



Communications Law Centre, UTS

Submission to the Proposed revocation of the Advertising
Standard 2012

19/02/2013

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Executive Summary

1. The CLC submits that reverting to industry self-regulation, via Proposed Code of Practice 3-Advertising, will adversely affect the ACMA's ability to regulate disclosure and sponsorship on commercial radio.
2. The CLC believes that the *Broadcasting Services (Commercial Radio Advertising) Standard 2012* ('Advertising Standard') and Disclosure Standard¹ ought to work in concert.
3. The CLC recommends that the commercial radio industry should be provided with the opportunity to self-regulate under its own code for a trial period of two to three years.
4. The CLC believes that a trial period is a workable compromise: one that serves the dual purpose of allowing industry to demonstrate a capacity to self-regulate, while holding in reserve a regulatory instrument that may be necessary to protect the public interest.
5. The definition of 'advertisement' in Proposed Code of Practice 3 should be broadened.

1. Introduction

- 1.1 The Communications Law Centre, UTS (CLC) is an independent, non-profit, public interest centre specialising in communications, media and online law and policy. We appreciate this opportunity to respond to the ACMA's Inquiry.

2. Codes and standards

- 2.1 The CLC submits that reverting to industry self-regulation, via Proposed Code of Practice 3-Advertising, will adversely affect the ACMA's ability to regulate disclosure and sponsorship on commercial radio.
- 2.2 Commercial radio Standards, such as the *Broadcasting Services (Commercial Radio Advertising) Standard 2012* ('Advertising Standard'), are directly enforceable through the provisions in the *Broadcasting Services Act 1992* (Cth.) ("BSA"). This is because adherence to the Standards is a licence condition (Schedule 2 BSA). In contrast, the Commercial Radio Codes of Practice are not directly enforceable under the BSA, relying on a complaints driven process.
- 2.3 The CLC believes that the Advertising Standard and Disclosure Standard ought to work in concert.

¹ Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012.

2.4 The Advertising Standard states the basic principle that advertising and sponsorship ought to be transparent. The Disclosure Standard buttresses the Advertising Standard by prescribing the means by which advertising or sponsorship is to be made transparent on current affairs programs. It is incongruous to revoke the basic principle while retaining the prescriptive rules. Solely maintaining the Disclosure Standard is likely to lead to narrow and prescriptive ACMA investigations that have no recourse to the basic principle: that advertising and sponsorship ought to be transparent.

3. Trial period for Proposed Code of Practice 3

- 3.1 The CLC submits that the effectiveness of Proposed Code of Practice 3 can only be known after a period of implementation. The effectiveness of the Code should be judged on its ability to provide adequate community safeguards. If the Code fails to provide adequate community safeguards, then the ACMA should re-instate the Advertising Standard under s 125 BSA.
- 3.2 The CLC recommends that the commercial radio industry should be provided with the opportunity to self-regulate under its own code for a trial period of two to three years. The CLC believes that close consideration should be given to how such a trial period might be viable under the BSA. It is possible that the ACMA may de facto suspend the operation of the Advertising Standard by simply opting not to conduct any investigations pertaining to the Standard.
- 3.3 The CLC believes that a trial period is a workable compromise: one that serves the dual purpose of allowing industry to demonstrate a capacity to self-regulate, while holding in reserve a regulatory instrument that may be necessary to protect the public interest.

4. Definition of 'advertisement' in Proposed Code of Practice 3

4.1 The CLC submits that the definition of advertisement in Proposed Code of Practice 3- Advertising should be amended thus:

"...advertisement means material broadcast:

(a) which draws public attention to, or promotes directly or indirectly, an organisation, product, service, belief or course of action..."

4.2 The current definition of advertisement in Proposed Code of Practice 3- Advertising states²:

"...advertisement means material broadcast:

(a) a substantial purpose of which is to draw public attention to, or to promote, directly or indirectly, an organisation, product, service, belief or course of action..."

² See Commercial Radio Industry Code of Practice- Advertising Code, Request for public comments, available at <http://www.commercialradio.com.au/files/uploaded/file/News%20Tickers/Draft%20Code%203%20Public%20Consultation%20note%20%28final%29.pdf> p 2.

- 4.3 The current definition is narrower than the proposed definition in section 3.1 above, which directly imports the definition contained in the Advertising Standard. We believe the broadest definition of 'advertisement' is desirable to protect the public interest.
- 4.4 Imposing a threshold (as in the current definition) has the potential to exclude more subtle forms of inducement- an example may be a live talkback program in which an organisation, product or service is casually mentioned or woven into the conversation. The substantial purpose of the talkback program may be to entertain and inform, rather than to advertise. However, the mere mention of an organisation, product or service may, in some circumstances, have an inducement effect on the listener.

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