

Review of Program Standards and Captioning Requirements
on Digital Multi-channels
The Manager
Digital TV Policy
Digital Switchover Taskforce
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
Canberra ACT 2601

Dear Sir/Madam

AANA Submission: Content and access: The future of program standards and captioning requirements on digital television multi-channels

The Australian Association of National Advertisers (AANA) welcomes the opportunity to respond to the above discussion paper dated December 2009.

AANA, as the peak body for over 80 years, represents the rights and responsibilities of companies involved in the advertising, marketing and media industry contributing in excess of \$30 billion to the Australian economy annually.

AANA supports the current objectives of the Broadcasting Services Act to support and encourage Australian content on Australian free-to-air TV. It must also be acknowledged that part of the Act's objective to "...developing and reflecting a sense of Australian identity, character and cultural diversity..." is also achieved through the contribution of Australian content in television programming available to consumers through subscription TV and the national broadcasters (ABC and SBS) as required (in different ways) through their respective regulatory frameworks; as well as through the commercial imperatives for subscription TV.

AANA also supports, and reiterates, the Council of Australian Government (COAG) principles and features of good regulation particularly in relation to minimising the regulatory burden on the public and the administrative burden on government and the sectors of the community that will be affected. In the current instance, this includes advertisers and marketers.

AANA notes that the broadcasting environment - including consumer viewing expectations and has changed substantially over recent years and continues to do so. This has created a situation that can be considered to be a 'restructuring' of the broadcasting environment. Businesses must be able to adapt in order to meet the challenges of the market that includes consumer access to non-Australian regulated content (via the internet). Greater broadcasting diversity which moves away from a 'one-size fits all' approach will surely gain stronger viewer approval as it creates the opportunity to cater for the wide range of interests of a diverse Australian community - ethnically, culturally, and one that includes an expanding adult and ageing population (less than 20% of the population is under 15 years¹).

¹ Australian Bureau of Statistics - 3201.0 - Population by Age and Sex, Australian States and Territories, June 2008.

Advertising investments cover every area and every interest in Australia and are a significant contributor to stimulating the Australian economy. Digital multi-channels provide a TV environment in which advertisers are able to respond to the interests of differentiated audiences at optimal economic rates. The current regulatory (and self-regulatory) framework ensures that the supply of advertising time is fixed on free-to-air TV. This controlled market means advertising demand consistently exceeds supply, driving price increases carried by advertisers and ultimately consumers. As noted in the discussion paper the multi-channel environment will increase the level of Australian content and advertising broadcast. In relation to advertising, AANA is confident that latent demand will be better satisfied in an increased competitive market with resulting improved competitive costs.

The following comments:

- relate to the regulation of advertising and association of advertising to content only and do not specifically address other broadcast content and captioning issues;
- are premised on the continuation of the current regulatory framework for advertising – notably the *Television Program Standard for Australian Content in Advertising* (Advertising Standard) and relevant provisions of the Australia US Free Trade Agreement (AUSFTA). We draw to your attention that the current objective of the Advertising Standard, in maximizing Australian produced advertisements is effectively countered by the AUSFTA. We note that the current arrangements:
 - set the level of Australian-produced advertisements at 80 per cent as the Advertising Standard prescribes a minimum 80 per cent whilst the AUSFTA prescribes a maximum of 80 per cent – ie no margin; and
 - limits the application of other Advertising Standard to 2 and maximum of 3 multi-channels per provider.
- recognise that Australian content standards do not apply to or preclude the broadcasting of Australian content programming and advertising by the non-commercial and special broadcasting free-to-air TV channels that will also have multi-channels.
- advocate for a competitive free-to-air TV broadcasting market with an appropriate level of regulatory burden recognizing the place of free-to-air TV within a large and diverse broadcasting and media market.

Recommendation

In recognition that program and advertising standards will not apply to all multi-channels AANA recommends the development of a regulatory framework that maximizes flexibility to ensure a competitive market that benefits the Australian community.

AANA suggests this can be achieved by specifying that the equivalent of one digital multi-channel must meet program standards, however, there should be options for how the obligations would be met or exempted from.

For example:

- the broadcaster of a single channel may either trade their obligations or apply for exemption from the standards.
- the broadcaster of numerous channels may nominate one channel to fully comply with the standards or aggregate across their channels or trade some or all of their obligations.

Comments on options

Option 1: Specify that one digital multi-channel must continue to meet all program standards (p13)

AANA notes that the application of Australian content standards is restricted by the AUSFTA to 2 and a maximum of 3 channels of a broadcaster. Although, as noted (p12), it is unlikely at switchover that individual broadcasters will have a greater number of channels the reality is that many broadcasters do have objectives of introducing a wide range of channels so the application of Australian standards will always be limited (under the current AUSFTA arrangements). AANA notes that it will be inevitable that there will be free-to-air-TV channels that will not be required to comply with any Australian content or advertising standards. AANA considers that any consideration of broadcasting regulation in the post-switch era must consider a broadcasting environment comprising an abundance of channels.

AANA supports the maximization of programming and content flexibility for broadcasters and advertisers and notes that even if the Australian content standards are restricted, for example, to one channel this does not preclude other channels from including Australian content in response to consumer demand (for example, developing an Australian-only content channel and not just the opportunity for foreign content only channel) or from broadcasting a high, or higher percentages of Australian produced advertisements than the current regulatory framework allows. In regard to the latter point potentially resulting in fulfilling the objective of the current Advertising Standard for a minimum of 80 per cent Australian produced advertisements.

Option 2: Bring forward the date at which exemptions for program standards and captioning requirements end (p13)

AANA does not support an option that entails a heavy regulatory burden on broadcasters and advertisers. The bringing forward of the date at which exemptions for program standards requirements end would be acceptable if complemented with transition period conditions. Given the stated potential difficulty of meeting the June 2010 timeframe AANA has no further specific comment on this option. AANA considers that given the lead-in time for introducing digital multi-channel TV broadcasts it would have been preferable for the Department to have undertaken this consultation at a much earlier time.

Option 3: Allowing broadcasters to apply for exemption from program standards for particular multi-channels (p14)

AANA notes that the issue of channels being available to which content standards will not apply is inevitable whether one or multiple (2 to max 3) channels are prescribed to do so (also refer to comments above re Option 1). The objective of multi-channels is to provide variety and choice to a range of audience interests. This objective cannot be achieved with the mandating of Australian content standards across the board.

Allowing for exemptions would be appropriate to facilitate competition and support new broadcasters entering the market. For example, a new broadcaster may only wish to introduce one channel focusing on a specialized niche market and should therefore not be required to meet specified content standards.

Option 4: Aggregate all programming shown across all digital television multi-channels (p14)

AANA acknowledges that this option appears to provide some flexibility on how content standards may be met over a number of channels. However, the option would be unable to be applied by a broadcaster of one channel only. AANA considers further clarification is required regarding the operation of this option given the AUSFTA restricts the imposition of transmission quotas for local content to no more than two channels or 20 per cent of the total number of channels (whichever is greater) made available by a provider. In this circumstance it is unclear whether aggregation would

apply to only the regulated channels or all channels.

Notwithstanding this, the option would also not remove the requirement that for each channel the annual Australian content transmission could not exceed 55 per cent of programming or 80 per cent Australian produced advertisements. The objective of diversity of content, eg introducing a foreign film only channel, nor the potential for higher levels of Australian programming and advertising content, could not be achieved unless a broadcaster had numerous channels.

Option 5: Introduce a tradable obligations scheme (p15)

AANA is not in favour of a tradable obligations scheme only. AANA considers that there are risks inherent in the shorter term (lower number of multi-channels) that such a system has the potential to reduce diversity as outlined in the discussion paper. AANA also notes the likely limited potential to 'trade' in the near future due to the lower number of multi-channels currently available. AANA also suggests clarification is required on whether the trading market includes all channels or only those that are Australian content 'regulated'. The latter situation in particular would limit the ability of broadcasters to in fact develop different styles of channels and would subject them effectively to the current standards (and limitations) for some time.

In relation to the example provided in the discussion paper, a scenario that focuses children's programming to a non-commercial channel would have significant implications for advertisers as well as content production due to the considerable resulting reduction in advertising income which would otherwise contribute to development and production of such programs.

Conclusion

AANA advocates for the promotion of Australian content in programming and advertising on free-to-air TV in a regulatory environment that imposes minimum burden and provides maximum flexibility. Such a regulatory environment recognises the constraints of statutory regulation in a complex TV and media environment and allows broadcasters and advertisers to effectively respond to viewer interests in a competitive global market.

Yours sincerely



Scott McClellan
Executive Director

4 January 2010