

content. So the pay TV code is less restrictive than that for free-to-air. Should rules for the upcoming digital Freeview channel be the same if they have similar protective tools?

When content is 'pulled content', like video-on-demand, or broadcast-like internet or mobile downloads available at any time, some argue it should simply be a matter of 'let the buyer beware'. What if the content is identical over different platforms? What if a broadcast programme is grossly unfair to a private citizen (which generally triggers a BSA penalty on the broadcaster), yet becomes freely available on the internet. Should there be any redress? Is there a case for a uniform set of rules?

All countries are grappling with this. Content regulation in other places, as here, tends to be made up of mandatory codes of practice, formal complaints processes managed by broadcasters, and usually some kind of 'appeal' right against broadcaster decisions. Codes tend to cover public good requirements like news broadcasts being fair, balanced and accurate, privacy protection, and balancing competing community standards with the right to freedom of information and expression.

All of this provides simple protections against the power of traditional broadcast media. But there are fewer restrictions for other and newer media.

What should New Zealand do? Our report looks in depth at what's happening in Australia, the United Kingdom, Ireland, and Finland. It also gives data on a range of other countries. It concludes with a series of questions. Should the status quo for the broadcast rules continue? Does it make a difference if you're watching content free on the home telly or requesting it via the PC or phone? Should there be an increase in self-regulation? What special protections do audiences – including those featured in programmes – still want? And the question remains, how we might adequately protect children, especially those more tech-savvy than their parents.

Media literacy initiatives will provide some of the solutions. But the big question remains – in a world where you can find pretty much any kind of broadcast content you choose, on an unprecedented range of platforms, what rules should apply?

Watch this space. The BSA will begin reviewing the free to air code of broadcasting practice in 2007, and the Government has signalled its interest in considering the overall framework. New Zealanders will need to think about what they want."

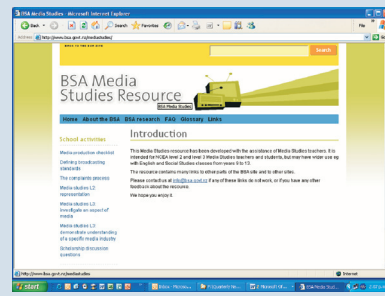
Radio Code Review progress

The review of the Radio Code is progressing well. The BSA's chair and complaints manager have now met with representatives of the Radio Broadcasters Association, Radio New Zealand, Access radio and Te Whakaruruhau to ascertain their responses to various ideas. We expect to issue a public discussion paper towards the middle of the year.

New website – new resources

The BSA website has a new look, and a new study resource for secondary school students.

The resource was developed with the assistance of media studies teachers. It is intended for NCEA level 2 and level 3 media studies teachers and students, but may have wider use, eg for English and social studies classes from years 9 to 13.



New practice note – denigration guideline

A third practice note is on the website. It discusses the denigration and discrimination guidelines in the codes. Look under 'codes and standards' and 'practice notes', or link to it from the home page. The practice notes are designed to help complainants and broadcasters understand the approach the BSA is likely to take in considering issues about standards.

This practice note says that the BSA has consistently defined denigration to mean the blackening of the reputation of a class of people. The use of this definition goes back at least as far as 1992, and has been followed in numerous subsequent decisions.

Considering the right to free expression contained in s14 of the New Zealand Bill of Rights Act, a high threshold must be crossed before a breach of the standard will be found.

The practice note includes links to decisions that help to illustrate the points discussed.

Directory

The current members of the Broadcasting Standards Authority are:
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0800 Number

The Broadcasting Standards Authority's free phone number is

0800 366 996

A recorded message explains the complaints process, and a connection through to the office is provided.



Quarterly

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New BSA Chief Executive

Dominic Sheehan, the new Chief Executive of the BSA, takes up his position at the end of the month. Dominic joins the BSA from the New Zealand Writers Guild where he was the Executive Director. Prior to that Dominic has worked as a self-employed scriptwriter, as a lawyer, and at the New Zealand AIDS Foundation. Along the way he also found time to write a humour column and publish a novel, *Finding Home*.

'Broadcasting is something I'm intensely passionate about,' says Dominic. 'I loved television so much I became a writer for it. I've worked in various areas of the media for the past fifteen years, primarily as a scriptwriter and advocate for scriptwriters, and I'll be bringing my rather diverse experience to this new position. After all, it is the content of broadcasting that is the basis for complaints to the BSA. As someone who has created that content I have a rather distinctive perspective.'

Why the BSA? Dominic explains that he's always been impressed by the professionalism of the organisation and that personally the timing was right. 'I firmly believe in the work of the BSA and its goal of supporting fairness and freedom in

broadcasting. I have spent the last few years working to make the world a fairer place for writers and in a sense this move is a development on that, but operating with a larger scope. I'm also looking forward to furthering the Authority's work on media literacy. Media is a powerful, persuasive beast and understanding how it works is crucial for anyone living in this brave new world.'

Dominic sees new technologies and a splintering media-scape as the biggest challenges facing the BSA. 'Broadcasting as a concept is undergoing a huge metamorphosis. As our name suggests, we are all about regulating broadcasting standards – the big question facing the Authority is how we do this in this new environment. I'm looking forward to leading the BSA through this change.'



Digital dilemmas

What kind of restraints, if any, do New Zealanders want on broadcast content in the 21st century? The BSA posed this question in the 2006 Statement of Intent, and since, has been finding out what other countries are doing to address the changes brought about by digital technology.

Now we have published a report of the findings, *Issues facing broadcast content regulation*. Four UK and NZ specialists who looked at New Zealand's current situation compared with 13 other countries wrote it.

You can get the report off www.bsa.govt.nz, or phone the BSA for a print copy.

In a recent article for The New Zealand Herald, outgoing CE Jane Wrightson commented on the findings:

"With fast broadband now becoming a reality, meaning TV over the internet is becoming viable, with digital free-to-air and radio around the corner and mobile TV not that far away,

New Zealand needs to rethink its broadcast rules. The current rules have been in place since 1989, even before there was a universally accepted word for the miracle now called the internet.

Free-to-air broadcast regulation in New Zealand has been light-touch for some years, but is still more constrained than that for pay TV, for example. The reason behind this is the idea of the 'uninvited guest' in the living room corner; the notion that while a free-to-air TV might be switched on, the content and its timetabling is still controlled by the channel.

That's why free channels like TV One and TV3 and Māori Television must, by law, adhere to codes of practice covering their programmes (including things like programme classification, adult watersheds, and protection of children etc). This kind of broadcasting is what is sometimes known as 'pushed content'.

New technology provides new protections. Digital pay TV has direct help for its customers, who choose to purchase channels, in the form of electronic programme guides and a parental lock to prevent access by children to selected

Decisions

The BSA issued 47 decisions between October and December 2006

Decisions of interest included the following:

Fairness – David Benson-Pope

Radio New Zealand's *Nine to Noon* host, Linda Clark, interviewed a former pupil of Bayfield High School in Dunedin, a school at which cabinet minister David Benson-Pope taught for a number of years.

The former pupil alleged that Mr Benson-Pope had caned him hard enough to draw blood, had enjoyed administering corporal punishment, and was a bully. The former pupil was not identified.

The BSA found that the programme was unfair for several reasons. First, Radio New Zealand did not undertake sufficient independent investigations to verify to a high standard that the interviewee and his story were credible before granting him anonymity.

Second, the BSA said that the interviewer should have challenged the anonymous interviewee's allegations that Mr Benson-Pope was guilty of criminal conduct in relation to other students.

Third, the BSA found that the way the broadcast was edited suggested, unfairly, that Mr Benson-Pope had acted illegally by caning the former pupil.

Nevertheless, the BSA did not uphold the balance complaint as Radio New Zealand had made reasonable efforts to present significant perspectives within the period of current interest.

The BSA declined to determine whether or not the allegations made by the anonymous man were accurate.

The BSA ordered Radio New Zealand to broadcast a statement summarising the decision, pay \$5000 costs to the complainant, and \$2000 costs to the Crown.

Decision ref. 2005-083

Another complaint from Mr Benson-Pope about a TVNZ broadcast was not upheld (2006-023).

Balance, fairness and accuracy – Child, Youth and Family Services

TVNZ's *Sunday* programme looked at the case of former foster parents whose foster children had been removed following allegations of abuse. The programme stated that the foster mother had been convicted of assault in relation to an incident where she had smacked one of the children on the hand with a wooden spoon, and it questioned the reasonableness of CYFS' actions in removing the children.

The chief executive of Child, Youth and Family services complained that the item was unbalanced, inaccurate and unfair. The BSA upheld the complaint under all three standards.

In relation to balance, it found that the programme had omitted a critical piece of information that would have given viewers CYFS' reason for removing the children.

In relation to accuracy, the BSA found the item inaccurate when it stated that CYFS had agreed to much more serious charges against the foster parents being plea-bargained down to a single count of assault with a wooden spoon. CYFS stated in its complaint that this was a police matter and not a decision in which it was involved.

In relation to fairness, the BSA found the item unfair because it implied that CYFS should not have based its decision to remove the children on allegations that had not been proven in a criminal court. TVNZ did not explain to viewers that CYFS' processes are independent of any criminal charges that might also be laid, and that it does not apply the same standard of proof when assessing whether a child is at risk.

The BSA also found that the programme treated the foster children unfairly. The programme portrayed the children as untrustworthy, but this ignored the fact that they had reported the same abuse in separate evidential interviews. In the view

of the BSA, this information would have significantly altered viewers' impressions of the children.

The BSA ordered TVNZ to broadcast a statement and to pay costs to the Crown of \$2000.

Decision ref. 2006-058

Privacy – hidden camera footage

An *Inside New Zealand* programme on TV3 looked at the dangers facing young people seeking work in the modelling industry.

The programme included hidden camera footage of two photo shoots conducted by the then editor of a prominent men's magazine. The item said the photo shoots had been set up by the programme makers because 'word around the modelling industry' was that the editor was 'luring young girls into his bedroom for trial photo shoots with the promise of getting work in his magazine'. The programme alleged that the magazine editor was not being honest with these models about where their photos might end up because he was also taking photos for his own DVD and website project.

The editor complained that in broadcasting the hidden camera footage, CanWest had breached his privacy. The BSA agreed, it found that filming him with a hidden camera in those circumstances amounted to an interference with his interest in solitude and seclusion and breached privacy principle 3. The BSA concluded that hidden cameras filming inside the complainant's home, and inside an apartment where he had a reasonable expectation of privacy, amounted to an intrusion which the ordinary person would find offensive.

CanWest maintained that the broadcast was in the public interest – which is a defence to an allegation that a broadcast amounts to a breach of privacy. The BSA found that the test in this case was whether broadcasting the hidden camera

footage complained of was in the public interest – as opposed to whether the entire story was in the public interest. It concluded that the test was not met because the footage did not show the complainant engaging in any improper or illegal conduct.

The BSA ordered CanWest to broadcast a statement, pay the complainant compensation of \$3000 and costs of \$393, and pay costs to the Crown of \$3000.

Decision ref: 2006-014

This decision is under appeal.

Accuracy, fairness – Viking Homewares

A *One News* item reported that the Green Party was calling for an urgent safety review of non-stick cookware, and that the US Environmental Protection Agency (EPA) had found possible links between non-stick cookware, cancer and birth defects.

Viking Homewares Ltd, an importer and exporter of non-stick cookware, complained that the item was inaccurate and unfair. The BSA agreed that the item was inaccurate as it misrepresented the EPA's findings on non-stick cookware.

The BSA found that viewers would have been unnecessarily alarmed by the message that the EPA believed the use of non-stick cookware posed a risk to health. In fact, the information available from the EPA did not suggest that the routine use of non-stick cookware posed any concern.

The BSA also found that it was misleading to state that the EPA was 'asking manufacturers to wind down production' of non-stick cookware. In fact, the EPA was asking manufacturers to reduce the amount of a chemical used in the manufacture of a range of products, including non-stick cookware.

The BSA ordered TVNZ to broadcast a statement summarising its decision, and to pay costs of \$927 to the complainant and \$2500 to the Crown.

Decision ref. 2006-021



Full decisions can be found on the BSA's website www.bsa.govt.nz