

19 August 2020

To: Submitters to BSA Review of  
Application of Broadcasting Act 1989  
to Online Content

By Email

Dear Submitter

### **Application of the Broadcasting Act 1989 to Online Content**

1. We are writing to update you on our review of the application of the Broadcasting Act 1989 (the **Act**) to certain categories of online content and the timeline for our next steps.

#### **Overview**

2. We undertook this review in response to ongoing complaints and enquiries that we receive from members of the public, and content providers, as to whether new and emerging online content is subject to the BSA's jurisdiction. We wanted to provide certainty to consumers and also to providers who are transmitting programme content to New Zealanders online and through traditional broadcast channels from overseas.
3. Recognising our role as the broadcasting regulator in New Zealand, we have to ensure that we are applying the Act in accordance with its purpose. This is to oversee standards in content which is broadcast to the public of New Zealand so that the right to freedom of expression is exercised without harm. To achieve this we needed to assess the application of the Act in the environment in which it now operates which includes the transmission of programmes through telecommunications as provided in the Act (excluding on demand content which is expressly excluded).

#### **Submissions**

4. In response to our letter of 19 November 2019, setting out our views on the interpretation of the Act, we received a range of very helpful and insightful submissions. All submitters acknowledged that the current framework for content regulation in New Zealand is dated, fragmented and in need of reform. We agree. There were however a range of views as to whether the implications of our interpretation of the Act are workable and many submitters indicated a willingness to meet with us to explore the issues and implications further.

#### **Context**

5. Since our November letter, there have been many changes in the operating environment. The content sector has been impacted by the COVID-19 pandemic and focus is on recovery and response. New legislation has been progressed introducing changes to the Films, Videos and Publications Classification Act, and the current Government has signalled its intention to progress a broader review of content regulation that will explore the gaps and overlaps in our system. We are now heading into the election and at the BSA we will soon be transitioning to a new Chief Executive.

## Next steps

6. In the above context we intend to pause this review until after the Election, when we will have greater clarity as to the direction and timeline of the broader review. By then we will also have a new Chief Executive who will lead our further engagement with you on these issues.
7. In the interim, if we receive a complaint from the public about online content that may fall within our interpretation of 'broadcasting' under the Act, we will take the following approach:
  - (a) If the complaint relates to content currently addressed by another standards body or regulator, for example complaints about auto-play on NZ Media Council members' websites, we will refer the complainant to that entity.
  - (b) If there is no other relevant standards body or regulator, and the complaint raises issues of public interest and/or presents a risk of harm, we will direct the complainant to the content provider to respond to the complaint in the first instance. We will advise the complainant that they may bring their concerns back to us if they are not satisfied with the outcome (within 20 working days of the response), or if there is no response (within one month of their complaint to the provider).

Given the unresolved jurisdictional issues, if we receive a complaint in these circumstances we will engage with the provider as to how the matter may be resolved using the BSA complaints process.
  - (c) We will not seek to extend the levy or publicity notice requirements to providers of online content at this time.
8. If any online providers wish to participate in the BSA standards system, we can work with them to adopt a memorandum of understanding that will guide their engagement with us. We will provide support to their teams to understand the standards and how they apply. We have used this type of arrangement effectively with a small number of providers over recent years.
9. The above is intended as a pragmatic approach that will support the interests of audiences in New Zealand whilst recognising the current context and complex environment in which we are all operating. It will also provide us with time to engage with you to work through the issues raised in our analysis and your submissions.

We wish to thank all of you for engaging in this process to date.

Yours sincerely

[Signed]

**Judge Bill Hastings**

Chair

Broadcasting Standards Authority