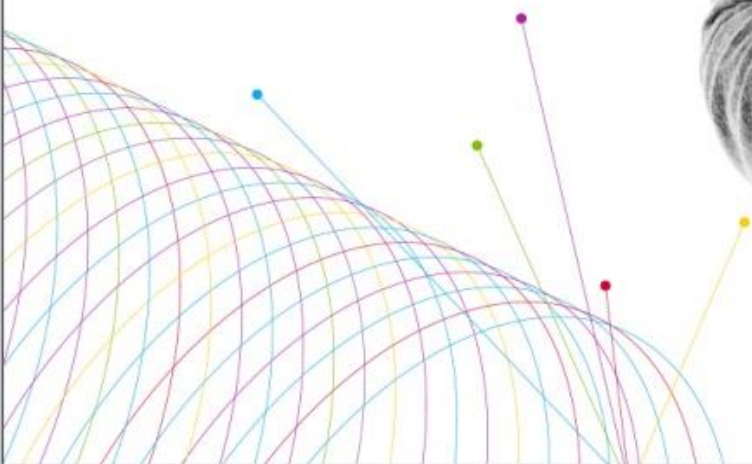


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LITMUS TESTING 2013/2014

PREPARED FOR: BROADCASTING
STANDARDS AUTHORITY





Litmus Testing 2013/2014

Report Prepared For

Broadcasting Standards Authority

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Opinion Statement

Nielsen certifies that the information contained in this report has been compiled in accordance with sound market research methods and principles, as well as proprietary methodologies developed by, or for, Nielsen. Nielsen believes that this report represents a fair, accurate and comprehensive analysis of the information collected, with all sampled information subject to normal statistical variance.

Executive Insights

To gauge the public's current attitudes and to determine whether the public can understand (and accept) the rationale for the BSA's decisions, the BSA commissioned Nielsen to conduct a new round of litmus testing. Four focus groups were conducted in Auckland with members of the public aged 18-65 years. The Discrimination and Denigration standard was the focus of discussion.

Due to the nature of the standard, it was important that the groups included some participants who are themselves part of, or are in close association with, the groups in the community that are possibly more likely to be subject to discrimination or denigration. To this end, we recruited respondents who had a personal experience with, or who had a family member/close friend who had a personal experience with, either a minority ethnicity, a non-heterosexual sexual identity, a mental or physical disability or religious beliefs.

Results must be interpreted in the following context:

- Participants were shown clips rather than a whole programme so the context of the clips was limited by the boundaries delineating the beginning and end. BSA decisions have to take into account a number of contextual factors including the programme as a whole.
- When the clips were first shown they provided a useful snapshot of the immediate reaction to the clips. When the participants had more information about what the BSA had to factor into their considerations (i.e, when they were provided with the BSA's reasoning), responses were more considered.
- The five decisions chosen for litmus testing were deliberately chosen as some of the more challenging decisions looking at this standard.

Key findings

- Most participants follow, and are largely supportive of, the decisions made by the BSA Board, when they consider these decisions in the context of the legal and other guidelines the Board operates within.
- Reactions and views of those who either belonged to a section of the community more likely to be the subject of denigration or discrimination (for example, on the basis of race, sexuality, disability or ethnicity) or who were close to someone who was, did not differ markedly from other people not in these categories.

Evaluation of Board decisions relative to public opinion

Prior to seeing a summary of the Board's reasoning in reaching their decision about whether or not to uphold a complaint about that clip, opinion was often in line with the Board decision as outlined below. The one obvious difference occurred with the ZM Morning Crew complaint.

Clip	Board Decision	Number who wanted complaint upheld (out of n=24)	Proportion whose initial opinion reflected Board's decision (n=24)
Breakfast – Paul Henry	Upheld	18	75%
ZM Morning Crew	Not Upheld	16	33%
The Edge Morning Show	Not Upheld	6	74%
The Rock – Robert and Jono	Not Upheld	8	67%
The Graham Norton Show	Not Upheld	3	88%

Board's decision/rationale

The table below shows participants' reactions to the rationale behind the Board's decisions. For all clips, the vast majority of participants were able to follow the Board's rationale and agree with, or at least accept, the decision made.

Clip	Board Decision	% considering Board made good / acceptable decision
Breakfast – Paul Henry	Upheld	88%
ZM Morning Crew	Not Upheld	88%
The Edge Morning Show	Not Upheld	87%
The Rock – Robert and Jono	Not Upheld	88%
The Graham Norton Show	Not Upheld	96%

The research shows that when the participants considered the Board's decisions in the context of the guidelines and standard, they followed the Board's rationale and were largely supportive of their decisions.

However, there is some discrepancy between agreeing with the decisions made and attitudes towards the content itself. This report provides valuable insights into where the public feels the boundaries lie between acceptable and unacceptable content.

When prompted to consider the Discrimination and Denigration standard, even after knowing the rationale behind the BSA's decision, specific comments regarding the clips were as follows:

- **Breakfast – Paul Henry:** This clip was perceived to be the most severe by group members, with respondents feeling that it not only breached the standard but was a serious breach. Along with the use of the word 'retarded', Henry's attitude and tone were called into question and groups felt uncomfortable about his laughter at both Susan Boyle's disability and her abuse allegations. Most supported the BSA's decision to uphold the complaint and felt that it was a clear example of unacceptable broadcast content.
- **ZM Morning Crew:** Most respondents found this clip to be discriminatory and denigrating to all three races featured. They felt that the tone of the female host encouraged discrimination. They also felt that the fact that this was a game encouraged discrimination and denigration by getting people to participate in stereotyping to 'guess the race'.
- **The Edge Morning Show:** Many respondents felt that because the comment came from a listener's text message rather than being an opinion held by the host, this was not a breach. Participants felt that the comment was not dwelt on and was not meant to be taken seriously, even though some did feel it would cause offence to gay listeners and incorrectly linked AIDS to homosexuality in a negative and stereotypical way.
- **The Rock – Robert and Jono:** This clip challenged the groups, as some struggled to ascertain whether the intention was to mock or support the Down Syndrome person in question. While the tone of the host was questionable, and his use of the word 'mental' was not appreciated, most felt that the story was in good humour.
- **The Graham Norton Show:** The most 'accepted' of all the clips, the vast majority chose not to uphold the complaint as they felt it was neither discriminatory nor denigrating of those who believe in God, although some could see how it may cause offence.

General discussion that may inform the development of codes and/or classification systems

- Some groups discussed whether broadcasting a discriminatory or denigrating clip was the same as *encouraging* discrimination or denigration. The discussion took into account the power and influence of the media in shaping opinions and encouraging stereotypes.
 - *"I think broadcasters do have a responsibility and as long as young people are still taking their own lives and their family aren't talking to them (because of their sexuality)... then I feel like they have a responsibility to choose... to estimate that they do have that influence." (40-49)*
- Other groups considered whether laughter encouraged denigration or discrimination. This discussion centred around the inclusion of laughter or humour as a mitigating circumstance in some of the BSA's rationales (ZM Morning Crew, The Rock). Some

participants felt that laughter made it more acceptable to discriminate or denigrate, as it can then be dismissed as 'only a joke'.

- *"They had their own agenda beforehand and I just put intention with a '?' It says here that their segment was intended to be humorous but how do you know? Because there was laughter the whole time? I don't think it was that innocent." (40-49)*
- *"I found the laughter offensive because it minimised anyone's ability to say 'hey, this is offensive'." (40-49)*
- Respondents often found the language of the standard and the definitions/threshold applied difficult to understand and outdated, e.g, 'blackening the reputation' of a group. Respondents relied on the explanations of the terms given by the moderator to interpret what discrimination and denigration meant as well as 'invective' and even 'satire'.
 - *"I just find it amazing that the BSA uses the term 'blackening' to describe denigration. It's such a medieval word. Why is that?" (40-49)*
- Some respondents struggled with elements of the Board's rationale that took into consideration a programme or station being known for a particular type of humour or approach. They felt that this did not excuse discriminatory or denigrating language or behaviour.
 - *"I think there is too much leeway given to the specific medium which the transmission is given out, so you know if you cut a lot more slack to certain radio stations over TV ONE, I'm not sure you should, if it's a standard it should be a standard shouldn't it?" (50-65)*

Needs Assessment

Background

As specified in the Broadcasting Standards Authority's (BSA's) Statement of Intent 2011-2014, members of the public must 'litmus test' at least five BSA decisions. The purpose of litmus testing is to help ascertain how well Board decisions align with public opinion. This contributes to ensuring members have a clear appreciation of the diversity of community views and public attitudes towards these decisions.

The last round of litmus testing was conducted in April 2013, when Nielsen ran four focus groups. The focus for litmus testing in 2013 was the Children's Interests standard.

Research objectives

The overall objective is to gauge the public's current attitudes and to determine whether the public can understand (and can accept) the rationale for the BSA's decisions. This year, the Discrimination and Denigration standard is the focus.

Specific objectives of the research are to:

- Identify each participant's spontaneous reaction to each broadcast clip to determine how commonly shared the complaint may be amongst the general population.
- Ascertain whether participants would have upheld the complaint (based on their initial independent reaction).
- Examine individual and group responses to the Board's actual decision.
- Ascertain whether participants agreed with the Board's decision after they were provided with a summary of the decision.

Sample structure

Four focus groups were conducted across four age groups (18-29, 30-39, 40-49, 50-65).

All groups were held at the Nielsen Takapuna offices, with three groups held in the evening and one held during the day. Participants came from a range of Auckland areas, and all participants received a koha of \$80 for attending.

Due to the nature of the standard, it was important that the groups included some participants who are themselves part of, or are in close association with, the groups in the community that are possibly more likely to be subject to discrimination or denigration.

To this end, we split the groups based on age to better understand any generational attitudinal differences. Within each group, we also ensured that there were some participants

who identified with, or had someone close to them who identified with, at least ONE of the following:

- being **not** heterosexual (gay, lesbian, bisexual, other)
- belonging to a particular religion or religious denomination
- having a mental or physical disability
- belonging to an ethnic minority (ensuring a range).

At least half of the sample personally identified with at least one of these groups.

Respondents were told the subject and intent of the research in the course of recruitment. Additionally, the need to ensure the inclusion of community members with a specific vantage point was disclosed. This personal information was for recruitment purposes only and was not shared in the focus groups unless the respondent chose to volunteer the information him or herself during the course of the discussion.

Overview of recruitment quotas across the groups

A range of Household Income (Low, Medium, High) and Employment Status (Unemployed, Part-Time, Full-Time, Students)

Equal gender breakdown

- 12 x male, 12 x female respondents

Association with groups commonly subject to discrimination or denigration

- **13** x self or close friend/family member identify as being **not** heterosexual (gay, lesbian, bisexual, other)
- **16** x self or close friend/family member identify with a particular religion or religious denomination
- **13** x self or close friend/family member identify as having a mental or physical disability

Range of Ethnicities

- 10 x NZ European
- 2 x Maori
- 2 x Pacific Islander
- 2 x Indian
- 3 x Other European (British/Scottish)
- 1 x Chinese, UAE, South African, Kenyan, Zimbabwean

Process

Initially there was a brief warm-up where participants discussed TV programmes and radio stations they enjoyed viewing or listening to.

The group was then provided with information about the BSA, its role and the Discrimination and Denigration standard (broadcasting standards are included in the Appendix). Participants

were also encouraged to consider the need for the BSA to balance freedom of expression and upholding standards.

Opportunities to ask questions and gain clarification were provided. Participants also asked questions at the end of the groups. Questions asked by participants included:

- Did the standards apply to Pay TV as well as Free-to-Air TV?
- When were the broadcasting standards last updated?
- Does the BSA Board have a representative mix of race/age/sexuality?
- Who decides upon the criteria for the standards? For the thresholds?
- What is the punishment to the broadcaster if a standard is breached?
- How quickly is a complaint ‘turned around’?

Each clip was then shown. The five clips were:

1. Ashurst and Others and Television New Zealand Ltd - 2010-001: Paul Henry talking about Susan Boyle on *Breakfast TV ONE*
2. Carpenter and The Radio Network Ltd - 2012-081: ‘Racial Profiling’ game on *ZM Morning Show*
3. Simmons and Walker-Simmons and RadioWorks Ltd - 2012-004: Gay AIDS joke on *The Edge Morning Show*
4. Fattorini and RadioWorks Ltd - 2012-034: Story about Down Syndrome man on *Robert and Jono* on *The Rock*
5. Bergman and TVWorks Ltd - 2013-013: Mary, Joseph and ‘baby dog’ promo for *The Graham Norton Show* TV3

During and after each clip, participants were asked to independently note down in writing:

- Any specific issues they personally had with the clip
- What aspects they felt might have triggered the complaint
- Whether they felt most people would feel this way, and if not, why not
- Whether they felt the BSA should have upheld the complaint.

Once this form was completed the respondents each received a written and verbal summary of the actual BSA decision.

Respondents were then asked to write down individually:

- Any thoughts about the BSA’s decision
- How they would rate the severity of the clip (where 1 was “Nothing Wrong With It” and 5 was “Really Bad”)
- How they would rate the BSA’s decision, taking into account the reasoning given by the BSA and the final outcome (1 being “Very Poor” and 5 being “Very Good”).



For the first two groups, the clips were shown in random order, while for the remaining groups, the clips were shown in chronological order (in terms of when the programme was broadcast). Clips were shown in chronological order to help assess whether respondents felt the Board had been consistent and followed precedent in its ruling. Respondents felt that, in the main, the rulings were consistent over time.

The responses to each clip were then discussed as a group.

Appendix I contains the discussion guide used, as well as the information participants were given about the Discrimination and Denigration standard.

Overview of Findings

Synopsis

- The consistency of response across the four groups leads us to understand that the reactions and views of those who either belonged to a section of the community more likely to be the subject of denigration or discrimination (for example, on the basis of race, sexuality, disability or ethnicity) or who were close to someone who belonged to one of these sections, did not differ markedly from those of other people not in these categories.
- Some respondents chose to reference their background or identify themselves as belonging to or knowing someone from a particular section of the community that may be vulnerable to discrimination. More often than not this was to counter the view that offence or discrimination should be taken. Therefore, it is our view that the personal relevance of the subject of discrimination or denigration (e.g. race, sexuality, disability, ethnicity) is only part of a number of influences that determine a respondent's viewpoint and, in most cases, is not a defining factor.
- The nature of the standard, and the responsibility given to group participants to make decisions on complaints, meant that sometimes, and particularly for the first clips shown, participants were compelled to comment. In reality, the clips would often go unnoticed in everyday viewing or listening. Respondent feedback should be viewed in this context.
 - *“Well, we’re listening hard, we’re actually looking for fault because we’re not just general listeners, we know there has been a complaint so we’re looking for what is wrong so I think that that has definitely had an influence on me, particularly on the ones where I could have ‘swayed’.” (50-65)*
- None of the respondents in the groups had ever filed a complaint with the BSA. (Although one respondent said he had made a complaint about a Paul Henry piece featuring animal cruelty, it was not taken to the next step or registered with the BSA.) This was due to several factors including not being overly offended by anything seen or heard and assuming that someone else would make a complaint.
 - *“For about 4/5 clips I wouldn’t have bothered to make a complaint because it didn’t stand out to a severe extent. It wasn’t enough for me to go ‘oh, this is going to affect my kids.’”(30-39)*
- The youngest group of participants (18-29 years old) were more accepting, found more humour in the clips and were not particularly bothered by the language that caused offence.
 - *“Is ‘retarded’ slang or is it an actual word?” (18-29)*
 - *“I think if Paul Henry had done it on TV there would have been a ton of complaints, or on Classic Hits... but because it was ZM generally it’s targeted at youth, many of us are*

a bit more light-hearted about these things, especially at our age and we're a bit less sensitive to racism because we're surrounded by so many racist jokes. It's all good."
(18-29)

- The groups reacted positively to the summaries of the BSA's rulings. Their feedback indicates that the decisions are seen to be fair and considerate of all factors involved.
 - *"I think it's good the way they word them (rulings) because they are referring to the guidelines that they have so that when it is presented... there is reasoning to back it up."* (18-29)
- Groups also spoke of the difficulty in distinguishing between an *encouragement* to discriminate or denigrate versus being offensive or discriminatory.
 - *"I think most people would agree that there was an element of offence whether you found it funny or not."* (40-49)
- Groups spoke of the potential danger of allowing 'looser' rules for certain types of media or shows and the gradual relaxation of what is seen as socially acceptable over time.
 - *"I think one of the risks (of hearing and seeing discrimination in the media) is that the boundaries could continue to be pushed and you get to a tipping point where it goes too far and becomes really demeaning to certain groups in the community."* (30-39)
 - *"I think slowly but surely things are slowly becoming more acceptable... You look at being gay for example, many years ago, I used to be slapped by my father and told 'this is what will happen to you if you ever come home with a boyfriend'... but my youngest brother came out last year and today it's acceptable."* (30-39)
- We asked participants if they felt that the standard went far enough. Most felt that it was comprehensive but were looking for more examples and clarity to help guide decision making.
 - *"In general I think it's really good... however, I wondered if it's specific enough, all of it in fact is really contextual... I don't know how it would be done but if it could be a bit more specific... because it's such a grey area."* (18-29)
 - *"Defining and determining the criteria – like it says a high threshold, but what does that mean?"* (40-49)
 - *"I feel like the standard needs to include, because it has been so prevalent here today, is how offensive to the general public would this be?"* (50-65)

Clip One (Breakfast – Paul Henry – 2010-001)

Synopsis

- *“I upheld based on discrimination – he is basically saying you can tell if someone is retarded by looking at them, which isn’t true.” (18-29)*
- *“Paul Henry is renowned for being a shock jock and he set the tone when he laughed about her receiving beatings in school.” (50-65)*

Ashurst and Others and Television New Zealand Ltd - 2010-001: Paul Henry and Susan Boyle

Breakfast presenter Paul Henry said that a magazine article had revealed that singer Susan Boyle was ‘retarded’. He held up a picture of her and said you could ‘make it out’ by looking at her.

Taking into account the right to freedom of expression, a majority of the BSA (three members to one) upheld the complaint that Mr Henry’s comments breached the Discrimination and Denigration standard.

The majority said that because the comments ridiculed and derided someone on the basis of intellectual disability, they extended beyond Ms Boyle to all members of the community who suffer from intellectual disabilities.

The majority felt that the message conveyed to viewers was that people with intellectual disabilities can be identified and characterised by certain physical features, and are appropriate subjects for ridicule. The comments applied to a particularly vulnerable sector of society whose members cannot easily defend themselves, and Mr Henry drew viewers in by holding up the magazine and pointing to Ms Boyle’s photograph.

The majority of the BSA concluded that this clearly encouraged the different treatment of people with intellectual disabilities, to their detriment. They ordered the broadcast of a statement during *Breakfast*, summarising the BSA’s decision.

The minority felt that the comments were clearly about one person and not aimed at a section of the community. The comments were brief, and were not repeated or sustained. The minority found that, if any of the comments extended to a section of the community, this was too oblique to encourage discrimination or denigration against that group.

Most participants voted to uphold the complaint, making it one of the most unanimous tested in terms of group agreement and agreement with the Board’s decision.

Severity of the clip (n= 24)

1 Nothing Wrong With It	2	3	4	5 Really Bad
0	3	6	8	7

Reaction to Board's decision (n= 24)

1 Very Poor	2	3 Neither Good nor Bad	4	5 Very Good
0	3	2	9	10

After reading a summary of the Board's decision, the balance of opinion remained in favour of the Board's decision. As stated in the decision summary, the Board had a minority who believed that the standard had not been breached. This was also reflected in the groups.

Main issues regarding the clip

In agreement with the complainant, the main issues participants had regarding the Breakfast – Paul Henry clip were:

- The use of the word 'retarded'
- Paul Henry's laughter at Ms Boyle's abuse and disability
- Paul Henry's encouragement of the audience to judge Ms Boyle's mental ability based on her appearance
- No issue – to be expected of Paul Henry and not directed at a wider group of disabled people.

1. **The use of the word 'retarded'**: Many respondents objected to what they felt was a derogatory and offensive term.

- *"I really didn't like what he said, I'm an up and coming Occupational Therapist and we hate that word, it's really un-PC now, I'm not really all for hard-out PC things but it's quite discriminating and I would never want to refer to any of my clients as that." (18-29)*
- *"It was very forceful considering he is in the public eye. A very forceful way of using vocabulary. It was right there in your face." (40-49)*

2. **Paul Henry's laughter at Ms Boyle's abuse and disability:** Some respondents also felt that Mr Henry's laughter made the situation worse and contributed to the denigration and discrimination.
 - *"And laughing like 'everyone agree with me, I know this lady looks retarded'." (40-49)*
 - *"So terrible, the belittling of people who are vulnerable and then making them feel embarrassed to stand up for themselves, it's like encouraging people to abuse, even if it's a passing comment this is the media and they are incredibly influential as to how people think." (18-29)*

3. **Encouragement of audience to judge Ms Boyle's mental ability based on her appearance:** Some felt that Mr Henry's gesture encouraged the audience to make the same stereotypical judgements about ability based on looks.
 - *"The definition came about encouraging others by him holding it up and saying 'look' to 50 million viewers, 'look right there'. That is definitely encouraging in my opinion." (40-49)*

4. **No issue – to be expected of Paul Henry:** Some had no issue with the clip and stated that Paul Henry was known for this kind of behaviour and did not mean anything by it. Others didn't feel that the clip was directed at disabled people in general and agreed with the minority in the Board ruling.
 - *"Everyone knows what he says, people tune into him because he's like how he is and although what he said was not correct, it does make you wonder how much of it was put on for TV." (30-39)*
 - *"I thought it was mainly aimed at Ms Boyle. I do agree there was an edge to it... it was just humour, it was an opinion point, it wasn't something that I felt was laboured or strongly pushed... and given that this standard is nothing about individuals and about the community that's why I thought it was fine not to uphold it." (50-65)*

Board's decision to uphold complaint: None of the groups were surprised that this complaint was upheld, but some struggled to accept the rationale that Mr Henry's comments about Ms Boyle could be extrapolated to include a wider disabled community.

- *"I agree that it would affect a vulnerable sector of society by causing others to laugh. (The way he presented was done in a demeaning way.) I agree with the ruling." (40-49)*
- *"I agree with the BSA, although it was not aimed at the whole community it was said on national TV and could be taken that way." (30-39)*
- *"I'm sure his intent wasn't for the wider community but his comments were inappropriate." (30-39)*

Initial reaction to clip (prior to seeing Board's summary)	Reaction after considering Board summary (did Board make a good decision?)	N= 24
Should uphold complaint	Board did not make a bad decision (thought decision was good or had no strong views either way)	18
Should uphold complaint	Board made a poor decision	0
Should not uphold complaint	Board did not make a bad decision (thought decision was good or had no strong views either way)	3
Should not uphold complaint	Board made a poor decision	3

Clip Two (ZM Morning Crew – ‘Racial Profiling’ Game – 2012-081)

Synopsis

- *“I didn’t think it was terrible but it is stereotyping on a certain race and I didn’t think it was fair... but it’s just a stupid competition really.” (18-29)*
- *“I don’t think it’s very nice, I think it’s promoting racist stereotypes, denigrating people, well, groups of people, for entertainment.” (50-65)*

Carpenter and The Radio Network Ltd - 2012-081: ‘racial profiling’ game on ZM

In a competition called ‘Racial Profiling’, hosts of the *ZM Morning Crew* and a contestant guessed whether individuals who had committed certain offences in the United States were ‘black, white or Asian’.

Taking into account the right to freedom of expression, the BSA did not uphold the complaint that this breached the Discrimination and Denigration standard.

On the face of it, the game perpetuated racial stereotypes, and would have caused discomfort for listeners. However, the outcome as broadcast demonstrated flaws in stereotyping, because the participants for the most part incorrectly guessed the ethnicities of the perpetrators, undermining the premise of racial stereotyping. The segment featured three racial profiles, rather than singling out one group, and did not amount to hate speech or vitriol.

ZM listeners would have appreciated that the segment was intended to be humorous, rather than as an attack on any of the groups referred to. The BSA noted that guideline 7a(iii) to Standard 7 recognises that the standard is not intended to prevent the broadcast of humour or satire, which are important for free speech.

The complaint caused respondents to consider the intent of the game and whether it encouraged discrimination and denigration. Respondents were split as to the severity of the clip, but initially 16 of the 24 participants felt the complaint should be upheld.

Severity of the clip (n= 24)

1 Nothing Wrong With It	2	3	4	5 Really Bad
0	8	9	5	2

After reading the Board’s decision, most agreed with the decision not to uphold. They felt that the game may have been in poor taste, but did not use invective.

Board's decision to not uphold complaint

1 Very Poor	2	3 Neither Good nor Bad	4	5 Very Good
2	1	9	8	4

Main issues regarding the clip

- Enforcing and creating stereotypes – race-related vs racist?
 - Poor taste
 - Not singling out one race
 - No offence taken
1. **Enforcing and creating stereotypes – race-related vs racist?** Some participants felt that the nature of the game enforced negative stereotypes about the races and that the female host's tone encouraged the audience to think in the same way.
 - *“Fundamentally it's based on a racial outcome and preconceptions of how people think about that, how it wasn't racist I do not know.” (50-65)*
 - *“It gave the audience an opportunity to think so the process of the game did actually imprint more information with the audience.” (30-39)*
 - *“She was pushing her opinion... She was putting her personal opinion in here and her racism was shining through.” (18-29)*
 2. **Poor taste:** Some respondents found the game to be in poor taste and premeditated.
 - *“I just thought the whole thing was wrong, the name, Racial Profiling, we are going to play a game and you think ‘oh, what are they going to be doing?’ And it's not humorous at all.” (40-49)*
 - *“The foundation of this – if you think of them planning this piece, how would they not think that it was racist, however humorous it's put across? You sit down and plan a piece like that.” (50-65)*
 3. **Not singling out one race:** Some respondents disagreed with the inclusion in the Board's reasoning that the segment featured three race profiles rather than one.
 - *“It was racist, I think it's racist regardless if you're singling out a single race or all of them.” (18-29)*
 4. **No offence taken:** This clip drew laughter from some who did not think that it was encouraging discrimination or denigration.

- *“Putting my mind to it and if I was in a pub with a group of friends and we heard this, we’d be laughing, we’d be doing the same thing, we’d all know there was no malice behind it, just the reality of life.” (40-49)*
- *“I found it funny, like I’m an Arab and I get all the terrorist jokes, but I don’t take this offensively, people get offended too easily nowadays, and it’s ZM, they are funny...” (18-29)*

Board’s decision to not uphold complaint: Groups reiterated the difficulty of determining whether this was a breach or not.

- *“I think that’s why I didn’t uphold because I just felt a lot of people would go 50/50 with this... and even though there was mocking going on in the background it was a hard aspect to try and determine.” (40-49)*
- *“Just go on Facebook and try to find something not targeted to race like a meme or something.” (18-29)*

Initial reaction to clip (prior to seeing Board’s summary)	Reaction after considering Board summary (did Board make a good decision?)	N= 24
Should uphold complaint	Board did not make a bad decision (thought decision was good or had no strong views either way)	13
Should uphold complaint	Board made a poor decision	3
Should not uphold complaint	Board did not make a bad decision (thought decision was good or had no strong views either way)	8
Should not uphold complaint	Board made a poor decision	0

Clip Three (The Edge Morning Show – AIDS joke – 2012-004)

Synopsis

- *“It’s about context... I had no problem with it, it was quite funny, there was the whole gay and AIDS correlation but the context and the way he was saying it, he wasn’t being mean or anything.” (18-29)*
- *“I felt it was humorous and that’s the nature of their show to joke like that but I feel it was possibly promoting ideas which are not factual... inappropriate.” (30-39)*

Simmons and Walker-Simmons and RadioWorks - 2012-004: gay AIDS joke

During *The Edge Morning Show*, one of the hosts performed a parody of a song. He later read out a listener’s text message which said, ‘Dom, your song was so gay I’m pretty sure I just got AIDS from listening to it.’

The BSA did not uphold the complaint that the comment breached the discrimination and denigration standard.

The BSA acknowledged that the comment played on stereotypes about AIDS and the gay community, and that this would have been offensive to some people. However, the text message was directed at the host’s song and was not intended as a criticism of homosexuality or as an attack against homosexual people as a section of the community.

The BSA carefully considered whether the broadcast went too far. It took into account relevant contextual factors such as the radio station’s target audience, regular listeners’ expectations of content on *The Edge*, the host’s tone of voice, and the relatively innocuous intent of the segment.

The BSA found that, on balance, the comment did not reach the high threshold necessary to be seen as encouraging the denigration of, or discrimination against, homosexual people as a section of the community.

Of the **24 participants**, **only 6 wanted to uphold the complaint initially**, with the majority not upholding the complaint due to the brevity of the comment and the fact that it was not made by the host.

The participants, in the main, felt that the clip itself was not meant to be taken seriously and was not demeaning or derogatory when placed in the context of the programme.

Severity of the clip (n= 23 – one respondent had to leave the group before these questions were answered)

1 Nothing Wrong With It	2	3	4	5 Really Bad
8	9	2	2	2

Board's decision (n= 23 – one respondent had to leave the group before these questions were answered)

Most agreed with the Board's decision to not uphold the complaint.

- *"I was fine with it, the fact that it wasn't even his expression and it was presented in context from an outside source." (18-29)*

1 Very Poor	2	3 Neither Good nor Bad	4	5 Very Good
2	1	4	9	7

Main issues regarding the clip

- No issue
 - Reading a text message vs a personal statement
 - Linking AIDS to homosexuality
1. **No issue:** Many respondents had no issue with the clip that they heard or did not find it severe enough to warrant a breach of the standard.
 - *"They were playful they weren't sounding harmful." (18-29)*
 - *"At the end of the day the comment was targeted at the host not the audience and not anybody that was gay as such, it just became more banter." (30-39)*
 - *"I agree with the ruling, I think it's another one when striking the balance is really hard because you could argue on one side of stereotyping gays as automatically having AIDS was there, but I think that in the context of the whole piece being very humorous and it only being mentioned once, it's one of those where they've said ok, the balance lies over here, not there. It's tough, I think they've got a hard job." (50-65)*
 2. **Reading a text message vs a personal statement:** Some respondents made mention of the fact that the distasteful statement was not made by the host, and therefore was not an opinion. This was an important factor in considering whether or not there was a breach.
 - *"It's someone else's personal opinion so it's freedom of speech isn't it?" (30-39)*

- *“I thought by their comments it was clear that this wasn’t a fact, it was quite clear by the laughter that it was a stupid thing and it wasn’t their own comments.” (40-49)*

3. Linking AIDS to homosexuality: The groups also discussed the damage that may be caused by perpetuating the stereotype that AIDS is a homosexual illness.

- *“I just feel it is not taking into account enough that it is promoting those ideas which are not factual and that’s why I disagreed with it.” (30-39)*
- *“It encourages the idea that homosexuals are dirty or diseased, or weak because they were talking about ‘gaying it up’... I think most people would have laughed about it but that’s only because it’s completely normalised in society, we aren’t offended because we hear it all the time, but they actually aren’t appropriate.” (18-29)*

Board’s decision to not uphold complaint

When provided with a summary of the Board’s decision, 19 of the 22 participants who answered this question agreed with or accepted the BSA’s decision to not uphold.

Initial reaction to clip (prior to seeing Board’s summary)	Reaction after considering Board summary (did Board make a good decision?)	N= 22
Should uphold complaint	Board did not make a bad decision (thought decision was good or had no strong views either way)	2
Should uphold complaint	Board made a poor decision	3
Should not uphold complaint	Board did not make a bad decision (thought decision was good or had no strong views either way)	17
Should not uphold complaint	Board made a poor decision	0

Clip Four (The Rock – Robert and Jono – 2012-034)

Synopsis

- *“I thought the context made it clear it was meant to be a funny story, even though I didn’t find it funny.” (40-49)*
- *“I think the use of the word mental and the condescending tone caused the complaint.” (30-39)*

Fattorini and RadioWorks Ltd - 2012-034: story about Down Syndrome man

One of the hosts on *Robert & Jono’s Drive Show* on The Rock radio station told a story about a man with Down Syndrome who fell off a swing and hurt himself. The host used the term ‘mental’ several times to refer to people with intellectual disabilities.

The Authority did not uphold the complaint that this breached the Discrimination and Denigration standard.

The story was told in a light-hearted, tongue-in-cheek manner and with humorous intent, consistent with other content on The Rock. The term ‘mental’ was used in the context of a personal anecdote, which overall was favourable and positive towards the man. The term was used without malice, did not amount to hate speech or vitriol and was not intended as an attack against people with intellectual disabilities. The co-host also made some mitigating comments.

The BSA said that the right to free speech necessarily means that some information and views may offend some people. Audiences should not be overly sensitive about comments directed at particular segments of society, even those that are considered vulnerable, particularly where there is an obvious lack of invective and where the comments are not intended to be taken seriously.

Eight of the 24 respondents initially wanted this complaint upheld. It was not seen by the majority as a breach, but largely viewed as a humorous, if not a slightly alarming story, about a Down Syndrome man being injured.

Severity of the clip (n= 24)

1 Nothing Wrong With It	2	3	4	5 Really Bad
5	13	2	1	3

When considering the Board's summary, participants agreed with the Board's decision to **not** uphold the complaint.

The Board's decision was seen to be 'considered' and balanced by most.

- *"I agree with it. It was without malice and light hearted and had humorous intent."* (30-39)
- *"I agree with the ruling, it doesn't actually encourage... there's no deliberately trying to offend."* (50-65)

Board's decision

1 Very Poor	2	3 Neither Good nor Bad	4	5 Very Good
2	1	4	6	11

Main issues regarding the clip

- Making fun of a disabled person
 - The use of the word 'mental'
 - Tone and intent
 - No issue
1. **Making fun of a disabled person:** Some respondents found the story to be in bad taste and said it encouraged discrimination by making fun of a man with Down Syndrome.
 - *"I thought it was making entertainment out of handicapped people... I thought the whole thing was quite offensive and rude."* (50-65)
 - *"I just feel like the tone was a bit condescending... I just feel if I were the parent of someone with a disability like that I think that would really upset me."* (30-39)
 2. **The use of the word 'mental':** Most respondents felt that the complaint was prompted by the use of the word 'mental' to describe a group of people in the story. This word was felt to be insulting and discriminating.
 - *"He was doing it to stir, he knew what he was doing was wrong... for me that was the only thing that stood out, that he said mental people."* (30-39)
 - *"It maybe didn't encourage discrimination but it made fun of him and called him mental."* (50-65)
 3. **Tone and intent:** Groups debated the intent of the story and the host's comments – were they genuinely supportive of the Down Syndrome man or were they making fun of a vulnerable member of society who got hurt?

- *“I felt it contradicted the earlier Susan Boyle decision about vulnerable groups – this one said that the audience should not be overly sensitive whereas Susan Boyle was upheld because it was about vulnerable groups who can’t defend themselves so I found that contradictory.” (40-49)*
- *“I thought it was denigrating to a class of people... I think they were laughing at him.” (50-65)*

4. **No issue:** Some respondents had no issue with the clip and found it an amusing story.

- *“I just want to put something out there before you all think I’m totally crazy [for laughing at the clip], I had no issues with this and for the record... I have a close family member who does have a mental illness, and I can see why the trigger was the word mental, but come on, that was hilarious and at no point was he putting him down, if anything he was giving him props.” (18-29)*
- *“He even put him on a pedestal at the end, called him a bloody legend.” (30-39)*

Board’s decision to not uphold: The vast majority of respondents (21 out of 24) either felt that the Board made a good decision or were neutral about the Board’s decision.

- *“I agree with it but I think that the comment around the host’s comments being positive and favourable are a bit of a stretch... I don’t think they were meant to be...” (30-39)*

The minority disagreed and found the decision lacking.

- *“I can see that the BSA wouldn’t have a problem with it but what about the families of those with intellectual disabilities or challenges, therefore I would uphold the complaint on behalf of this group even if they [BSA] see it as merely insensitive.” (40-49)*

Initial reaction to clip (prior to seeing Board's summary)	Reaction after considering Board summary (did Board make a good decision?)	N= 24
Should uphold complaint	Board did not make a bad decision (thought decision was good or had no strong views either way)	5
Should uphold complaint	Board made a poor decision	3
Should not uphold complaint	Board did not make a bad decision (thought decision was good or had no strong views either way)	16
Should not uphold complaint	Board made a poor decision	0

Clip Five (Promo for The Graham Norton Show – Mary, Joseph and ‘baby dog’ – 2013-013)

Synopsis

- *“It has to be a Jesus thing, I’m a Catholic but come on, he was just looking at a picture given to him... he’s not saying Jesus is a dog or anything. As a religious person I take no offence whatsoever.” (18-29)*
- *“I would say this is a breach and why I say this is... anything to do with religion is very dangerous... it’s quite a touchy subject, look at the situation in the Middle East.” (40-49)*

Bergman and TVWorks Ltd - 2013-013: Mary, Joseph and ‘baby dog’

A promo for *The Graham Norton Show*’s Christmas special showed a photograph of a couple dressed as Mary and Joseph holding a dog in place of baby Jesus.

The Authority did not uphold the complaint that this breached the Discrimination and Denigration standard.

The BSA found the content was a light-hearted attempt at satire and humour, and was not intended to be taken seriously. Guideline 7a to Standard 7 states that it is not intended to prevent the broadcast of legitimate humour or satire.

The content related to a segment reviewing ‘wacky’ internet material and was not intended as a criticism of, or derogatory comment about, Christians. The content did not carry any invective, and did not encourage the blackening of the reputation of all Christians, or the different treatment of them, to their detriment.

Further, the innocent lampooning of religious figures comes within the broadcaster’s right to freedom of expression.

A total of **3 out of the 24 participants** indicated initially that they would have upheld the complaint. Out of all the clips, this clip was considered least offensive or discriminatory/denigrating to the majority of group participants.

Severity of the clip (n= 24)

1 Nothing Wrong With It	2	3	4	5 Really Bad
14	4	4	1	1

Board's decision

The majority agreed with the Board's decision to not uphold the complaint.

- *"It took into account that it was humorous, it was wacky and it wasn't criticising anyone." (30-39)*

Board's decision to not uphold

1 Very Poor	2	3 Neither Good nor Bad	4	5 Very Good
0	1	5	3	15

Main issues regarding the clip

- No issue
 - Disrespecting Christianity
1. **No issue:** Most respondents, even those who identified themselves as Christians to the group, did not have a problem with the piece. Many felt that if people had such strong religious views or beliefs they should know better than to watch a programme such as Graham Norton, which is well known to be humorous.
 - *"I'm mostly practising as a Christian anyway and I saw humour in it and I didn't feel undermined by it, I didn't feel like it was denigrating me in any way, it was light hearted and funny and there were no offensive words used." (18-29)*
 - *"We are a Christian family and it's not something that would even bother us, so I can't imagine that it would bother someone else." (30-39)*
 - *"I'm looking at it and I'm still like how, where, why would you ever make the effort to complain about that even if you were a Christian?" (18-29)*
 2. **Disrespecting Christianity:** A small number of participants who identified as Christian felt that the clip could be seen as offensive.
 - *"I put that many wouldn't worry but those who put Jesus at the centre of their faith will be offended." (40-49)*
 - *"I think it's gratuitous and offensive, what if he had pictured the dog as Muhammad or somebody else? I think a lot of Muslims would be offended." (50-65)*

Board's decision to not uphold: The vast majority agreed with the Board and most of those who thought that the complaint should be upheld, still felt the Board's decision was fair.

- *"I interpreted it the exact same way that they did." (18-29)*

- *“I agree entirely, it’s a comedy show, light entertainment, did not breach the code or the factors that the BSA are to consider.” (50-65)*

Initial reaction to clip (prior to seeing Board’s summary)	Reaction after considering Board summary (did Board make a good decision?)	N= 24
Should uphold complaint	Board did not make a bad decision (thought decision was good or had no strong views either way)	2
Should uphold complaint	Board made a poor decision	1
Should not uphold complaint	Board did not make a bad decision (thought decision was good or had no strong views either way)	21
Should not uphold complaint	Board made a poor decision	0

Summary and Points for Consideration

In summary, the Board's rationale was respected and considered to be fair in this round of litmus testing. Group participants, in the main, agreed with the Board's rulings for each of the clips tested.

In the case of the **Breakfast – Paul Henry** clip, respondents felt that Paul Henry's comments and tone were both denigrating to disabled people, and to Susan Boyle specifically. Although this type of behaviour and attitude was expected of Paul Henry (and found to be entertaining by some group members), participants generally felt that Paul Henry had crossed a line when he drew attention to Susan Boyle's looks and was encouraging others to stereotype or discriminate against intellectually disabled people in the same way that he has. A minority of participants did not believe Paul Henry's comments about Susan Boyle could be extended to disabled people in general and did not agree that it was a breach.

Respondents' view of the **ZM Morning Crew** clip was that, although it was possibly a racist piece, it was not clear as to whether it encouraged racism. Some argued that making a game of racial profiling meant the broadcaster was encouraging the audience to discriminate, while others felt that it may have been in bad taste, but was humorous, lacked invective and did not breach the standard.

With regard to **The Edge Morning Show**, most did not find the complaint to be a breach. While some found it to denigrate gay people by linking them with AIDS, most felt that the throwaway nature of the comment and the fact that it was a listener's text message rather than the host's opinion meant it was not a breach of the standard.

The Rock – Robert and Jono created discussion around the intent and tone of the story and, while many found it an uncomfortable story because of the injury to the man featured, it was not seen by most respondents to be a breach. Although the host used the derogatory term 'mental' to describe disabled people, he was not felt to be encouraging others to do so.

The promo for **The Graham Norton Show** was not seen to be a breach of the standard by most participants. It was described as a picture shown in good humour and was not felt to encourage discrimination or denigration of religious groups.

Appendix I – Discussion Guide and Standards

Discussion guide (2.5 hours)

1. **Research Introduction (2 min)** Greetings, and brief explanation of topic – understanding broadcasting standards. Gut feeling, fun, philosophical discussion, no right or wrong – important to accept that other people have different opinions from yourself
 - Confidentiality, explanation and consent to record audio, video
 - Introduce clients, timing, amenities
 - Thank people for their participation

2. **TELEVISION/RADIO AND ME – General discussion (5-10 min)**

- What kind of programmes/channels do you tend to watch/listen to, and why?
- Which, if any, do you avoid and why?

3. **BROADCASTING STANDARDS – General discussion (5-10 min)**

Now I am just going to give you a little bit of background about standards in broadcasting. *All to have a copy – interviewer to read out*

Broadcasters in New Zealand have a code of practice and are responsible for maintaining a number of **standards** in their programmes. These standards cover areas such as good taste and decency, privacy of individuals, and balance and fairness in factual programmes such as documentaries. There is also a standard for discrimination and denigration – this standard says broadcasters should not encourage discrimination against or denigration of any section of the community on account of sex, sexual orientation, race, age, disability, occupational status or as a consequence of legitimate expression of religion, culture or political beliefs. This is the standard that we will be focusing on today.

The Broadcasting Standards Authority (BSA) ensures broadcasters fulfill their obligations to maintain standards as agreed under their code of practice. It also provides the public with a free, independent complaints service if someone feels a standard has been breached.

At the same time, we need to bear in mind that New Zealand is a modern democratic society where freedom of speech is protected by law under the New Zealand Bill of Rights Act (1990).

Broadcasters therefore are constantly mindful of getting the balance right between protecting everyone's right to freedom of expression while at the same time maintaining standards expected of broadcasting. And when the BSA is considering the complaints made to it, it also needs to justly balance these two concepts.

4. WRITE UP MAINTAINING STANDARDS/FREEDOM OF EXPRESSION

- Has anyone ever made a complaint, or gone to their website to get information?
 - If so, what were your impressions of the process?
 - If not, why not? Is it that they've never found anything offensive, or is the process difficult?

5. BROADCASTING STANDARDS – DISCRIMINATION AND DENIGRATION (15 min)

As we mentioned earlier, broadcasting standards cover a number of different issues concerning what we watch on tv or listen to on the radio. In our discussion today, we'll be covering just one of the standards – the discrimination and denigration standard.

What I will show you now is the standard as it is written in the broadcasters code of practice

Each Participant to get a copy of the standard and Moderator to read out

- What do you understand by this standard? *Probe on ease of understanding, use of language, amount of information, are there any questions?*

6. INDIVIDUAL JUDGEMENTS (60 min)

For the rest of our discussion tonight, I am going to show you clips of shows that people have made complaints to the BSA about. Some of the complaints were upheld (which means that the BSA agreed with the complainant and took action) and some were not upheld (which means the BSA did not agree that there had been a breach of the discrimination and denigration standard).

There will be 5 clips that we will show you one at a time. As we go through, I'd like you to jot down your gut feelings and thoughts. Please don't discuss them at this stage. *Hand out sheet 1.*

Show each of the five clips (rotated order) and leave time for them to write down their thoughts on each. Provide information regarding channel, programme, time and rating
Hand out sheets 2-6 with the following questions

- Write down what thoughts you have about this broadcast
- What aspects do you think triggered the complaint?
- What is your personal view on the clip – do you feel OK about it airing on this channel/station at this time and why/why not?
- Have a look at the specific guidelines in the discrimination and denigration standard. Think about the need for the BSA to support the right of the broadcasters for free speech while making sure they uphold agreed standards. Do you think the BSA would have upheld this complaint – that is, ruled that it breached the discrimination and denigration standard?

Then give each person a copy of the decision summary to read individually

Here we have a summary of the final decision made by the BSA in regard to the complaint. Can you please take a few minutes to read it individually and write your comments on it.

- What are your thoughts?
- Now that you have read the decision made by the BSA and how they came to that decision, do you agree with the decision that they made?

Let's discuss it as a wider group. Remember we don't have to agree with each other or reach a consensus (5 minutes)

So, what was everyone's thoughts for clip 1?

- Who agreed with the BSA's decision? Why/why not?
- Regardless of whether or not this clip breached the discrimination and denigration standard, what were the group's thoughts on this clip being broadcast on this channel at this time?
- Would your views have been different if it was a different channel/station, a different programme, or a different time of day?

Repeat for Clips 2-5

We're nearing the end of our discussion now. To wrap up, thinking about the decisions made by the BSA, and the way they were communicated, what is the one thing you'd like to say to them?

The standard around discrimination and denigration itself - does it go far enough? Is there anything missing?

Thanks and Koha

FREE-TO-AIR TELEVISION CODE

STANDARD 7 – Discrimination and Denigration

Broadcasters should not encourage discrimination against, or denigration of, any section of the community on account of sex, sexual orientation, race, age, disability, occupational status, or as a consequence of legitimate expression of religion, culture or political belief.

Guidelines

- 7a** This standard is not intended to prevent the broadcast of material that is:
- factual, or
 - the expression of genuinely held opinion in news, current affairs or other factual programmes, or
 - legitimate humour, drama or satire.

‘Discrimination’= Encouraging the different treatment of the members of a particular group, to their detriment

‘Denigration’ = Blackening the reputation of a class of people

High threshold for a breach: A high level of invective is necessary for the Authority to conclude that a broadcast encourages denigration or discrimination in contravention of the standard, because of the importance of the right to **freedom of expression** contained in the NZ Bill of Rights Act 1990.

Factors the BSA will consider:

- the language used
- the tone of the person making the comments
- the forum in which the comments were made – eg talkback radio is recognised as a ‘robust’ forum
- whether the comments appeared to be intended to be taken seriously, or whether they were clearly exaggerated/hyperbole
- whether the comments were repeated or sustained
- whether the comments made a legitimate contribution to a wider debate, or were gratuitous and calculated to hurt or offend.

RADIO CODE

STANDARD 7 – Discrimination and Denigration

Broadcasters should not encourage discrimination against, or denigration of, any section of the community on account of sex, sexual orientation, race, age, disability, occupational status, or as a consequence of legitimate expression of religion, culture or political belief.

Guidelines

- 7a** This standard is not intended to prevent the broadcast of material that is:
- (i) factual
 - (ii) a genuine expression of serious comment, analysis or opinion; or
 - (iii) legitimate humour, drama or satire.



Appendix II – Nielsen Quality Assurance

Quality Assurance

Nielsen is committed to the principles of Total Quality Management, and in 1995 achieved certification under the International Standards Organisation ISO 9001 code.

The company maintains rigorous standards of quality control in all areas of operation. We believe no other commercial research organisation in New Zealand can provide clients with the level of confidence in survey data that we are able to. Furthermore, Nielsen is routinely and regularly subjected to **independent external auditing** of all aspects of its survey operations.

ISO 9001

Nielsen is committed to the principles of Total Quality Management, and in 1995 achieved certification under the International Standards Organisation ISO 9001 code. In March 2007 Nielsen also adopted the standards specified in AS20252.

In terms of this project, all processes involved are covered by our ISO 9001 procedures. As part of these procedures, all stages of this research project (including all inputs/ outputs) are to be approved by the Project Leader.

Code of Ethics

All research conducted by Nielsen conforms with the Code of Professional Behaviour of the Market Research Society of New Zealand.



Appendix III – Company Information

Company Profile

Nielsen Corporation is the world's leading provider of market research, information and analysis to the consumer products and service industries. More than 9,000 clients in over 90 countries rely on Nielsen's dedicated professionals to measure competitive marketplace dynamics, to understand consumer attitudes and behaviour, and to develop advanced analytical insights that generate increased sales and profits.

The company provides four principal market research services:

Retail measurement

Includes continuous tracking of consumer purchases at the point of sale through scanning technology and in-store audits. Nielsen delivers detailed information on actual purchases, market shares, distribution, pricing and merchandising and promotional activities.

Consumer panel research

Includes detailed information on purchases made by household members, as well as their retail shopping patterns and demographic profiles.

Consumer Research

Includes quantitative and qualitative studies that generate information and insights into consumers' attitudes and purchasing behaviour, customer satisfaction, brand awareness and advertising effectiveness.

Media measurement

Includes information on international television and radio audience ratings, advertising expenditure measurement and print readership measurement that serves as the essential currency for negotiating advertising placement and rates.

In addition, Nielsen markets a broad range of advanced software and modeling & analytical services. These products help clients integrate large volumes of information, evaluate it, make judgements about their growth opportunities and plan future marketing and sales campaigns.

As the industry leader, we constantly work to set the highest standards in the quality and value of our services, and the passion and integrity of our people bring to helping clients succeed.

Our professionals worldwide are committed to giving each of our clients the exact blend of information and service they need to create competitive advantage: The right information, covering the right markets, with the most valuable information management tools, all supported by the expertise and professionalism of the best market research teams in the industry.