

16 November 2020

Hon Kris Faafoi

Office of the Minister for Broadcasting, Communications and Digital Media

Parliamentary Buildings

Private Bag 18041

Wellington 6160

By Email and Courier

Tēnā koe Minister,

Congratulations on your election and re-appointment to the Broadcasting portfolio.

We would like to take the opportunity to raise with you the key challenges and opportunities affecting the BSA, New Zealand audiences and the broader regulatory and media sectors.

We want the best outcomes for New Zealanders in a world where there is so much choice and upheaval; our mission, free speech without harm, has never been more important.

We would welcome an opportunity to discuss this in more detail.

Change is now urgent

The 'broadcasting' market is more vibrant than ever, with a large number of outlets catering to incredibly diverse and large audiences. They are key to informing and entertaining us, as events of the last year have shown.

But they are more than 'broadcasters' - they are podcast makers; website producers; bloggers and vloggers. All 'traditional' media are reaching people via a range of platforms.

What really is a broadcaster? According to NZ On Air research, Spotify and YouTube are the most listened-to platforms in the country. Social media platforms are a huge source of video and livestreams. Services like Netflix, Disney+ and Lightbox are a central part of people's media consumption.

Large technological change, and the emergence of new platforms, has had a dramatic effect – changing audiences’ behaviour, growing reach and choice, allowing the spread of information (and misinformation) far more quickly, but at the same time undermining the advertising-based model many outlets relied on.

We have seen the damage the spread of misinformation and harmful content has done to other democracies. Unchecked, it has sowed division and hate.

For decades the changes in the market and audience habits have out-paced the regulatory system and this has accelerated in recent years. The primary objective - to protect free speech and mitigate harm – is at risk.

Where can a member of the public turn to for help and advice or to complain if they believe a piece of content is causing harm? Is it the BSA, Media Council, NetSafe, ASA, or the Office of Film and Literature Classification? Do they have the legislative mandate to help?

Meanwhile, there is a body of providers who are subject to multiple regulatory regimes and others to none. It creates unneeded complexity around cost and jurisdiction. Uniquely, there is near-universal agreement that reform is needed.

A new system must be fair and consistent. It should address offshore providers, without placing undue restrictions on local ones. New Zealanders need to be empowered to make good choices and be protected from harm.

With the Government considering broader media policy, including around the funding of content and stronger public media, we believe it’s timely to address the regulatory environment. It's the bedrock of what sits above.

We see a role for the BSA in processes developed to advance change. Our regulatory expertise and sector knowledge would allow us to work collaboratively to achieve an environment which truly meets audiences’ needs and helps protect the national well-being.

The current environment

We, other regulators and broadcasters, have been receiving an increased number of enquiries and complaints. The BSA has witnessed a 74 percent increase between June and October on last year. We issued 23 percent more decisions in the year to June 30.

These complaints reflect the uncertain social, health, political, environmental and economic environment. Society is understandably stressed – and we are a pressure valve. The fallout has increased demands not only on the regulator but also the regulated. While we are resilient and continued to be operational during the COVID-19 lockdown, such an ongoing increase in complaints will tax regulators and broadcasters.

Broadcasters are dealing with a range of frontline COVID-19 related issues, with some reporting a more than 100 percent increase in complaints (it’s worth noting the number of upholds has not increased).

Inevitably, funding models are in the spotlight with broadcasters under pressure.

Nearly two thirds of our budget comes from broadcasters and the remainder from Government. Sky, TVNZ, MediaWorks and NZME are our largest funders. All have rationalised their operations in the past year and face more uncertainty after years of battling declining revenue.

We have kept a tight control on costs and have a good bank balance, but anticipate calls for levy relief in 2021/22. As an industry regulator we suggest that any future Government package for the media sector considers levy relief.

Finally, the levy-paying regulatory environment is increasingly complex, with some broadcasters required to pay levies to multiple regulators. This is also fuelling industry calls for reform and offers further impetus to modernise the system.

Preparing for regulatory reform

Improving the regulatory system for all is very much front of mind and we acknowledge this will take time. However, in the meantime there is a range of BSA-led activity that can be undertaken to support reforms which may follow. Our focus includes:

- Audiences – we want New Zealanders to have the information they need to make good decisions about the content they consume. Self-regulation is an important part of harm prevention. To aid this, we will be undertaking new research in 2021. It will inform our code review, in which audiences and stakeholders will play a pivotal role.
- We need to be very good at our core job - maintaining an effective and responsive quality complaints service and addressing the high number of complaints and enquiries. We will deliver robust, well-reasoned, timely and reliable decisions with the appropriate level of resource.
- Working collaboratively – while we are an independent regulator we know change only comes through working with others. Developing and maintaining our relationships with numerous stakeholders, including other similar bodies, Ministry of Culture and Heritage and broadcasters, is key.
- Our people – the well-being of our staff, board and those we interact with is vitally important. We need to support them during such dramatic times.
- Ensuring that our external communications are appropriate, help educate people and show the value of free speech without harm.
- Work with other government agencies to leverage public sector management resources so taxpayers receive good value for money in these difficult times.

We appreciate that any sector changes, and the process to make those changes, are for the government to determine.

We are keen to contribute to that process, and hope that it is given a high priority in the incoming government's legislative programme. We look forward to working with you.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Bill Hastings". The signature is fluid and cursive, with the first name "Bill" and the last name "Hastings" clearly distinguishable.

Judge Bill Hastings

Chair

Appendix

BSA key facts

- The BSA is an independent Crown entity, established under the Broadcasting Act 1989. The Authority is a quasi-judicial tribunal that deals with complaints about broadcasting standards. These are set out in the Broadcasting Act and are subject to Codes of Broadcasting Practice developed by the BSA in consultation with broadcasters. The BSA operates in a co-regulatory environment in which complaints are first addressed by the broadcaster (excluding complaints about election programmes and privacy). Complainants may refer their complaints to the BSA if they are dissatisfied with the broadcaster's response.
- Our vision is freedom in broadcasting without harm, and our purpose is to prevent harm to New Zealanders while fairly balancing the broadcasters' right to freedom of expression and reflecting the values of New Zealand's liberal democratic society. Balancing the right to freedom of expression against the obligation to avoid harm is at the heart of the BSA's role.
- The BSA oversees the development of the broadcasting standards system. We also engage with broadcasters and the public about the standards, freedom of expression and the complaints system.
- Traditionally, we have dealt with complaints relating to free-to-air and pay television, and radio, and where that content is also made available online. The Act expressly excludes on demand content from our remit.
- We have a board of four members. It has responsibility for determining complaints, and for the governance of the Authority. The board members' terms end in 2021, which raises continuity issues. They fall at these times: Paula Rose, 30 April; Leigh Pearson, 31 May; Judge Bill Hastings and Susie Staley, 31 August. The board is supported by a small team, led by our Chief Executive.
- We are jointly funded by government and through broadcaster levies. We have forecast a deficit for this financial year reflecting forecast declining levy revenue in light of the challenges facing broadcasting in Covid-19 conditions, and increased costs to address our heavy workload. We are continuing to monitor our revenue line, through regular reforecasting.
- We have external monitoring of our performance, through the Ministry for Culture and Heritage and surveys of broadcasters and complainants. We believe that these show good results recognising that any adjudicative body, such as ours, will never get universal approval.
- Our Annual Report for the year ending 30 June 2020 and our Audit have been completed, with excellent results. It, our 2021 SPE and SOI for 2020-2024 are ready to be tabled by you in November 2020.

Attachments:

- Annual Report for the year ending 30 June 2020

- Statement of Intent 2020-2024
- Statement of performance expectations for the year ending 30 June 2021