcasting licensees.

The ACMA determined the Children's Television Standards (the CTS) to regulate the content of children's programs and non-program material during designated children's viewing times on commercial free-to-air television. Compliance with the CTS is a licence condition for commercial television broadcasting licensees.

In 2007, the ACMA commenced a review of the effectiveness and relevance of the Children's Television Standards 2005 (the CTS 2005). This review involved analysis of a significant body of research and two rounds of public consultation.³

When they commenced, the CTS 2009 replaced the CTS 2005. The CTS 2009 revise a range of obligations in the CTS 2005 and introduce new options for licensee broadcasters on commercial free-to-air television, having regard to the needs of the child audience, industry and the community.

¹ Obligations under the CTS are imposed on the holders of commercial television broadcasting licences under the *Broadcasting Services Act 1992*.

² However, as guidance, it is not legally binding on licensees, or on the ACMA. Users of this guide may wish to seek independent legal advice when applying CTS 2009 provisions.

³ Further information about the review is provided in the *Children's Television Standards 2009—Explanatory Statement* and the *Final Report of the Review*, available from the ACMA's website at www.acma.gov.au.

Structure of the CTS 2009

The CTS 2009 have been restructured to separately group programming provisions and provisions relating to the protection of children. This change aims to help licensees identify their responsibilities under the CTS 2009, and to assist the public to understand licensees' obligations and locate relevant provisions if they wish to make a complaint.

The CTS 2009 are divided into three parts:

- > **Part 1—Preliminary.** This section provides definitions of key CTS 2009 terms and information about the application of the CTS 2009. This includes transitional arrangements for commencement dates for certain provisions under Division 1 and Division 2 of Part 1 of the CTS 2009.
- > **Part 2—Requirement to provide C programs and P programs.** This section sets out the obligations of licensees to broadcast children's (C) and preschool (P) programs, and matters relating to program scheduling, schedule variations and displacements, quota requirements, program classification and Australian C drama requirements.
- > **Part 3—Requirements relating to protection of children.** This section sets out the provisions that aim to protect children from unsuitable and potentially harmful program and advertising material on television. These provisions regulate areas such as the use of premium offers in advertising, the use of popular characters and personalities in advertising, program promotions, prizes, competitions and advertising of alcoholic drinks.

Key CTS provisions and amendments

The guide discusses new and amended provisions, and explains the operation of the more complex long-standing provisions. Some provisions that are covered in the guide include:

- > **CTS 10, CTS 11 and CTS 12**—requirements for schedule variation and displacement. These provisions introduce new obligations for licensees including the submission of annual schedules to the ACMA and on-air promotions for schedule variations or displacements in certain circumstances.
- > **CTS 33**—disclaimers and premium offers. To ensure consistency and clarity in the interpretation, the ACMA has included in the CTS 2009 factors that will be used in the consideration of whether a premium offer in an advertisement is merely incidental.
- > **CTS 35**—promotions and endorsements by popular characters and personalities. CTS 35 expands the list of popular characters and personalities that cannot be used to endorse, recommend or promote a commercial product or service in program or non-program material that is broadcast during a C or P period, except in some limited circumstances. The guide seeks to assist an understanding of CTS 35 by offering hypothetical examples of material that is likely and unlikely to be prohibited.

Forms

Various provisions within the CTS 2009 require licensees to submit information relating to their annual C and P schedules (CTS 3 and CTS 9), variations to schedules (CTS 10) and displacements of C and P periods (CTS 11 and CTS 12) in a form approved by the ACMA (these requirements are discussed in detail below). Further information about the form (ACMA B83 form), including instructions for use, are provided in a separate document available on the ACMA's website at

www.acma.gov.au/WEB/STANDARD..PC/pc=PC_90151.

Time of broadcast

REMOTE CENTRAL AND EASTERN AUSTRALIA TV1 AND TV2 LICENCE AREAS SOUTH EASTERN AUSTRALIA TV3 AND NORTHERN AUSTRALIA TV3 LICENCE AREAS

In 2010, the BSA was amended to allow commercial television broadcasting licensees operating in specific licence areas to nominate a place as the relevant time zone for the purpose of broadcasting (see sections 211AA and 211A of the BSA).

Licensees operating in the Remote Central and Eastern Australia TV1 (RCEA TV1) and Remote Central and Eastern Australia TV2 (RCEA TV2) licence areas may nominate such a place. These licence areas cover the Northern Territory, South Australia, Queensland, New South Wales, Victoria and Tasmania. Licensees under section 38C of the BSA operating in the South Eastern Australia TV3 licence area (SEA TV3) (covering New South Wales, Victoria, South Australia and Tasmania) and the Northern Australia TV3 licence area (NA TV3) (covering Queensland and the Northern Territory) may also nominate a place.

These licence areas span multiple time zones. After nominating a place, broadcasts across the entire licence area will be taken to have been broadcast at the time in the nominated place.

With the nomination, the CTS 2009 have effect as if any broadcast is at the time in the nominated place, even if the broadcast is shown in a different time zone to the place nominated. For example, such a licensee could nominate Brisbane as its specified place. One effect of such a nomination would be that the 'C band' (which is defined in the CTS 2009 to cover specified periods of time on a weekday, a weekend, or a school holiday) for the whole of the licensee's licence area would be determined based on the time, and school holidays, in Brisbane only.

See the ACMA's website for details of the nominations received under sections 211AA(1) and 211A of the BSA from licensees operating in the RCEA TV1, RCEA TV2, SEA TV3 and NA TV3 licence areas: http://www.acma.gov.au/WEB/STANDARD/pc=PC_312414.

Associated documents

The guide should be read with the:

- > Children's Television Standards 2009—Explanatory Statement:
www.acma.gov.au/WEB/STANDARD/pc=PC_300296
- > Review of the Children's Television Standards 2005—Final Report of the Review:
www.acma.gov.au/WEB/STANDARD/pc=PC_300296
- > guidelines associated with the assessment procedures for C and P program classification:
www.acma.gov.au/WEB/STANDARD/pc=PC_91815

These and other documents associated with the CTS review are available from the ACMA's website at www.acma.gov.au

Contacting the ACMA

For further information about the contents of the guide, please contact the Content Monitoring and Review Section at the ACMA:

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Guide to the CTS 2009

Implementation of the CTS 2009

The CTS 2009 commenced on 1 January 2010. From 1 January 2010, the CTS 2005 were revoked and licensees were subject to the CTS 2009.

Criteria of suitability for children—CTS 6

A program must comply with all CTS 6 criteria in order to be eligible to obtain a C or P classification. CTS 6 states that a children's program is one which:

- a) is made specifically for children or groups of children; and
- b) is entertaining; and
- c) is well produced using sufficient resources to ensure a high standard of script, cast, direction, editing, shooting, sound and other production elements; and
- d) enhances a child's understanding and experience; and
- e) is appropriate for Australian children.

The ACMA assesses applications for C and P program classification against the above criteria and determines whether the program or proposed program is suitable for children either in the P classification category (preschool children) or the C classification category (children other than preschool children). The CTS 2009 defines children as 'people younger than 14 years of age' and preschool children as 'children who have not yet started school'.

Information about the classification process and the ACMA's current interpretation of the criteria for suitability of children is available from the ACMA's website at www.acma.gov.au/WEB/STANDARD/pc=PC_91815. This includes the application form and documents which address the classification criteria, application requirements for various classification categories and assessment procedures.

In summary, the CTS 6 classification criteria require C and P programs to:

- > deal with issues and themes of interest to children and contain child-driven action
- > entertain and engage the child audience, which can be through the use of humour, unpredictability, appropriate pace and presentation of contemporary style
- > demonstrate high production values, such as professional casting, performance and direction and maintenance of the child perspective
- > treat themes and issues in a way that is appropriate to the target age group and add to their understanding and experience
- > treat themes and issues in a way that is appropriate to the cultural framework.

The ACMA intends to explore the classification process, including the application and interpretation of the CTS 6 criteria, with industry in future annual forums, and current classification practices may change. The first of these forums was held on 22 June 2010.

However, the ACMA notes that it makes decisions in relation to C and P classification on the basis of whether or not a program meets the requirements of the CTS 6 classification

criteria and does not encompass an assessment of the program's compliance with other aspects of the CTS. This aspect of the classification process will remain the same.

Classification decisions are based on sample completed episodes/programs or can be made at the pre-production stage on the basis of scripts and other supporting material. Accordingly, the ACMA is unable to determine whether or not a program will comply with other aspects of the CTS, such as whether each episode within a C series will comply with the requirements under CTS 28 in terms of the separation of advertising and sponsorship material from program material.

In addition, the ACMA does not classify or provide advice in relation to advertisements prior to broadcast on commercial free-to-air television. Commercial Advice offered by Free TV Australia provides classification and information services to advertisers, agencies and production houses in relation to television commercials.

Licensees are required to ensure that all material broadcast during C or P periods complies with all requirements of the CTS 2009.

C and P program quotas—CTS 8

CTS 8 requires that licensees broadcast at least 390 hours of eligible children's and preschool material per year, comprising at least 260 hours of C material and 130 hours of P material.

Eligible material is defined in CTS 8(1) as C and P material that has been notified in an annual schedule to the ACMA and broadcast in accordance with that schedule. Only C and P material broadcast in accordance with the annual schedule can count toward the annual quota.

If licensees wish to diverge from the scheduled programming arrangements, they must do so in accordance with the schedule variation and displacement provisions prescribed in the CTS 2009. (For more information about these provisions, please refer to the discussion under *Schedule variation—CTS 10*, *Schedule displacement for expected events—CTS 11* and *Schedule displacement for unexpected events—CTS 12*.)

Licensees must meet the **annual quotas** for C and P material by broadcasting a minimum amount of C and P programming each week. For C material, the licensee can broadcast the remaining hours of the programming quota throughout the year in the C time band. (For more information about these requirements, please refer to the discussion under *C program scheduling—CTS 13* and *P program scheduling—CTS 14*.)

The CTS 2009 also require, in accordance with the Broadcasting Services (Australian Content) Standard 2005 (the ACS), that minimum hours (sub-quotas) of Australian drama be broadcast within the overall quota of C programming required.

Under the ACS, the C programs contained in at least 50 per cent of the total time occupied by C periods must be first release Australian C programs, and all P programs must be Australian. Licensees must broadcast at least 96 hours of first release Australian C drama over a three-year period, with a minimum of 25 hours in each year. At least eight hours per year of repeat Australian drama must also be broadcast.

Schedule notification—CTS 9

Under CTS 9(1), licensees are still required to provide the ACMA with their C and P program schedules. However, this notification must now be provided on an annual basis and in a form approved by the ACMA.

Under CTS 9(2), licensees are required to submit a schedule to the ACMA by 31 December 2010 for the year 2011, and every year thereafter, by 31 December in the year preceding the year for which the schedule applies.

In addition, CTS 9(3) requires a licensee to include the schedule of the licensee's C and P programs on the licensee's website on the main program schedule.

Schedule variation—CTS 10

CTS 10 provides licensees with the flexibility to vary a scheduled C or P period, provided they meet the following obligations:

- > **Notify the ACMA.** The CTS 2009 retain the requirement that licensees provide the ACMA with written notification of a schedule variation **at least 14 days before** the variation will occur (CTS 10(2)(a)). However, licensees are now required to provide this notification to the ACMA in a form approved by the ACMA (CTS 10(2)(c)).
- > **Notify the audience.** CTS 10(2)(b) requires licensees to ensure the child audience is appropriately notified of the variation. CTS 10(3) describes when that notification must occur. Licensees must broadcast **at least two on-air promotions** of a schedule variation:
 - > one promotion at a time when children and their parents or carers may reasonably be expected to be watching television together (CTS 10(3)(a)). There are likely to be a range of times when children and their parents or carers may reasonably be expected to watch television together, in which case the licensee may wish to refer to relevant data and research to establish and support this if required. For example, data from *Media and Communications in Australian Families 2007* research shows that the number of children watching television with their parents or carers increases significantly from 6.00 pm until 8.00 pm;⁴ and
 - > one promotion immediately before, during, or immediately after, the time the program was originally scheduled to be broadcast (CTS 10(3)(b)).⁵ It specifically targets the regular child audience of the C or P program, and should be tailored with this audience in mind.

These provisions clearly apply to a variation that involves a postponement of a C or P period to a later time in the relevant schedule, and the provisions must be fully complied with in those circumstances. However, there are three other kinds of permitted variations, where full compliance with CTS 10(3) would not be possible. In those situations, a licensee must comply with CTS 10(2)(b) and CTS 10(3) so far as possible. Those three situations are addressed in turn in the following three paragraphs.

Under CTS 10, licensees may vary a schedule to add a C or P period that was not previously scheduled. In this event, the ACMA considers that the licensee must broadcast at least two on-air promotions containing details of when the C or P will be broadcast. One promotion must be broadcast at a time when children and their parents or carers may reasonably be expected to be watching television together, in order to satisfy CTS 10(3)(a), and another promotion must be broadcast at a similar time, or any other time, prior to the broadcast of the newly scheduled C or P period. As the C or P program was not originally scheduled to be broadcast, the licensee would not be required to broadcast a promotion as set out in CTS 10(3)(b).

⁴ This report is available from the ACMA website at www.acma.gov.au/WEB/STANDARD/pc=PC_310262.

⁵ This requirement is carried over from CTS 2005.

Under CTS 10, licensees may also vary a schedule to remove a C or P period that was previously scheduled, without intending to schedule it for another date or time. In these circumstances, it will not be possible for the licensee to comply with CTS 10(3) because it is not possible to do a promotion for a program that will not be broadcast.

A licensee may also vary a schedule under CTS 10 to move a C or P period to a date or time prior to the date or time it was originally scheduled. In these circumstances, the ACMA considers that appropriate notification for the purposes of CTS 10(2)(b) would require the licensee to broadcast at least two on-air promotions containing details of when the C or P program will be broadcast. One promotion must be broadcast at a time when children and their parents or carers may reasonably be expected to be watching television together, in order to satisfy CTS 10(3)(a). The other promotion may be broadcast at a similar time. However, both promotions must be broadcast prior to the broadcast of the C or P program that has been moved forward in the schedule. The licensee would not be required to broadcast a promotion at the time the C or P program was originally scheduled, as compliance with CTS 10(3)(b) is not possible in these circumstances.

On-air promotion

An on-air promotion includes material of any length that clearly indicates when the varied or displaced C or P program will be shown.

The on-air promotion could occur during the closing credits of a program, within a program break or between programs.

In terms of levels of literacy of the child audience, it is considered appropriate that an on-air promotion include, as a minimum, aural material, and may take one or more of the following forms:

1. a clearly audible voice-over or announcement
2. superimposed text or visual matter that occupies all or part of the screen, accompanied by a clearly audible voice-over or announcement
3. a visual listing (line-up) of the programs to be broadcast that day/evening, including the varied or displaced program, accompanied by a clearly audible voice-over or announcement.

Schedule displacement for expected events—CTS 11

CTS 11 allows a licensee to displace a scheduled C or P period to allow live coverage of the following expected events that are suitable for viewing by children:⁶

- > an event of national, state or territory importance; or
- > a major sports event.

An explanation of these events is provided in the box 'Interpretation of allowable events for schedule displacement' below.

CTS 11 offers licensees some scheduling flexibility to ensure viewers have timely information about important events. This flexibility is balanced by the following requirements for licensees:

- > **Reschedule the displaced C or P period.** Licensees are required to broadcast the displaced C or P program in the C or P band **within 14 days** of the date of the

⁶ The CTS 2005 allowed for the displacement of C periods scheduled for a weekday, but not scheduled P periods.

broadcast of the live coverage (CTS 11(4)(a) and (b)). CTS 11(6) provides licensees with a broadcast option, rather than an obligation, for rescheduling displaced C and P programs. Licensees now have the option to broadcast two C or P programs, as long as they are from the same C or P program series, when the displaced C or P period is rescheduled (CTS 11(6)).

- > **Notify the ACMA.** Licensees are required to provide the ACMA with written notification of a schedule displacement **at least 14 days before** the planned displacement is expected to occur (CTS 11(4)(c)). However, licensees are now required to provide this notification to the ACMA in a form approved by the ACMA.
- > **Notify the audience.** To appropriately notify the audience, CTS 11(5) now requires that licensees broadcast **at least two on-air promotions containing details of when displaced C or P programs will be broadcast.** Most commonly, the displaced C or P period will be deferred until after the broadcast of the expected event. The discussion under 'Schedule variation - CTS 10' (above) on the comparable situation will also be relevant to CTS 11(5).

It is also possible that a C or P period displaced under CTS 11 could be broadcast within 14 days prior to the time it was originally scheduled to be broadcast. In those circumstances, the licensee must broadcast at least two on-air promotions containing details of when the displaced C or P program will be broadcast. One promotion must be broadcast at a time when children and their parents or carers may reasonably be expected to be watching television together, in order to satisfy CTS 11(5)(a). The other promotion may be broadcast at a similar time. However, both promotions must be broadcast prior to the broadcast of the C or P program that has been moved forward from its originally scheduled time of broadcast. The licensee would not be required to broadcast a promotion at the time the C or P program was originally scheduled, as compliance with CTS 11(5)(b) is not possible in these circumstances.

Schedule displacement for unexpected events—CTS 12

CTS 12 allows a licensee to displace a scheduled C or P period, to cater for the unexpected cancellation, postponement, early completion, overrun or availability of live coverage of:

- > an event of national, state or territory importance; or
- > a major sports event;

provided that the live coverage is suitable for viewing by children.

An explanation of these events is provided in the box *Interpretation of allowable events for schedule displacement* below.

Like CTS 11, CTS 12 offers licensees some scheduling flexibility to ensure viewers are able to view important unexpected events. This flexibility is balanced by the following requirements for licensees:

- > **Reschedule the displaced C or P period.** Licensees are required to broadcast the displaced C or P program in the C or P band **within 14 days** of the date of the broadcast of the live coverage (CTS 12(3)(a) and (b)). CTS 12(4) provides licensees with a broadcast option, rather than an obligation, for rescheduling displaced C and P programs. Licensees now have the option to broadcast two C or P programs, as long as they are from the same C or P program series, when the displaced C or P period is rescheduled (CTS 12(4)).
- > **Notify the ACMA.** Licensees are required to provide the ACMA with written notification of the unexpected schedule displacement **within 72 hours after** the

broadcast of the live coverage (CTS 12(3)(c)). Licensees are now required to provide this notification to the ACMA in a form approved by the ACMA.

- > **Notify the audience.** CTS 12(3)(d) requires that licensees broadcast details of when the displaced C or P program will be broadcast, immediately before, during or immediately after, the time of the scheduled C or P period (i.e., the scheduled C or P period that is being displaced to enable live coverage).

Schedule displacements generally

The displacements contemplated by both CTS 11(1) and CTS 12(1) are displacements of periods notified in the annual schedule, either as submitted under CTS 9 or as varied under CTS 10. A displacement under CTS 11 or CTS 12 does not vary the annual schedule, in the way that a variation made in accordance with CTS 10 does. The terms of both CTS 11(1) and CTS 12(1) are that the material 'is taken to be broadcast in accordance with a schedule', if certain requirements are satisfied. This means that it is not possible to use the displacement provisions to further displace material which has already been displaced from its scheduled time under one of those provisions. This is because, in such circumstances, the terms of CTS 11(1)(a) or CTS 12(1)(a) will not be engaged; the licensee will not be failing to broadcast material in accordance with a schedule. The failure to broadcast material in accordance with a schedule would have occurred on the occasion of the first displacement, and any further attempt to displace the already displaced program would not involve a failure to broadcast in accordance with a schedule.

For example, a commercial television broadcasting licensee notifies in its annual schedule under CTS 9, a C period on 1 February 2011 at 8.00 am. That licensee then displaces this C period in accordance with CTS 11 to 12 February 2011 at 7.30 am. Under the terms of the CTS, the licensee could not subsequently displace the C period on 12 February 2011 at 7.30 am under CTS 11 or CTS 12. The licensee's schedule is not varied to broadcast the C period on 12 February 2011; rather, the schedule remains unchanged. Instead, provided all the requirements of CTS 11 are satisfied, the material will be taken to be broadcast in accordance with the schedule at 8.00 am on 1 February 2011, even though it will in fact be broadcast at 7.30 am on 12 February 2011.

Interpretation of allowable events for displacement

CTS 11 and CTS 12 allow displacement of scheduled C and P periods for live coverage of events of national, state or territory importance, and major sporting events, that are suitable for viewing by children. Under CTS 5 'live coverage' includes a broadcast delayed for time zone reasons and broadcast as plausible live, without reformatting. While CTS 2009 does not provide definitions for major sporting events, or events of national, state or territory importance, a guide to their interpretation is provided below.

Event of national, state or territory importance

Event of national importance

In determining whether an event is one of national importance, the ACMA considers that the event must have significance or consequence to a substantial segment of the Australian public. It is not necessary, in that regard, that the event be distinctively Australian, or that it occur in Australia.

This means that an international event, or an event that occurs in an Australian state or territory, which has significance or consequence to a large proportion of the Australian public, can be an event of national importance. For example, broadcasting coverage on the day of a federal election would be considered to be an event of national importance.

Event of state or territory importance

CTS 11 and CTS 12 also expand the list of important events for which a C or P period may be displaced to include events of state or territory importance. This amendment recognises that some state or territory events (such as state or territory government announcements, or perhaps coverage of an extraordinary weather event that has affected, or could pose a safety risk to, a significant segment of the public in a particular state or territory) may have such significance or consequence to a substantial segment of the viewing audience in the licensee's licence area as to justify displacement of a scheduled C or P period.

An event of state or territory significance is likely to be one that most licensees in that state/territory would want to broadcast, if they could, in order to serve the interests of their audience.

Some of these events may also be considered to be of national importance. For example, a major bushfire occurring in one state is also likely to be considered an event of national importance.

Major sporting event

In determining whether a sporting event qualifies as a major sporting event, the ACMA considers whether a substantial segment of the Australian public would regard it as a significant event that should be available for live coverage, even if it occurs outside Australia or lacks Australian participation. For example, events such as the Olympic or Commonwealth games, whether involving Australian participants or not, would likely be considered major sporting events.

C program scheduling—CTS 13

Licensees must nominate in their annual schedule to the ACMA the period within the C band during which they will broadcast C programs (this is the C period). The C band means 7.00 am to 8.30 am Monday to Friday; 4.00 pm to 8.30 pm Monday to Friday; and 7.00 am to 8.30 pm Saturday, Sunday and school holidays. Only C material that is broadcast in a scheduled C period within the C band counts toward the annual C quota. To meet their weekly C programming obligation, licensees now have the option under CTS 13 to:

- > continue to broadcast 30 minutes of C material each weekday in the nominated C period within the weekday C band (that is, 7.00 am to 8.30 am or 4.00 pm to 8.30 pm) to a total of at least 130 hours per year. Additional C material can be broadcast at any other time within a scheduled C period in the C band, including the broader C band on Saturdays, Sundays and school holidays (that is, 7.00 am to 8.30 pm) (CTS 13(2)); or
- > undertake block programming, which involves broadcasting C material in a minimum of 60 minute blocks on at least two days per week (weekdays and/or weekends) in the C band to a total of at least 104 hours per year. Additional C material can be broadcast in a scheduled C period at any other time within the C band in 60 minute blocks (CTS 13(3)).

Licensees who choose the block programming option are still required to adhere to all CTS 2009 provisions, including:

- > **Quota requirements.** Licensees are still required to broadcast at least 260 hours of C material every year in scheduled C periods in the C band.
- > **Submission of an annual program schedule.** Licensees are required to nominate their scheduling option (block programming or 30 minutes each weekday) in their annual C program schedule provided to the ACMA.
- > **Schedule variation and displacement provisions.** Licensees are able to vary or displace a block of C material, providing they comply with the applicable schedule variation or displacement requirements under CTS 10, CTS 11 or CTS 12.

During **school holidays**, licensees can choose to broadcast additional C material in the extended school holiday C band to count toward the annual quota. However, they must still broadcast the minimum hours required in accordance with either CTS 13(2) or CTS 13(3).

For example, if the licensee nominates the option to broadcast 30 minutes of C programs each weekday in accordance with CTS 13(2), then during school holidays they must still broadcast 30 minutes of C material each weekday within the period designated in CTS 13(2)(a), that is, 7.00 am to 8.30 am or 4.00 pm to 8.30 pm.

The CTS 2009 define school holidays as the government primary school holidays, and each public holiday, in a licensee's licence area. In the case that a licensee's licence area covers more than one state or territory, the definition of school holidays will cover only those days that are government primary school holidays, or public holidays, in every state or territory within a licensee's entire licence area. For example, for a licensee whose licence area covers both sides of the New South Wales–Queensland border, the day of the May Day public holiday in Queensland (which has no counterpart in New South Wales) will not be a school holiday for that licensee's licence area.

P program scheduling—CTS 14

CTS 14 remains unchanged from its counterpart in the CTS 2005 and requires that licensees broadcast P material in the P band for a minimum continuous period of 30 minutes every weekday. Licensees must nominate in their annual schedule to the ACMA the periods within the P band during which they will broadcast the required amount of weekly P programs (this is the P period).

The P band is defined at CTS 5 as 7.00 am to 4.30 pm Monday to Friday. Only P material that is broadcast in the P band, during a scheduled P period, counts toward the annual quota required to be broadcast (130 hours).

Presentation of prizes—CTS 24

CTS 24 prohibits prizes being offered or given during a P program and aims to ensure that any prize-giving segment within a C program does not become embedded advertising or promotional material.

CTS 24(2) specifies that where a prize is offered within a C program:

- a) the presenter cannot recommend or endorse the prize, or encourage children to buy it. Statements by the presenter such as ‘this fantastic prize’ and ‘you can’t go without this toy/prize’ would be prohibited under this provision;
- b) the value of the prize cannot be announced, unless the prize is a cash prize; and
- c) any description by the presenter of the prize should only be to clarify the nature of the prize, such as its features, appearance and uses.

Hypothetical example: Presentation of prizes

The winning team of a children’s television game show is presented with a prize.

Likely to be prohibited

The presenter of a children’s television game show states: Congratulations Team B, you have won this great video game console, which will give you endless hours of fun. You can navigate through the challenging games which will improve your co-ordination skills and enhance your memory. It also comes with a joystick so you can share the fun with your friends.

The presentation of this prize is likely to be prohibited under CTS 24 as statements such as this ‘great computer game’ and claims made by the presenter that the computer game will improve your co-ordination skills and provide hours of fun are likely to encourage children to purchase the prize. This is also likely to be considered a promotion of a commercial product by a principal personality of a C program (see CTS 35(1)).

Unlikely to be prohibited

An off-screen announcer, who is not a popular personality, states: Congratulations Team B, you have won this video game console, which provides a range of activities that aim to challenge your co-ordination skills and your memory. It comes with 35 games and includes two joysticks for multi-player competition.

This is unlikely to be prohibited under CTS 24 because the description of the prize refers only to the nature of the prize, such as its features and uses.

Unsuitable material—CTS 25

CTS 25 prohibits the broadcast during C and P periods of certain material, including programs and advertisements, which is unsuitable for children. Unsuitable material is material which:

1. demeans individuals or groups of people on the basis of race, nationality, ethnicity, gender, sexual preference, religion or mental or physical disability. Further information about appropriate treatment in a C or P program of themes which deal with any of these issues is available from the ACMA’s website at www.acma.gov.au/WEB/STANDARD/pc=PC_91815; or
2. presents images or events in a way which is unduly frightening or unduly distressing to children. For example, a segment within a children’s current affairs/magazine-style program which depicts detailed images of people injured as a result of an earthquake is likely to be prohibited under this provision; or

3. presents images or events which depict unsafe uses of a product or unsafe situations which may encourage children to engage in activities dangerous to them. For example, if a cooking segment in a children's program involves the use of knives in the preparation of food, appropriate guidance and demonstration in the safe use of the knife and/or warnings should be provided (e.g. that adult supervision/assistance is needed). Unsafe depictions of the knives may include cutting food with the blade facing inwards and close to fingers; or
4. advertises products or services officially declared unsafe or dangerous by a Commonwealth authority or by an authority having jurisdiction within a licensee's licence area. Declarations of products or services that have been declared unsafe are usually published in the Commonwealth Gazette or a state government gazette, and the ban on their supply can be temporary or permanent. These goods may include food and toys.⁷

Separation of advertisements and sponsorship announcements—CTS 28

The intention of CTS 28 is to protect children from confusion that may result from the mingling of program and commercial content in children's television programming. CTS 28 requires that advertisements and sponsorship announcements broadcast during a C period must be clearly identifiable as such to the child viewer. This provision applies to advertisements and sponsorship announcements that are broadcast in all breaks immediately before, during and immediately after C programs, and addresses any advertising and sponsorship material that may be embedded within the program.

Embedded advertising refers to the integration or immersion of a product or service into the dialogue, plot and/or scenery of a program so that the product or service appears to be part of the program.

Examples of embedded advertising include:

- > a story line or program segment that revolves around a particular commercial product or service, with a focus on the branding of the product or service rather than its generic use
- > a program host repeatedly referring to a commercial product or service from a company that provides financial support to the program
- > a program host endorsing, recommending or promoting a commercial product or service rather than merely informing the audience about it as part of a story or segment
- > repetitive images or signs for a commercial product or service, or product placements, which are more than an accidental accompaniment or merely incidental to the broadcast of the main program material. For example, an accidental/incidental visual of a billboard for a commercial product or service on a film set would be permitted within a C program. However, repetitive and/or focused visuals of the billboard would be restricted under this provision.
- > scripted dialogue that includes references to well-known product or service brands, product slogans and/or catch phrases.

As discussed under CTS 6, licensees should be aware that while a program has been classified as C or P, this does not mean that the content of that program has been

⁷ Further information about the process whereby products are officially declared unsafe by a Commonwealth authority is provided in the *Trade Practices Act 1974*, available at www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/.

assessed for compliance with all aspects of the CTS 2009 (as some programs are assessed for classification at pre-production stage and on the basis of scripts).

The classification of C or P programs is based on a set of criteria under CTS 6 which is only a subset of CTS 2009 provisions. Licensees are required to ensure that C or P programs broadcast during C or P periods comply with all other requirements of the CTS 2009, including CTS 28.

Hypothetical example: Separation of programming and advertisements/sponsorship announcements

A television network and a theme park have an arrangement which allows a C classified program to be filmed in the theme park without charge. The theme park sponsors the show, but is not otherwise involved in its production or broadcast activities. At the beginning of an episode, the following off-screen announcement is made: 'This show is brought to you by this theme park!'

Likely to be prohibited

In the episode, the child contestants are performing in front of banners with the theme park's logo that includes text explicitly promoting the theme park. Child contestants are also wearing hats and tops with the theme park's logo and there are numerous references to the theme park in the closing song.

The logo and branding presented in the program is identical to the logo and branding associated with a commercial service—the theme park. The verbal and visual references described above blur the distinction between programming and advertising/sponsorship material, and are likely to be prohibited under CTS 28.

While the announcement at the beginning of the episode clarifies the sponsorship arrangement between the theme park and the program, the issue of embedded advertising remains, as advertising and sponsorship material is not distinct from the program material. If the announcement is made by a popular personality, it may also be considered to be a promotion of a commercial product by a principal personality of a C program (see CTS 35).

Unlikely to be prohibited

During the show, a child contestant wins a hat and t-shirt which feature the theme park's logo and an off-screen announcer, who is not a popular personality, states that this prize is provided by their sponsor, the theme park.

Assuming other requirements of the CTS 2009 are met, this announcement is unlikely to be prohibited under CTS 28 because sponsorship identification disclosures were made at the beginning of the program, and concurrently with the prize offered during the program. This makes obvious to child viewers the difference between advertising/sponsorship material and program material.

Repetition of advertisements—CTS 29

CTS 29 is intended to protect children by preventing them from being exposed to repeated advertisements, which may have an unfairly persuasive effect. Under CTS 29, a licensee may broadcast the same advertisement no more than twice during *any* 30 minutes of a C period.

The ACMA interprets CTS 29 to apply to any thirty minutes within a scheduled C period, and where two (or more) half hour C periods are immediately adjacent to one another, they together comprise a C period for the purpose of CTS 29.

For example, a licensee may schedule a 30 minute C period at 7.30 am, and then another 30 minute C period at 8.00 am on the same day. Together, these two adjacent 30 minute periods comprise a C period from 7.30 am to 8.30 am for the purposes of CTS 29.

In these circumstances, CTS 29 would prohibit the licensee from broadcasting the same advertisement at 7.51 am, 8.03 am and 8.14 am as the advertisement would have been broadcast more than twice during any 30 minutes of the C period.

Clear presentation—CTS 32

CTS 32 requires that advertisements accurately represent the advertised product or service. The provision includes:

- > obligations in relation to claims made in advertisements;
- > a requirement that if accessories (such as batteries) are required to operate or enjoy an advertised product this is clearly understood by children;
- > a requirement that the presentation of the product (for example, its size) and its price is accurate and clearly understood; and
- > an obligation to fairly represent the performance a child can obtain from products such as toys and games.

For example, an advertisement that features a child playing with a toy which, through the use of animation and special effects, demonstrates and suggests that the toy is able to fly when in fact that toy cannot fly, would not comply with CTS 32(3). However, animation can be used to illustrate a toy's capability, such as flying in the case that a toy plane can actually fly.

Furthermore, CTS 32(7) requires that an advertisement for a food product must not contain misleading or incorrect information about the nutritional value of that product. This information must be factual and must not lead the viewer to an incorrect view of the food's nutritional value. For example, an advertisement that states that a muesli bar 'contains the goodness of almonds' when it actually contains peanuts, is likely to be prohibited under this provision as the information provided is factually incorrect.

Disclaimers and premium offers—CTS 33

Disclaimers and premium offers may be used in advertisements, provided they meet the requirements imposed by CTS 33.

DISCLAIMERS—CTS 33(1)

CTS 5 defines a disclaimer as 'a statement which attempts to limit or deny any legal liability which might otherwise fall on an advertiser.' CTS 33(1) requires that disclaimers be presented conspicuously. Generally, this means that any disclaimer should be easily seen by, or should readily attract the attention of, the child audience.

PREMIUM OFFERS—CTS 33(2) and CTS 33(3)

CTS 5 defines a premium as ‘anything offered with or without additional cost that is intended to induce the purchase of an advertised product or service.’

A premium offer may be used in an advertisement broadcast during a C period, provided the advertisement meets the requirements imposed by CTS 33(2).

The next section provides guidance and threshold tests for identifying whether the use of a premium offer in an advertisement broadcast during a C period meets the requirements of CTS 33.

> Does the advertisement contain a premium offer?

Whether an advertisement contains a premium offer will be determined by reference to the definition in CTS 5. ‘Premium’ is defined to mean anything offered with or without additional cost that is intended to induce the purchase of an advertised product or service. When considering the term ‘induce’, the ACMA has regard to its ordinary meaning, which is ‘to lead or move by persuasion or influence, as to some action, state of mind, etc’.

This definition will usually capture so-called ‘bundled’ products which typically comprise edible and non-edible components.

In addition, this definition will usually capture the offer of a chance to win prizes by purchasing a product or service. In such cases, the advertisement will contain both a premium and a competition. While CTS 33 and CTS 34 are separate provisions, they do not contain mutually exclusive concepts. A licensee that broadcasts an advertisement containing a competition that also meets the definition of premium in CTS 5 must comply with both CTS 33 and CTS 34.

> If a premium is offered, does it comply with CTS 33(2)?

If a premium is offered, the advertisement must comply with **all** of the following requirements in CTS 33(2):

a) Incidental to the reference to the main product or service advertised

If a premium is offered, CTS 33(2)(a) requires that the advertisement must not make reference to the premium in a way that is more than **merely incidental** to the reference to the main product or service advertised.

Generally, this means that any reference to the premium offer in an advertisement must occur as secondary to, or be given lesser importance than, the reference to the main product or service advertised. The reference does not need to be verbal.

CTS 33(3) provides a non-exhaustive list of factors that are relevant to determining whether a reference is merely incidental. These factors are primarily focused on the way in which the premium offer is presented in the context of the advertisement as a whole.

The factors include:

- > the amount of time devoted to the premium offer compared to the amount of time devoted to the advertised product or service
- > the way pictures, text or moving images are used to promote the premium offer
- > the way sound is used to promote the premium offer.

There are no quantitative measures in relation to the above factors. For example, an advertisement which devotes only five seconds of visuals to the premium offer in a thirty second advertisement could still raise issues of compliance in relation to CTS 33(2)(a) if, in those five seconds, the premium is presented in a way that makes it stand out considerably from the remaining footage, whether through the use of sound, colour,

animation and/or special effects. This would include, for example, the case where the premium was presented in a dynamic manner (such as colour and action), while the remaining advertisement comprised relatively static black and white footage.

b) Unreasonable expectation of the advertised product or service

CTS 33(2)(b) requires that an advertisement that contains a premium offer must not stimulate any unreasonable expectation of the main product or service that is being advertised.

c) Clear information about the conditions for obtaining the premium offer

CTS 33(2)(c) requires that any conditions for obtaining the premium are clearly set out for the audience.

In the context of CTS 33, conditions refer to the requirements, arrangements or rules that customers have to satisfy before they can get the premium which is being offered. For example, the advertisement must clearly state whether the premium is offered free, for a nominal cost, at a greatly reduced price and/or requires the purchase of another product or service.

A note to CTS 33(2) provides an example of how that provision operates in relation to food advertising where the non-food component is a premium offer:

‘Example: If an advertisement advertises a product that has both food and non-food components, and the non-food component is a premium, the reference to the non-food component must be merely incidental to the reference to the food component.’

Hypothetical case study: Premium offers

The following hypothetical case study illustrates the use of a premium offer in an advertisement which may not comply with CTS 33(2).

Description of the advertisement

A licensee broadcasts an advertisement for a packet of chips during a C period. The advertisement starts with a child playing with a toy action figure he removed from a packet of chips. The camera zooms into the toy action figure on several occasions, constituting 11 seconds of the 20 second advertisement. A close-up of the child shows him alternately looking at the toy action figure in awe and the chip packet in surprise.

The chip packet includes the words ‘Free action figure inside!’ across the top. The child places the chip packet on the kitchen table so that the front of the packet with the words ‘Free action figure inside!’ is visible.

The following scripted scene concludes the advertisement:

Voice-over: ‘These crunchy chips are delicious and full of energy.

You can find your own free action figure inside specially marked packets of these chips!’

Child: [playing with action figure] ‘This toy is fantastic!’

Issues for consideration—Threshold tests

1. Does the advertisement contain a premium offer?

CTS 5 defines a premium as ‘anything offered with or without additional cost that is intended to induce the purchase of an advertised product or service.’ The advertisement for the chips offers a free action figure with the purchase of specially marked chip packets. The advertisement notes that the toy action figure is not available for individual sale and cannot be obtained without purchasing the specially marked chip packets. Therefore, the toy action figure is likely to be a premium offer within the definition of CTS 5.

2. If a premium is offered, does it comply with CTS 33(2)(a), (b) and (c)?

a) Is the reference to the premium merely incidental to the reference to the advertised product or service?

The opening and closing images of the advertisement focused on the chip packet and there were several visuals of the chip packet throughout the advertisement. This demonstrated that the advertised product was the chip packet. However, extended close-ups on the toy action figure (the premium offer) throughout the advertisement constituted the majority of the advertisement (11 out of 20 seconds). In addition, verbal references to the toy action figure (the premium offer) within the script formed a substantial part of the script and were not merely incidental to the main product (the chips) advertised.

In this case, the focus on the premium offer means that it is not likely to be considered merely incidental to the reference to the product advertised, that is, the chips.

b) Does the advertisement stimulate an unreasonable expectation of the advertised product or service?

The message conveyed in this advertisement was that a free toy action figure was available with the purchase of specially marked chip packets. The way in which the toy action figure was described did not have a bearing on the way the chips were described.

Therefore, it is unlikely that the use of the premium offer in this advertisement stimulated an unreasonable expectation of the main product advertised, that is, the chips.

c) Does the advertisement provide clear information about the conditions for obtaining the premium offer?

In the advertisement, the only condition that had to be met before obtaining the premium offer, the toy action figure, was the purchase of specially marked packets of chips.

The advertisement made it clear that the premium offer was available free with the purchase of specially marked packets of chips through the voice-over ('These crunchy chips are delicious and full of energy. You can find your own free action figure inside specially marked packets of these chips!'), and the visual images of the chip packet which included written information about the condition for obtaining the toy action figure.

Assessment

In order to comply with CTS 33(2), an advertisement containing a premium offer must meet the conditions at CTS 33(2)(a), (b) and (c). As this advertisement may not have been compliant with CTS 33(2)(a), it may not comply with CTS 33(2) overall.

Competitions—CTS 34

CTS 34 imposes two requirements if competitions for children are referred to in programs or advertisements. If competitions for children are referred to:

- a) a summary of the relevant basic rules must be stated. These may include the terms and conditions for entering and participating in the competition, or obtaining a prize; and
- b) any statements made about the chance of winning must be clear, fair and accurate.

Competitions involve an act of competing or a contest for some prize of advantage. Examples of competitions captured under this provision include televised game shows where children are the contestants/competitors, discrete competitions within children's magazine/variety-style programs, and competitions referred to within an advertisement. As discussed above, competitions referred to within advertisements may also be premiums, in which case the advertisement must comply with both CTS 33 and CTS 34.

While competitions for children are not expressly prohibited from broadcast during P periods, it is unlikely that a competition suitable for broadcast during P periods could be devised, having regard to CTS 24(1) which prohibits the offer of prizes during P programs, and CTS 26(2) which prohibits the broadcast of advertisements during P periods.

Hypothetical example: Competitions

A promoter seeks to broadcast, during a C period, an advertisement that refers to a competition which offers a prize of a band playing at a primary school within a specific region.

Unlikely to be prohibited

The advertisement explains that anyone can enter the competition by registering their details online before the closing date. It explains that winners would be notified by phone on a specific date. A voice-over announces: 'Entering is easy, but only primary schools in this region have a chance of winning!'

The advertised competition is likely to meet conditions under CTS 34, as the advertisement clearly specifies the rules of the competition and does not stimulate unrealistic expectations about the chance of winning.

Likely to be prohibited

The advertisement explains that anyone can enter the competition by registering their details online before the closing date. It explains that winners would be notified by phone on a specific date. A voice-over announces: 'Entering is easy, and everyone has a chance to win!'

The advertised competition is not likely to meet conditions under CTS 34. While the rules of the competition were clearly specified, the competition was unfair to those viewers who entered on the basis that they had a fair and equal chance of winning the prize when, in fact, due to the location of their school, they had no chance of winning.

Hypothetical example: Competitions and premiums

An advertiser seeks to broadcast, during a C period, an advertisement (for a toy) that refers to a competition. Consumers may purchase the toy and submit a barcode from the toy's box to the toy manufacturer to go into a draw to win one of twenty prizes. The competition closes on 31 December 2011.

Does the advertisement contain a premium offer?

CTS 5 defines a premium as '*anything* offered with or without additional cost that is intended to induce the purchase of an advertised product or service' (emphasis added). In the advertisement, a chance to win a prize/s is being offered with the purchase of the toy. This offer is made without additional cost to consumers. The intent of the offer of a chance to win prizes, in the context of the advertisement where consumers may only enter the competition after purchasing the toy, is to induce the purchase of the advertised product. Therefore, the offer of a chance to win a prize is likely to be a premium offer having regard to the definition of 'premium' in CTS 5.

Unlikely to be prohibited

The advertisement spans 30 seconds and shows the toy and explains the competition.

The advertisement opens with the image of the toy manufacturer's logo. For the first 22 seconds, the advertisement shows children enjoying the toy, with a product jingle playing as background music. The music fades while the advertisement shows a picture of the toy in its packaging for eight seconds and the accompanying scripted voiceover states:

'Send in your toy box barcode before 31 December 2011, and have a chance to win one of twenty prizes! See our website below for more details.'

The URL for the website is displayed at the bottom of the screen during the scripted voiceover segment of the advertisement.

Details of the twenty prizes on offer, the toy manufacturer's address for delivery of the toy box barcodes, and any other information is available on the website displayed as a URL during the advertisement.

The advertised competition is likely to meet CTS 34(a) as the advertisement includes a summary of the basic rules of the competition.

The advertisement is likely to meet CTS 33(2)(a), as the reference to the premium, being a chance to win prizes, is merely incidental to the reference to the product. The toy is shown consistently throughout the advertisement and is the focus of the advertisement, both in terms of audio and visuals. While the chance to win prizes through the competition is referred to in the advertisement, these references are of lesser importance to the toy.

The advertisement is also likely to meet CTS 33(2)(c) as it clearly states that the chance to win prizes may only be obtained if the toy box barcode is sent to the product manufacturer prior to 31 December 2011.

Likely to be prohibited

The advertisement opens showing children enjoying the toy for five seconds. This image dissolves to images of entry passes and the gates to a theme park. A bag is then shown in the foreground that spills open with chocolate bars. This footage is shown for 15 seconds, during which a voiceover states:

'You could win one of twenty prizes! You could win one of five theme park packs containing four entry passes to the best theme park in Australia! You could also win one of 15 chocolate packs, packed full of a variety of chocolate bars!'

The advertisement then returns to footage of the children enjoying the toy. This is shown for five seconds, before both children cry out in unison:

'You have to be in it to win it!'

The advertisement then concludes with the image of the toy manufacturer's logo.

The advertisement is not likely to meet conditions under CTS 34. The advertisement does not include a summary of the basic rules of the competition, that is, in order to enter the competition, the toy box barcode must be sent to the toy manufacturer.

The advertisement is also not likely to meet conditions under CTS 33(2)(a). The references to the chance to win prizes are not secondary to, or of lesser importance than, the references to the toy. More than half of the 30 second advertisement includes references primarily to the competition and chance to win prizes. The advertisement concludes with the children featured in the advertisement, referencing the chance to win prizes.

The advertisement is also not likely to meet the conditions set out in CTS 33(2)(c) as the conditions that must be met before the chance to win prizes can be obtained are not clearly set out. The advertisement does not state or suggest that the competition closes on 31 December 2011, nor explain that the toy box barcode must be sent to the toy manufacturer in order to go into the draw for the chance to win.

Promotion by popular characters—CTS 35

CTS 35 prohibits popular characters and personalities from being used (with some exceptions) to endorse, recommend or promote commercial products or services during C and P periods. The intention of this provision is to minimise the undue influence of broadcast material with a commercial content on children's product choices.

In the context of CTS 35, 'popular' will cover any character (created in Australia or internationally) or personality (Australian or international) well known to the general public, or a section of the general public, such as the child audience. 'Popular' will generally include those characters and personalities regarded with favour or approval by the general public or a section of the general public. Note 1 at CTS 35 states that popular personality includes well-known sporting and music personalities. The ACMA also considers that popular personalities include prominent persons and celebrities.

Popular characters and personalities can fall into more than one category. For example, a principal personality or character from a C or P classified program may also fall into the following character categories in CTS 2009: CTS 35(1)(b) (a popular program or movie character), CTS 35(1)(d) (a popular personality), CTS 35(1)(e) (a licensed character) and CTS 35(1)(f) (a proprietary character).

CTS 35 applies to **all** material broadcast during a C or P period or in the break immediately before or after a C or P period.

'Material' is not defined in the CTS. On the basis of the definition of 'C material' in CTS 5, 'material' encompasses at least:

- > a program;
- > a program promotion;
- > a community service announcement;
- > any other announcement;

- > a station identification;
- > a news flash; and
- > an advertisement.

'Material' can be visual or aural material.

Promotions, endorsements and recommendations

The CTS do not define 'promotion', 'endorsement' or 'recommendation'. These terms are given their ordinary dictionary meaning and relate to particular advertising techniques used to draw people's attention to certain commercial products and services and encourage people to purchase these products/services. They refer to activities which publicise, market, or advocate the purchase of, a particular product or service.

These promotions, endorsements and recommendations can be direct (for example, a personality expresses strong verbal approval of the product or service) or indirect (for example, an endorsement is implied or understood from the appearance or conduct of the personality, having regard to the context of the material broadcast).

An example of an indirect endorsement would include an advertisement in which a popular personality, such as a well-known actor, is shown to play with a hand-held game. While the popular personality does not verbally endorse the commercial product, visuals of her enjoying the game and her association with the product would be understood as a promotion of that product.

Another example of a promotion would be an advertisement for a breakfast cereal which includes visuals of a popular sporting personality wearing a t-shirt exhibiting the logo/branding for the breakfast cereal, while running in a marathon. These visuals would be understood as an endorsement of a commercial product by a popular personality.

Advertisements often use well-known personalities or celebrities to favourably represent or recommend a product or service, thereby increasing its audience appeal. It is this advertising technique that CTS 35 targets.

CATEGORIES OF RESTRICTED POPULAR CHARACTERS

The following section provides a discussion of each of the categories of popular characters and personalities listed in CTS 35(1). Following the explanatory material on CTS 35(2) ('Exceptions'), examples are given of the application of CTS 35(2) to popular characters and personalities from each of the categories discussed below.

Principal personalities or characters from C or P programs

CTS 35(1)(a) refers to the main personalities or characters in a C or P classified program.

Examples of a principal character or personality include:

- > the host/presenter/s of a C classified live action game show or magazine-style program
- > a character from an animated or live action C drama program
- > the main presenter/s of a P classified variety-style program.

Popular program or movie characters

CTS 35(1)(b) refers to characters (human, puppet or animated) from any television program or movie that can reasonably be expected to be well-known to children, or to members of the public generally, within the licensee's licence area.

Examples of a popular program or movie character include:

- > a main character from a G classified drama series/serial broadcast during prime time
- > Luke Skywalker from the *Star Wars* movie trilogy
- > Batman from the movie *The Dark Knight*.

Popular cartoon, animated or computer generated characters

CTS 35(1)(c) refers to all popular cartoon, animated or computer generated characters that feature in television programs, movies or games, or that were developed or created to promote a brand, product or service.

Examples of popular cartoon, animated or computer-generated characters include:

- > Bart Simpson from *The Simpsons* television series
- > Shrek from the *Shrek* movie series
- > Dory from Pixar's 2003 movie, *Finding Nemo*
- > Master Chief Petty Officer John-117 from Xbox 360 game, *Halo 3*.

Popular personalities

Popular personalities includes any character (created in Australia or internationally) or personality (Australian or international) well known to, and generally favourably regarded by, the general public, or a section of the general public, such as the child audience. They may come from a range of fields and industries, but usually from those where public performance, or public recognition or support, are integrally involved, for example, sport, or music and other performing arts.

The ACMA also considers that popular personalities include prominent persons and celebrities. Personalities may include Olympic medallists, high-profile cricketers and footballers, Top 40 singers and award winning actors.

Licensed and proprietary characters

For the purpose of CTS 35(1)(e) and CTS 35(1)(f), CTS 5 defines a licensed character as 'a character used, under licence from the owner of the character, in the promotion or advertising of products or services.' Proprietary character is defined at CTS 5 as 'a character used by its owner in the promotion or advertising of products or services'. Licensed and proprietary characters can include characters from novels, comic books, television programs, movies or computer games.

EXCEPTIONS

CTS 35 targets the use of popular characters and personalities as an advertising technique, which evidence shows is unduly influential on children's product choices. It does not, however, aim to otherwise restrict advertising of particular products or services. CTS 35(2) and (3) provide exceptions to CTS 35(1) and are described below.

Products that depict a popular character or personality

CTS 35(2)(a) allows an advertisement to depict a commercial product or service in the form in which it is usually offered for sale, even though that form may incorporate the image of a popular character or personality mentioned in CTS 35(1), providing that no endorsement, recommendation or promotion of the commercial product or service is provided by that popular character or personality.

This means that (providing the requirements of CTS 35 are otherwise satisfied):

- > **retail product packaging** which features a popular character or personality can be included in advertisements if the product (and the retail product packaging) is presented in the form in which it is usually offered for sale
- > **product logos** that incorporate the image of a popular character or personality, and are visible on the product in the form in which it is usually offered for sale, can be included in advertisements
- > **promotions of a DVD or video** may include clips from the DVD or video even if they feature a popular character or personality, if the clip presents a component of the product in the form in which it is usually offered for sale
- > **a concert or live show** which features a popular character or personality may be promoted in an advertisement if the clip shows segments of the concert or live show (including the popular character or personality featured in it) in the form it is usually offered for sale.

However, advertisements for products or services featuring a popular character or personality would be prohibited if:

- > the image of the character is animated (for example, provided with moving features, or visually or aurally represented differently to the form in which the character or personality is incorporated in the product, or its packaging, as it is usually offered for sale); and
- > the character is used to promote, recommend or endorse the product.

Toys and games

Under CTS 35(2)(b), advertisements for toys and games may use a popular character or personality to endorse, recommend or promote a commercial toy or game when that popular character or personality is represented in the toy or game.

In the case where there are multiple toys in the advertisement, this exemption only applies to the extent that the listed character making the endorsement, recommendation or promotion is represented in each toy or game endorsed, recommended, or promoted by that character.

The extent to which advertisements, where the popular character is promoting a toy which represents that popular character, as well as related toys, would be exempt under CTS 35(2)(b) can only be established with regard to the particular facts of the case.

The exemption will not apply in the case where a group of popular characters (such as those from a music group or a television series) promote a toy or game which represents only one of the characters from the group.

Non-commercial products and services

In recognition of the influential role of popular characters and personalities in the lives of children, CTS 35(3) allows the popular characters and personalities listed in CTS 35(1) to be used to promote products and services which are non-commercial (that is, not connected to a private business or profit-making enterprise) provided the advertisement is suitable for viewing in a children's program described in CTS 6, and provided that, if the advertisement relates to nutrition, safety, education or like matters, it contains only generic statements about such matters.

Community service announcements fall within the scope of 'material' under CTS 35(1). The ACMA considers that community service announcements which draw public attention

to, or promote, a product or service are advertisements and therefore subject to CTS 35(3).

However, whether or not a community service announcement promotes a non-commercial product or service and is exempt under CTS 35(3) can only be assessed on a case-by-case basis.

For example, if any part of an advertisement for a non-commercial product or service draws attention to or promotes a commercial product or service (such as, by mentioning sponsorship by a commercial enterprise of a charitable or community service event), care must be taken to ensure that a character or personality listed in CTS 35(1) who endorses, recommends or promotes a non-commercial product or service is not also seen as, or understood to be, drawing attention to or promoting a commercial product or service.

Hypothetical examples: Popular characters and personalities

The following hypothetical examples illustrate the application of CTS 35(2) to the characters/personalities from each of the categories in CTS 35(1).

CTS 35 (1)(a)—Principal C or P program character or personality

The host of a C classified magazine-style program refers to a set of playing cards, and there is only incidental reference to the brand name of the cards during a segment within the program.

Likely to be prohibited

This provision is likely to prohibit the program host from displaying the playing cards and stating 'I just played with these new [brand name] cards, and I love them!' as this would constitute a promotion or endorsement of a commercial product.

Unlikely to be prohibited

This provision is unlikely to prohibit the program host from referring to the playing cards as an example of a traditional children's game in a general discussion of children's games and how they have evolved over time. In this context, the generic reference to the playing cards is a way of explaining the range of conventional games to the child audience. However, care would need to be taken to ensure that the program host is not promoting the particular brand of playing cards.

CTS 35 (1)(b)—Popular program or movie character

A film studio has released a new action blockbuster on DVD.

Likely to be prohibited

An advertisement for the DVD features both an original clip from the DVD and an active promotion by the main character from the action movie. This advertisement is likely to be prohibited under CTS 35 (1)(b) as the promotion by the movie character, physically present in the advertisement, is not an original part of the DVD.

Unlikely to be prohibited

An advertisement for the DVD containing a clip from the DVD which features the main character from the movie is unlikely to be prohibited as the clip is part of the original product, the clip is presented in its original form, and supplementary footage of the main character is not presented.

CTS 35 (1)(c)—Popular cartoon, animated or computer-generated character

A theme park promotes its new ride which incorporates the image of a popular cartoon character.

Likely to be prohibited

In an advertisement for the ride, the cartoon character's image on the ride is brought to life through voice-over and animated movements. This is likely to be prohibited under CTS 35, as this may constitute an endorsement, recommendation or promotion of a commercial service; that is, the ride, by a popular animated character.

Unlikely to be prohibited

An advertisement for the theme park which shows the ride in action is unlikely to be prohibited under CTS 35, provided the ride is presented in its usual form; for example, an image of the character that is actually painted on a dodgem car at the theme park.

CTS 35 (1)(d)—Popular personality

A popular football player is sponsored by a cereal brand and features in advertisements for that product.

Likely to be prohibited

An advertisement for the cereal which shows the football player recommending, promoting or endorsing the product is likely to be prohibited under this provision.

Unlikely to be prohibited

The footballer's image on the cereal box or any other product packaging in an advertisement for the product is unlikely to be prohibited under CTS 35, if it is in the form in which the cereal is usually offered for sale.

This may cross into the prohibited category if, for example, a considerable proportion of the advertisement contains footage that zooms into the image of the football player on the product packaging, making the footballer and his/her association with the product the focus of the advertisement rather than the product as a whole, or if the image is animated through action or voice-over to actively promote, endorse or recommend the product.

CTS 35 (1)(e)—Licensed character

A company manufactures and advertises a t-shirt which features a licensed character.

Likely to be prohibited

An advertisement for the t-shirt draws specific attention to the licensed character on the t-shirt, by providing the character's voice-over and zooming into the character's face. This is likely to be prohibited under CTS 35, as this may constitute an endorsement, recommendation or promotion of a commercial product by a licensed character.

Unlikely to be prohibited

An advertisement for the t-shirt shows the image of the character on the t-shirt, but does not animate the character or in any way draw specific attention to the character. As the character does not appear in the advertisement in any other way to promote the t-shirt, this advertisement is unlikely to be prohibited under the provision.

CTS 35 (1)(f)—Proprietary character

A chip company's trademarked logo includes its proprietary character.

Likely to be prohibited

An advertisement for a new chip flavour features the retail chip packet, which includes the trademarked logo. During the advertisement, the proprietary character's image on the chip packet is brought to life through animation. This is likely to be prohibited under CTS 35.

Unlikely to be prohibited

An advertisement for a new chip flavour features the chip packet which incorporates the proprietary character's image, in the form in which it is usually offered for sale, but does not animate the character or in any way draw specific attention to the character in the advertisement. This is unlikely to be prohibited under this provision.