

Andrea Millwood Hargrave – address to the Broadcasting Conference

In August, the BSA participated in the 'New Broadcasting Futures: Out of the Box' conference at which our guest speaker, respected broadcasting researcher Andrea Millwood Hargrave, gave an address entitled *We have standards you know*. The following is an excerpt from Andrea's speech in which she made observations about the speed of technological change, and the need for what she called 'communications literacy'.



Andrea Millwood Hargrave

"There is a need to create a regulatory environment that allows for and recognises/responds to the new communications environment but that does not reject all that came from traditional regulation, simply because it is traditional. We need to take the best and capitalise on learning from what has worked less well.

To start with, spectrum scarcity has been largely removed by the move to digital television and significantly more spectrum is available although it is not unlimited if we want high definition television.

Then delivery of content has changed from a uni-directional process of the provider to the user via a broadcaster to one in which the user is active in choosing what they want, when they want it, and how they get it. They even make it.

...Ofcom [the British regulator established in 2003] was born out of a desire to create a light-touch regulatory system, something much more recognisable in New Zealand. In the UK there was the possibility, in terms of protective regulation, of two regulators coming to different conclusions or adjudications on the same complaint. There was a restrictive approach to content regulation, based on the Broadcasting Act. Ofcom, created out of the Communications Act of 2003, is no longer required to consider complaints in many areas – the exception being fairness

and privacy which is seen as important and a constant. Indeed, in the rewriting of the Communications Act the section that was least changed was that on fairness and privacy. What Ofcom has is regulatory principles and this informs the position that intervention will only occur 'where it is considered necessary'.

...An important – and increasingly important – part of the debate about the future of content regulation is communications literacy. I think it is important that users understand the limits of platforms, or their lack of limits. They need to know where regulatory protection might lie and where it won't. But communications literacy is not just about prevention and control, it is also about access and knowing how to evaluate content for its veracity, for example, or what can be done creatively. But I fear that communications literacy of which I am a keen proponent, may be a fig leaf. It cannot be a reason for inaction or something to hide behind as other forms of regulation feel too difficult."

New Online Publication – 'Balancing Act'

In a newly published report on the balance standard in the codes of broadcasting practice, Associate Professor Martin Hirst of the School of Communication Studies at AUT has considered a number of questions about the standard that are relevant to the review of the radio code currently underway. [See 'call for public submissions' on the front page of this newsletter.]

Among the points raised by Assoc. Prof. Hirst, are these:

- Whether talk and talkback radio should be subject to a lesser requirement to present a range of views on a controversial issue of public importance? (see p 22 Hirst report as well as *Freedoms and Fetters* pp 58-66)
- Whether, as between radio, free-to-air television and pay television broadcasting, there are material differences that justify differences in the wording of the balance (or significant viewpoints) standard that applies to each of those media? (see pp 22-23 Hirst report)
- Whether it would assist understanding of what amounts to a 'controversial issue of public importance' if it were defined by reference to there being a 'public interest' in such an issue? (see p 16 Hirst report)
- Whether there would be advantages in changing the requirement for balance/significant viewpoints 'within the period of current interest' to a requirement that there be balance/significant viewpoints within a period defined by the level of public interest in the issue? (see p 14-16 Hirst report)

The full report by Martin Hirst and the BSA's research published as *Freedoms and Fetters* are available on the BSA's website publications page <http://www.bsa.govt.nz/publications-booksandreports.php>

QUARTERLY

NUMBER 36, NOVEMBER 2007



Radio Code Review - call for public submissions

The Radio Broadcasters Association and the Broadcasting Standards Authority have jointly released a draft revised Radio Code of Broadcasting Practice and we are now calling for public submissions on the proposed changes.

Codes are revised from time to time to reflect community expectations, to keep them relevant to broadcasting practice, and to support fair and efficient decision-making by the BSA.

The deadline for submissions is **Friday 1 December**. Submissions can be made by email to info@rba.co.nz or info@bsa.govt.nz or by mail to The Radio

Broadcasters Association, PO Box 3762, Auckland or to the Broadcasting Standards Authority, PO Box 9213, Wellington.

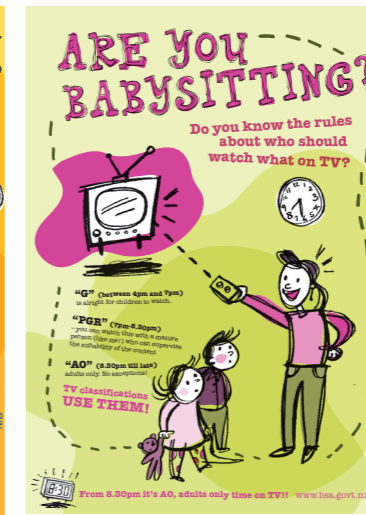
One change proposed in the draft revised radio code is that the current Principle 4, Balance, be renamed Standard 4, Controversial Issues – Viewpoints. A change proposed to the content of the standard is that talk and talkback programmes would be expressly identified as programme types that may be subject to a lesser requirement to present a range of views on a controversial issue of public importance. This responds to, amongst other things, views expressed by the public in *Freedoms*

and *Fetters* published by the Authority in 2006 (see in particular pp 58-66).

Another proposed change is that 'the approach of the programme, eg taking a particular perspective' would be spelt out as a factor that could be relevant when assessing whether the programme presents a reasonable range of viewpoints. (For more about the balance standard see the back page of this newsletter.)

For more information about the proposed changes to the Radio Code, consult the documents featured on the homepage of the BSA's site: www.bsa.govt.nz

AO 8.30pm Awareness Campaign



In February this year, the BSA's community advisory panel (CAP) confirmed its workplan. The CAP identified a need for ethnic broadcasters and communities to receive tailored information about the complaints system and about BSA decisions, and that there is a lack of awareness about the classification and timeband systems among sections of the community, particularly among caregivers of young children. As a result, an awareness campaign about the AO 8.30pm

watershed and the classifications system was developed. A poster was produced for teenage babysitters and distributed to secondary schools; an advertising campaign for grandparents who look after children was run in ethnic print media and its key messages were translated into different languages such as Punjabi, Chinese, Samoan and Tongan; a poster in te reo Māori was produced for Kohanga Reo and Kura Kaupapa; and, a fridge magnet designed to

appeal to young mothers was produced reminding them about the adults only 'AO' programming shift that occurs at 8.30pm on free-to-air television. The fridge magnet has been distributed throughout the country via Parent and Child Shows in Auckland, Wellington and Christchurch, and sent to playgroups and caregiver associations. Members of ethnic communities, young mums, teenagers, and CAP members had input into the design of these well-received resources.

Directory

The current members of the Broadcasting Standards Authority are:

Joanne Morris (Chair), Tapu Misa, Diane Musgrave and Paul France.

Contact us at:

2nd Floor, Lotteries Commission Building, 54-56 Cambridge Terrace,

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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.

DECISIONS

The BSA issued 27 decisions between July and September 2007

Decisions of interest included the following:

Privacy

A 3 News item, broadcast in February 2007, interviewed a Dunedin woman, JS, who was a committed patient under section 30 of the Mental Health (Compulsory Assessment & Treatment) Act 1992. The item stated that JS was 'bipolar and manic depressive', and was one of 300 New Zealanders receiving electric shock treatment (ECT). JS stated that she did not wish to receive ECT. She also revealed that she had tried to kill herself twice because she was scared of the treatment and was 'having night horrors and night sweats'.

The item included a statement from the Ashburn Clinic, where JS was receiving treatment, which said 'that it is the formal, clinical view of the Ashburn Clinic that this patient was not well enough at the time of the interview to have given informed consent to it'. JS's husband was shown in the item attempting to stop the interview with JS from proceeding.

Dr Stephanie du Fresne, the Medical Director at the Ashburn Clinic, lodged a privacy complaint with the BSA under s.8(1)(c) of the Broadcasting Act 1989. She argued that JS was not capable of consenting to the interview, and that both she and JS's husband had advised the broadcaster not to broadcast the item.

The BSA upheld Dr du Fresne's complaint. It found that the broadcast had disclosed inherently private facts about JS's mental status and treatment. Noting that a stigma still surrounds people with mental illnesses, the BSA considered that the disclosure would be highly offensive to the objective reasonable person.

The BSA accepted Dr du Fresne's view that JS was not capable of giving informed consent to the disclosure of private facts about her. It found that, as JS's treating clinician and a forensic psychiatrist, Dr du Fresne was the person best qualified to assess JS's capacity for giving consent to the interview and the broadcast.

Looking at whether there was a public interest in disclosing private facts about JS, the BSA found that there was no legitimate public interest in disclosing private information about JS in circumstances where the proper legal processes had been followed with respect to her committal and treatment.

The BSA ordered CanWest TVWorks Ltd to pay \$1500 costs to the Crown. CanWest TVWorks Ltd is appealing the decision.

Decision ref. 2007-017

A documentary entitled *Sex and Lies in Cambodia* was broadcast on TV One at 9.30pm, 18 December 2006. It examined the case of a New Zealand man, Graham Cleghorn, who was serving a 20-year sentence in a Phnom Penh prison for the rape of five teenage girls.

The documentary featured an interview with a Swiss man, RK, who had been accused of rape and paedophilia one year before Mr Cleghorn, but whose case had been thrown out due to a lack of evidence. Stating that RK was 'reluctant to speak on camera', the reporter said that they had filmed him with a hidden camera 'in the public interest'. RK was seen giving his view that a particular Cambodian judge was 'a big crook'.

Dr Lynley Hood complained that broadcasting the hidden camera footage of RK had breached his privacy, and was unfair to him.

The BSA upheld the complaint. It found that filming RK with a hidden camera, inside his home and car, amounted to an interference with his interest in solitude or seclusion, which the ordinary person would find highly offensive. The BSA took into account that there had been a verbal and written agreement between RK and the reporter that he would not be filmed and that his comments would remain off the record.

The BSA also concluded that the broadcaster had treated RK unfairly. It found that there was no public interest in broadcasting the hidden camera footage, and considered that the unfairness to RK was exacerbated by the indefensible conduct of the programme's director in breaking a verbal and written undertaking that RK would not be filmed or quoted in the programme.

The BSA ordered TVNZ to broadcast a statement summarising its decision, to pay compensation to RK in the amount of \$500, and to pay \$5000 costs to the Crown. **Decision ref. 2007-028**

Liquor

On 13 February 2007 at 8.20am on the *ZM Breakfast* morning show, one of the presenters attempted to drink a yard glass of beer to celebrate his 21st birthday. Throughout the broadcast, the presenters made comments that he was 'going to throw up', 'doesn't hold his liquor well', 'needs to drink quickly', and 'if he throws up on my shoes I am going to be so pissed'. One female presenter described his actions as 'gross', and that he shouldn't 'force it down him'.

The Regional Public Health arm of the Hutt Valley District Health Board complained that the broadcast breached standards relating to liquor promotion and social responsibility, particularly in relation to child listeners.

The BSA upheld the liquor complaint. It found that the broadcast advocated liquor consumption. Because the hosts treated the presenter's actions as humorous and 'cool', the BSA considered that the broadcaster not only implicitly condoned the behaviour, but in fact presented it in a positive light. It also found that the liquor promotion in the programme was not socially responsible, taking into account the wide concern in New Zealand about a perceived culture of binge drinking among young people.

Noting that the segment was broadcast at 8.20am when children would be listening, the BSA considered that many older children would have been aware of what was taking place, particularly in light of the hosts' comments. The BSA found that this explicit coverage of excessive alcohol consumption, portrayed in a positive and humorous light to an audience that included children, was socially irresponsible, and in breach of Principle 7.

The BSA ordered The Radio Network Ltd to broadcast a statement summarising its decision. **Decision ref. 2007-030**

Appeals and Other Court Proceedings

XY Stake Out

The appeal by CanWest MediaWorks over the *XY Stake Out* decision (2006-014) was heard in the High Court in Auckland on 6 July 2007 and a judgment given upholding the BSA's decision.

TV3 argued that merely establishing an 'intrusion' was not enough to breach the relevant privacy principle (principle 3), that there needed to be some offensiveness in the facts disclosed. TV3 also argued the BSA had acted *ultra vires* in establishing privacy principle 3.

Justice Harrison reaffirmed the BSA's approach in applying principle 3 and held the relevant principle to be within the BSA's power to make (*intra vires*). The Judge awarded costs to both XY and the BSA.

Du Fresne and TVWorks

An appeal has been lodged over the Du Fresne and Canwest TV Works decision (2007-017). The case has been set down for 7 February 2008.

KW and TVNZ

A date for the appeal lodged by TVNZ over the KW and TVNZ decision (2006-086) has not yet been set. This decision concerned a *Close Up* item that alleged that KW's property was a suburban brothel. TVNZ is appealing the BSA's findings and has applied for a judicial review of the BSA's process.

Printed copies of the codes of broadcasting practice for radio, free-to-air television, and pay TV, and of the radio and television complaints guide are available free of charge from the BSA, email: info@bsa.govt.nz, freephone: 0800 366 996 | Full decisions can be found on the BSA's website www.bsa.govt.nz