

Investigation report no. BI-629

Summary	
Licensee	Channel Seven Sydney Pty Ltd
Station	86 SEVEN ATN
Type of service	Commercial Television Broadcasting
Name of program	<i>Dancing With The Stars: All Stars (Episode 7)</i>
Date of broadcast	25 April 2021
Relevant Legislation/Standard	<p>> <i>Broadcasting Services Act 1992 (the BSA):</i></p> <p>Captioning quality</p> <ul style="list-style-type: none"> Subsection 130ZZA(4) of the BSA [compliance with captioning standard by a commercial broadcaster]. <p>Record-keeping</p> <ul style="list-style-type: none"> Paragraph 130ZZD(2)(b) of Part D [make audio-visual records sufficient to enable the responsible person's compliance with Divisions 4 and 5 to be readily ascertained]. Paragraph 7(1)(o) of Schedule 2 to the BSA [licence condition to comply with Part 9D of the BSA]. <p>> <i>Broadcasting Services Television Captioning Standard 2013 (the Standard)</i></p>
Findings	<p>No finding in relation to subsection 130ZZA(4) of the BSA due to insufficient information available for the Program.</p> <p>Breach of paragraph 130ZZD(2)(b) of Part D of the BSA due to failure to keep audio-visual records sufficient to enable the assessment of the Licensee's compliance with its captioning obligations to be readily ascertained.</p> <p>Breach of paragraph 7(1)(o) of Schedule 2 to the BSA due to the Licensee not meeting its record-keeping obligations.</p>
Attachments	<p>A – extracts from the complaint to the ACMA</p> <p>B – extracts from the Licensee's submissions to the ACMA</p>

Background

The *Dancing With The Stars* program (the **Program**) is broadcast by Channel Seven Sydney Pty Ltd (the **Licensee**). The Australian Communications and Media Authority (the **ACMA**) received a complaint that the captioning service for the episode of the Program broadcast on 25 April 2021 was inadequate.

The complainant alleged that the captions for the Program broadcast on 25 April 2021 covered the contestants' faces and were too small to read. A copy of the complaint to the ACMA is at **Attachment A**.

On 10 May 2021, the ACMA commenced an investigation into the complaint under the *Broadcasting Services Act 1992* (the **BSA**).

The ACMA investigated the Licensee's compliance with:

- subsection 130ZZA(4) of the BSA; and
- paragraph 7(1)(o) of Schedule 2 to the BSA.

As a result of information provided by the Licensee on 3 November 2021, the ACMA amended the scope of the investigation on 9 December 2021 to include the Licensee's compliance with paragraph 130ZZD(2)(b) of the BSA.

The Program

The Program is an Australian-produced light entertainment reality show.

Legislative framework

Provision and quality of captioning services

Subsection 130ZZA(4) of the BSA imposes a requirement that a commercial television broadcasting licensee must comply with a standard determined by the ACMA under subsection 130ZZA(1) of the BSA.

The Standard was determined by the ACMA under subsection 130ZZA(1).

The Standard establishes minimum requirements relating to the quality of captioning services to ensure that they are meaningful to deaf and hearing-impaired viewers¹. Specifically, the Standard requires captions to be readable,² accurate³ and comprehensible.⁴

A 'captioning service' is defined in section 4 of the Standard as 'a service in which captions are provided for programs, that enable the viewer to follow the speakers, dialogue, action, sound effects and music of a program'.

'Captions' is defined in section 4 of the Standard as 'the visual translation of the soundtrack of a program in English, in word form'.

The Standard stipulates that the quality of a captioning service for a program must be considered in the context of the program as a whole.⁵ When determining the quality of a captioning service for a program, the cumulative effect of the readability, accuracy and comprehensibility of the captions must be considered.⁶

¹ section 3 of the Standard

² section 7 of the Standard

³ section 8 of the Standard

⁴ section 9 of the Standard

⁵ paragraph 6(a) of the Standard

⁶ paragraph 6(c) of the Standard

Compliance with the Standard by a commercial television broadcasting licensee is required under subsection 130ZZA(4) in Part 9D of the BSA and compliance with the Standard is a licence condition under paragraph 7(1)(o) of Schedule 2.

Record-keeping

Paragraph 130ZZD(2)(b) of the BSA requires licensees to make audio-visual records, in a form approved in writing by the ACMA, that are sufficient to enable the licensee's compliance with Divisions 4 and 5 to be readily ascertained.

Subsection 130ZZD(4) of the BSA requires licensees to retain audio-visual records for at least 30 days after the day the program to which the record relates was broadcast; or for at least 90 days after the day the program was broadcast if, before the end of those 30 days, the licensee becomes aware that a complaint has been made under Part 11 of the BSA.

Subsection 130ZZD(5) of the BSA requires licensees to provide the ACMA, upon request, with records retained by the licensee under section 130ZZD of the BSA, whether or not the minimum period for retaining the records has passed.

Issue 1: Did the licensee comply with the Standard and, accordingly, comply with subsection 130ZZA(4) of the BSA?

No Finding

As the Licensee was not able to give the ACMA an audio-visual record sufficient to enable the Licensee's compliance with the provision to be readily ascertained, the ACMA makes no finding on the Licensee's compliance with subsection 130ZZA(4) of the BSA.

Reasons

The Licensee indicated that the file that was provided to the ACMA was corrupted when it was extracted from the Licensee's file retention system. To support this view, the Licensee provided a copy of the TX Master File. The ACMA confirmed with the supplier of the file storage service that there had been a corruption issue with the file retention system.

The ACMA understands from the Licensee's submissions that the TX Master File is only the 'broadcast-ready' file for the Program with the captions embedded. The Licensee submitted on 3 November 2021 that the corrupted file contained delays and latency issues with captions, however, in its submission of 5 May 2022, the Licensee indicated that there were no issues with the quality of the captions on the TX Master File. As far as the ACMA can see, the TX Master File is not the version of the Program that was in fact broadcast and which may have included technical or other difficulties.

The ACMA therefore considers that the TX Master File is not an accurate record of the actual Program that was broadcast.

From an evidential perspective, as the ACMA does not have an accurate record of the captioning service for the Program broadcast on 25 April 2021, the ACMA is unable to determine whether the Licensee complied with the Standard and, accordingly, whether it complied with subsection 130ZZA(4) of the BSA.

Issue 2: Did the licensee comply with the record-keeping requirement in paragraph 130ZZD(2)(b) of the BSA?

Finding

The audio-visual record of the Program provided by the Licensee on 5 May 2021 was not sufficient to enable the ACMA to readily ascertain the Licensee's compliance with Divisions 4 and 5 and, accordingly, the Licensee failed to comply with paragraph 130ZZD(2)(b) of the BSA.

Reasons

In its response of 3 November 2021, the Licensee submitted that the broadcast file provided to the ACMA on 5 May 2021 was not an accurate representation of the Program, as the file had been corrupted when it was extracted from the Licensee's file retention system.

The Licensee also submitted it was unable to provide the ACMA with the original broadcast file because it could no longer be extracted from the hard drive on which it had been stored due to corruption issues with the file retention system.

In its submission of 5 May 2022, the Licensee disagreed with the ACMA's preliminary finding that it had breached the record-keeping requirement. The Licensee stated that 'the TX Master supplied to the ACMA on 3 November 2021 satisfies Seven's record-keeping obligations'. In this regard, the Licensee indicated that 'the TX Master is the broadcast ready version of the Program, but simply without the advertisements and promos.' For the reasons set out against Issue 1, the ACMA does not accept this view.

Paragraph 130ZZD(2)(b) of the BSA contemplates that the Licensee will make an audio-visual record, in a form approved in writing by the ACMA, that is sufficient to enable the Licensee's compliance with the captioning requirements to be 'readily ascertained'. The ACMA considers an audio-visual record to be a digital record of the images and sounds of an actual broadcast.

Consequently, the ACMA considers the Licensee did not provide the ACMA with an audio-visual record of the broadcast of the Program sufficient to enable the ACMA to readily ascertain the Licensee's compliance with Divisions 4 and 5 of the BSA.

Issue 3: Did the licensee comply with the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA?

Finding

The Licensee did not comply with the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA.

Reasons

By failing to comply with the record-keeping requirement at paragraph 130ZZD(2)(b) of the BSA, the Licensee has failed to comply with the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA.

Attachment A - Extract from complaint to the ACMA dated 28 April 2021

“Questions about captioning, why has it moved from the bottom to the top of the screen in front of peoples' faces. Also, captioning is getting smaller, which is hard if you have vision problems as well.”

Attachment B - Extracts from Licensee's submissions to the ACMA

1. Extract from Licensee's submission to the ACMA on 5 May 2021

[....]

Seven is not aware of any issues that would have affected quality/delivery of the captions for the Program. All known captioning outages and issues are reported by our playout system at NPC and are included in the daily Operations Reports.

[....]

2. Extract from Licensee's letter to the ACMA on 3 November 2021

[....]

We refer to your correspondence dated 5 October 2021 enclosing the ACMA's preliminary investigation report, in which the ACMA has preliminarily decided that Seven breached section 130ZZA(4) of the Broadcasting Services Act 1992 (BSA) [commercial television licensee to comply with the Standard] and breached paragraph 7(1)(o) of Schedule 2 to the BSA [licence condition to comply with Part 9D of the BSA].

[....]

Captions covering contestants' faces

Seven acknowledges that between 5:45 and 7:20 on the Off-Air Recording, captions did cover the faces of contestants as they were introduced, resulting in the viewer not being able to directly associate the visual of each contestant with their name. Seven confirms the ACMA's note that the captions were positioned at the top of the screen to allow each contestant's name to appear at the bottom of the screen. This decision was made by the captioner using the captioning principles below, which align with the Standard:

- Do not cover on-screen graphics.
- Faces and mouths should not be covered by graphics.
- It is preferable to keep vertical positioning consistent throughout a scene as captions jumping from the top of the screen to the bottom (or vice versa) can reduce readability.

The decision to keep captions at the top of the screen during the scene aligns with the above principles. To overrule the above principles in this context and place captions in the vertical centre of the screen would have created a condition where captions obscured the visual language of the dancing.

Subparagraph 7(b)(vi) of the Standard states that, as a factor for consideration in the context of the program as a whole, "captions should avoid obscuring other on- screen text, any part of a speaker's face including the mouth and any other important visuals where possible."

In Seven's view, in the context of the program as a whole, the contestants' movements in the middle third of the screen constitute "important visuals" as the term is used in the Standard. It is also our view that (in the context of the program as a whole) ensuring the visual language of the dancing remains unobstructed ought to take precedence over the contestants' faces being obscured, particularly where identifying information is supplied in the form of on-screen graphics and no dialogue is being spoken by those on screen. Finally, it is noted that for each couple, after the introductions by the hosts, the camera pans out and their faces can be seen clearly.

For the above reasons, Seven submits that there was no breach of the Standard.

[....]

Latency / Delay in captions

This is a very unusual case in which Seven believes that the off-air recording using [REDACTED] provided to the ACMA on 5 May 2021 (**Off-Air Recording**) was corrupted in the process of extracting the data from the [REDACTED] system, resulting in the latency issues identified. Seven has confirmed this with the software vendor, by way of a test file, in which the same problem occurred.

For these reasons, Seven firmly believes that these latency issues were not present during broadcast.

Unfortunately, given the time that has passed, we are unable to re-extract the file from the [REDACTED]. However, we have several additional indicators which together point to there not being any issue with latency of captions in the actual playout of the broadcast.

[...]

3. Extract from Licensee's submission to the ACMA on 8 November 2021

[...]

ACMA Question 1. Please explain why a copy of the broadcast file was not retained for the purposes of the ACMA's investigation.

A copy of the off-air recording was retained, however, the hard drive it was saved on is corrupted and the media file cannot be extracted. To avoid this in the future, Seven's content services team has put in place both a physical and cloud-based saving location for media files under regulatory investigation. [...]

4. Extract from Licensee's submission to the ACMA on 5 May 2022

[...]

Seven respectfully disagrees with the preliminary view that the ACMA has come to in relation to this investigation. Seven submits that the TX Master supplied to the ACMA on 3 November 2021 satisfies Seven's record-keeping obligations [...].

There were no issues with the quality of the captions on the TX Master. Contrary to the ACMA's footnote 7, the TX Master is the broadcast version of the Program, but simply without the advertisements and promos. The captioning on advertisements and promos was not at issue here, only the captioning of the Program itself.

Seven therefore submits that the TX Master was an audio-visual record sufficient to enable the ACMA to make a finding that Seven complied with its captioning obligations in respect of the Program.

[...]

[...] Seven keeps records of all audio-visual matter aired on its network via the [REDACTED] platform, for a period of 3 months in the ordinary course. This is in excess of the statutory obligation [...] to retain audio-visual records for at least 30 days from broadcast. Further, Seven has since updated its processes to ensure a copy of any content under regulatory investigation is kept on a backed up server (ie both physical and cloud-based).

As a final matter, this investigation arose from a viewer complaint to the ACMA about captioning quality on the *Dancing With The Stars*, which related only to position and size of captions (which Seven has already addressed in its previous submission dated 3 November 2021). Seven respectfully submits that it is inconceivable that a viewer who took the trouble to complain to the ACMA about captioning on a program would not also raise delay/latency issues if there were any. [...]