



Australian Government

**Australian Communications
and Media Authority**

Australia's regulator for broadcasting, the internet, radiocommunications and telecommunications

www.acma.gov.au

Community Broadcasting Sponsorship Guidelines 2008

20 June 2008

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Contents

1. SUMMARY OF KEY POINTS	1
2. BACKGROUND	2
3. WHAT CONSTITUTES ADVERTISING?	3
3.1 Assessing complaints about advertising.....	3
4. WHAT TYPES OF MATERIAL DO NOT AMOUNT TO THE BROADCASTING OF ADVERTISEMENTS?	5
4.1 What is the accidental or incidental accompaniment exception?.....	5
4.1.1 Matter that is an accidental accompaniment.....	5
4.1.2 Matter that is an incidental accompaniment	7
4.1.3 Payment or other valuable consideration.....	8
4.2 What other items are community licensees permitted to broadcast?.....	8
4.2.1 Community information material or community promotional material	9
Discussions with subject matter experts.....	9
Gig guides	11
4.2.2 Station promotions.....	13
4.2.3 Sponsorship announcements.....	13
Who is a sponsor of a licensee or program?.....	13
What is a sponsorship ‘tag’?	14
What information must a tag contain?.....	14
Where should tags and announcements be placed?.....	14
How many minutes of sponsorship announcements are permitted?.....	15
How does ACMA calculate the allowable minutes?	15
Who is responsible for sponsorship announcements in sold airtime?	16
Who is responsible for retransmitted or syndicated programming?.....	16
5. EXTRACTS FROM THE <i>BROADCASTING SERVICES ACT 1992</i>.....	18
Schedule 2—Standard conditions	18
Part 1—Interpretation	18
Part 5—Community broadcasting licences	19
Part 6—Community broadcasting licences	20

1. Summary of key points

- These are advisory guidelines to help community licensees understand and comply with their legal obligations as licensed community broadcasters.¹
- Community licensees must not broadcast advertisements except in limited circumstances.
- Broadcasting material of an advertising character is not taken to be broadcast of an advertisement if it is an accidental or incidental accompaniment to a broadcast and no payment or valuable consideration has been received by the licensee in relation to it.
- Community licensees may:
 - broadcast sponsorship announcements that are appropriately tagged and do not exceed hourly sponsorship limits (five minutes for radio and seven minutes for television);
 - broadcast station promotions;
 - broadcast community information or community promotions; and
 - sell airtime as long as they comply with licence obligations, including the statutory limits that apply to community television.
- Community licensees are responsible for all material they broadcast, including material sourced externally and material produced by stations.
- ACMA considers complaints about community licensees on a case-by-case basis. The examples used in these guidelines rely on their specific facts; even slight changes to those facts may lead to a different result.

¹ It should be noted, however, that community broadcasting services targeted, to a significant extent, to one or more remote Indigenous communities are subject to a particular rule different from other services—see *Broadcasting Services Act 1992*, Schedule 2, Part 5, Sub-paragraph 9(6).

2. Background

Under the *Broadcasting Services Act 1992* (the Act), all community broadcasting licensees are required to comply with obligations set out in the Act, licence conditions and codes of practice.

The obligations include a licence condition that prohibits them from broadcasting advertisements.² However, certain announcements and promotional material do not amount to the broadcasting of advertisements and are permitted under the Act.³

The obligations also include a licence condition that prohibits community licensees from broadcasting sponsorship announcements for more than a total of seven minutes in any hour of broadcasting for community television and a total of five minutes in any hour of broadcasting for community radio.⁴

The ability to distinguish between permitted promotional material and material that constitutes an advertisement is essential to enable community broadcasters to comply with the licence conditions. A failure to comply with either licence condition carries with it the possibility of serious penalties, including licence suspension and cancellation.

The Australian Communications and Media Authority (ACMA) has developed the *Community Broadcasting Sponsorship Guidelines 2008* (the guidelines) to assist licensees to comply with the licence conditions.

The guidelines are *advisory only* and do not replace the requirements of the Act. If in doubt, licensees should approach the industry groups representing the community broadcasting sector—the Community Broadcasting Association of Australia (CBA) and the Australian Community Television Alliance (ACTA)—or seek independent legal advice.

To understand their obligations, licensees will need to be familiar with Schedule 2 to the Act. This can be accessed at www.acma.gov.au/WEB/STANDARD/pc=PC_9141.

Community broadcasters should also be aware of their obligations under the respective codes of practice for radio and television, and the complaints process under the Act. For more information, please refer to www.acma.gov.au or www.cbaa.org.au.

² Clause 9(1)(b) of Schedule 2 to the Act.

³ Clause 2(2) of Schedule 2 to the Act.

⁴ Clause 9(3) of Schedule 2 to the Act.

3. What constitutes advertising?

The Act does not provide a definition for an ‘advertisement’. In investigating complaints, ACMA has previously had regard to the following:

- The High Court’s consideration of the meaning of the term ‘advertising’ in the context of the former *Broadcasting Act 1942*:

It would seem to be used in a broad general sense which would encompass any broadcast or telecast of material ‘designed or calculated to draw public attention’ to something ... regardless of whether the broadcast or telecast ‘serves a purpose other than that of advertising’.⁵

- The plain English definition in the *Macquarie Dictionary* (Fourth Edition), which defines ‘advertisement’ as follows:

Advertisement: *noun* any device or public announcement, as a printed notice in a newspaper, a commercial film on television, a neon sign, etc., designed to attract public attention, bring in custom, etc.

Accordingly, an advertisement is potentially any broadcast that is intended to promote a product or service, regardless of whether payment in cash or in kind has been received by a licensee, or by any employee, agent, contractor or volunteer of the service.

3.1 Assessing complaints about advertising

ACMA assesses potential advertising material on a case-by-case basis. If ACMA regards material complained of as constituting advertising, consideration would then be given to whether or not the advertisement qualifies for one of the exemptions specified in the Act.

In determining whether the requirements of the Act have been met, ACMA has previously considered what an ‘ordinary, reasonable listener or viewer’ would have understood the broadcast concerned to have conveyed. Courts have considered an ordinary, reasonable listener or viewer to be:

a person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. An ordinary, reasonable listener does not live in an ivory tower, but can and does read between the lines in the light of that person’s general knowledge and experience of worldly affairs.⁶

⁵ *Australian Capital Television Pty Ltd and the State of New South Wales v The Commonwealth* (1992) 177 CLR 106 at 166.

⁶ *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp.164–167.

ACMA will consider what an ordinary, reasonable listener or viewer would understand the material broadcast to mean in light of a complaint about the broadcast and following submissions from the relevant licensee.

4. What types of material do not amount to the broadcasting of advertisements?

The Act permits community licensees to broadcast material that has an advertising character in circumstances where it:

- can be regarded as an ‘accidental or incidental accompaniment’ to a broadcast of other matter; and
- is not paid for, either in cash or in the form of any other kind of valuable consideration.

4.1 What is the accidental or incidental accompaniment exception?

4.1.1 MATTER THAT IS AN ACCIDENTAL ACCOMPANIMENT

There is no definition of the term ‘accidental’ in the Act. In the past, ACMA has used the ordinary meaning of the word.

The *Macquarie Dictionary* (Fourth Edition) defines ‘accidental’ as:

accidental: *adjective* happening by chance or accident, or unexpectedly.

Advertising material may be an ‘accidental accompaniment’ to the broadcast of other matter only if it was broadcast by the licensee:

- by mere chance, or
- casually, without being planned.

If the broadcast of the advertising material is deliberate, or due to some arrangement or understanding, it would not be ‘accidental’.

TV example 1⁷

The backdrop, presenter's desk, presenter's T-shirt and coffee mugs placed on the presenter's desk of the set of a sports show all display logos that identify a range of businesses. Although the broadcast includes short segments of football games, commentary is given from the presenter's desk and for much of the broadcast the camera is on the backdrop and presenter's desk.

The announcement is clearly an advertisement as the backdrop, presenter's desk, presenter's T-shirt and coffee mugs are designed to draw the viewer's attention to the businesses whose logos appear on screen.

The broadcast of logos that appear on screen repeatedly, and for extended periods of time, is not accidental.

TV example 2

The set of a cricket show features computer screens displaying the words 'Calypso Bank', along with Calypso Bank's logo. There are four computer screens, of which one or two are visible at any one time, depending on the camera angle. Full-screen images of the words 'Calypso Bank' and its logo appear before the start of the show and on either side of program breaks.

In addition, the set for the show features a large Calypso Bank sign that covers the entire back wall and the three regular panelists wear T-shirts with the words 'Calypso Bank'.

There is no mention of Calypso Bank during the broadcast.

The advertising material is not an 'accidental accompaniment' to the broadcast as:

- the logos and signage are deliberately placed to promote Calypso Bank;
- three people wear the T-shirts, which are visible for extended periods; and
- the full screen images occupy the entire screen.

⁷ All examples provided in these guidelines are drawn from investigations completed between 2002 and 2007, and are intended to provide guidance only. ACMA considers complaints about advertising on community broadcasting services on a case-by-case basis. Even slight changes to the facts expressed in these examples may lead to a different result.

4.1.2 MATTER THAT IS AN INCIDENTAL ACCOMPANIMENT

There is no definition of the term ‘incidental’ in the Act. In the past, ACMA has used the ordinary meaning of the word.

The *Macquarie Dictionary* (Fourth Edition) defines ‘incidental’ as:

incidental: *adjective* happening or likely to happen in fortuitous or subordinate conjunction with something else.

Advertising material may be an ‘incidental accompaniment’ to the broadcast of other matter only if a reference to a product, service or organisation was secondary to the subject of the broadcast or occurred as a minor part of the broadcast. This may include a casual reference to a product or service where that type of casual reference is likely to occur in the context of a discussion of some other thing.

Radio example 1

A gardening expert talking to an interviewer and making a passing reference to a particular type of product, in this case Brand X, in the broadcast of a gardening program (that is, the other matter) may be permissible.

[...] You need a high-phosphate fertiliser; otherwise, the tree won't fruit. Brand X is one but there are many others that are just as good and cheaper in price. [...]

Radio example 2

A festival organiser calling in about activities planned (that is, the other matter)—in this case, the Chinese Moon Festival celebrations—making a single passing reference to a commercial organisation—in this case, the Phoenix Cake Shop—may be permissible where it occurs casually and without payment.

[...] The Chinese Moon Festival is on the 15th day of the eighth lunar month. This year, we have planned a poetry competition, there is a lantern-making workshop and of course there is the Sunday parade where the lion dance and fireworks display will be the main features. Money for the purchase of moon cakes this week from the Phoenix Cake Shop will be donated to the festival organiser, the Australian–Chinese Association. [...]

TV example 3

An announcement is broadcast during a program break that includes a map with the names and locations of hotels where viewers can watch upcoming football games on subscription television. A presenter refers to the map and names several hotels and their locations.

The map and the presenter's commentary is clearly designed to draw public attention to the hotels. This makes the announcement an advertisement.

The material was not broadcast as an ‘incidental accompaniment’ as the map and commentary were an integral part of the broadcast.

TV example 4

The set of a sports show includes a vintage tennis poster featuring a drawing of a tennis player in old-fashioned garb with a wooden tennis racket, and the words 'drink QuenchTea' under the drawing. The poster is partly obscured and appears on screen for only three minutes out of the hour-long program.

The poster is an advertisement as it is designed to draw viewers' attention to QuenchTea, a well-known brand of iced tea.

However, in this case, the material was broadcast as an 'incidental accompaniment' as the poster:

- was peripheral to the broadcast;
- formed part of the set design because of its vintage tennis content;
- was only partially visible for a few minutes;
- was not the subject of comment or highlight by the presenters; and
- did not contain any details on the price, attributes or availability of QuenchTea.

4.1.3 PAYMENT OR OTHER VALUABLE CONSIDERATION

Even if material is considered to be an 'accidental' or 'incidental' accompaniment to the broadcast of other matter, a licensee must not have received 'payment or other valuable consideration for broadcasting the advertising matter' in order for the exemption to apply.

'Payment or other valuable consideration' may be in cash or in kind. Where a licensee has received money (payment in cash) or something in lieu of money (other valuable consideration) for broadcasting the advertising matter—for example, CDs, books, movie tickets, free entry to a promotional event—it is unlikely that the advertising material would qualify for the exemption.

4.2 What other items are community licensees permitted to broadcast?

The following types of promotional material can be broadcast by community stations:

- community information material;
- community promotional material;
- station promotions; and
- sponsorship announcements.⁸

Each of these is considered separately below.

⁸ Clause 2(2) of Schedule 2 to the Act.

4.2.1 COMMUNITY INFORMATION MATERIAL OR COMMUNITY PROMOTIONAL MATERIAL

Any broadcast that provides information about community events or promotes community services (that is, community service announcements or CSAs) may fall into this category. Usually, licensees receive no payment for the broadcast of this type of material and therefore they do not need to be tagged.⁹ However, if a licensee receives payment in cash or in kind for broadcasting this type of material, the announcement should be tagged and must be included in the hourly sponsorship time limit.

Examples of community information material or community promotional material:

- Material about an appeal by a registered charity, or a non-profit or volunteer group; for example, the Red Cross Blood Appeal, Salvation Army Door Knock Appeal;
- announcements that can be seen to meet the needs of the community served by the licensee. For example, a licensee with an ethnic community interest may inform listeners belonging to that particular ethnic group about an upcoming cultural festival or provide information about other events of a cultural, welfare or educational nature;
- genuine community information material, such as local sporting events, community theatre or weather warnings; and
- announcements about goods or services, where the money raised benefits the community, a non-profit group or a community organisation. For example, a school fete or an announcement promoting a radiothon where the money raised goes to help the victims of a tsunami.

Discussions with subject matter experts

Interviews with subject matter experts are common to broadcasting and play a legitimate role in community broadcasting. However, care should be taken to ensure that discussions do not move from the general (for example, a DIY program that provides technical information about home improvements) to the specific (for example, the promotion of a particular product, service or organisation). Also, an interview is more likely to be characterised as an advertisement if the broadcaster has a financial or other arrangement with the expert being interviewed.

⁹ Please see Part 2.3(b) of the guidelines for an explanation of a sponsorship tag.

Example 1

Announcer: Welcome to the *Home Show*. Today we are discussing the local real estate market and providing useful tips for everyone interested in buying property. We are lucky to have with us George Roy, who has worked in the real estate industry for 25 years and has spent the last 10 years at XYZ Real Estate. George, how is the local market? Is it a good time to buy?

George Roy: It sure is, as long as you do your homework first. It is so important to know the local area and do your research. Check recent sales history, find out what deals you can get with home loans and, if you are an investor, find out what the local rental market is doing. You can do this by checking the local papers and having a look in real estate windows. Or use the web—it is a great tool for home buyers.

Why is this likely to be found to not amount to advertising?

Example 1 establishes George Roy's credentials ('We are lucky to have with us George Roy, who has worked in the real estate industry for 25 years and has spent the last 10 years at XYZ Real Estate') but does not promote him or his real estate agency. The reference to Mr Roy's employer is contextual—that is, it is a relevant consideration as listeners would want to know whether he is qualified to provide advice. The discussion is about buying property generally and does not focus on individual properties, real estate agencies or a particular real estate agent. The reference to the real estate agency is an incidental accompaniment to the broadcast of other matter.

Example 2

Announcer: Welcome to the *Home Show*. Today we are discussing the local real estate market and providing you with useful tips if you are interested in buying property. We are lucky to have with us George Roy, from XYZ Real Estate, which is located at 1 Market Street. They are rated number one in the local area and George has recorded the best sales figures for five consecutive years. Be sure to call George on 9876 5432 whether you are buying or selling and he'll be sure to look after you. George, what properties are you going to tell us about this week?

George Roy: Well, good morning to you and your listeners. I have some great homes to talk about this week and I'll give you all the open-day information and viewing times. The first property is at 2 Commercial Street and features ...

Why is this likely to be found to be advertising?

Example 2 promotes both Mr Roy ('... George has recorded the best sales figures for five consecutive years. Be sure to call George on 9876 5432 whether you are buying or selling and he'll be sure to look after you') and the real estate agency ('They are rated number one in the local area'). Further, the segment provides both the address and telephone number for XYZ, promotes the services it provides ('they are rated number one in the local area') and promotes properties for sale by XYZ. These references are not accidental or incidental accompaniment as they are designed to bring attention to XYZ. They are more than merely background to establish Mr Roy's qualifications or expertise.

Gig guides

The broadcast of gig guides is a common feature on community broadcasting services. Licensees often broadcast interviews with music artists and concert performers, including information about upcoming concerts, gigs and performances in the local area—for example, dates, venues, costs and telephone numbers for tickets.

However, care should be taken to ensure that discussions do not move from the general (for example, a review about a CD release) to the specific (for example, the promotion of the CD [product], scheduled concerts [service] or where tickets may be obtained [distributing organisation]).

Example 1

Announcer. So what's happening this weekend? At the Music Hotel on Friday, we have Band A. They are on at 9 pm and the cover charge is \$10. At the Jazz Club on Friday, Band B will be on at 9 pm and Band C at 11 pm. Cover charge \$15. Also on Friday at the RSL will be Band D. They are on at 10 pm and it is free entry.

Why is this likely to be found to be community information?

Example 1 refers to a number of venues and is providing information without promoting any one venue or band. Relevant information is provided to listeners and this information would be covered by the community information exemption.

Example 2

Announcer. So what's happening this weekend? At the Music Hotel we have Band A on Friday night at 9 pm. Cover charge is only \$10. Saturday, the Music Hotel has Band B at 9 pm and Band C at 11 pm. The cover charge for this great event is only \$15. Sunday night, the Music Hotel has a great afternoon of music, starting at 5 pm. No cover charge and happy hour from 6–7 pm.

Why is this likely to be found to be advertising?

Example 2 refers only to one venue and the language used is designed to promote this venue. The primary purpose of this announcement is to promote the venue rather than to provide information to the community.

Example 3

Announcer: Today we are lucky to have with us Robbie, from Band A. Thanks for joining us, Robbie. Now, what have you been up to?

Robbie: Great to be here. We have been really busy, we have a new album out, and we have been out and about promoting it. We are trying to get to as many places as we can and we are really enjoying playing the new songs.

Announcer: Tell us about the album. It seems to be different from your last.

Robbie: We have worked with a new producer and it does have a new sound but we have been getting positive feedback from the fans. We recorded it in LA, which was a new experience for us and we worked with some new songwriters, so I think the album reflects the band being out of its comfort zone and meeting new challenges.

Announcer: Let's have a listen to the new single. [song]

Announcer: That was Band A's new single. Band A is touring to promote its new album—check your local gig guide. We are talking to Robbie from the band. Robbie, tell us a bit about the people you worked with in LA?

Robbie: We worked with ...

Why is this likely to be community information?

The discussion is about Band A's new album and provides listeners with information about the album and the recording process. Reference is also made to the band touring; however, the discussion does not move from providing contextual information (that is, it would be of interest to the audience to know that the band has a new album and that it is touring) to actually promoting or advertising the album or the gigs.

Example 4

This statement is likely to be considered community information:

Musician: We've just finished recording our latest album, *A Heavy Winter*, available at your local record store.

Whereas this statement is likely to be considered advertising:

Musician: We've just recorded our latest album, *A Heavy Winter*, which you can buy for \$19.95 from any Vinylbeat record store or from their website at vinylbeat.com.au.

It is important to note that announcements about goods or services that charge commercial rates or are sold by an entity with a profit-making purpose are less likely to be community information or community promotional material.

4.2.2 STATION PROMOTIONS

This includes any material that is likely to encourage the public to give support (financial or otherwise) to, or to make use of, the community broadcasting service. This could be by way of announcement or promotion of events, products or services associated with the station, but cannot be for a third party's goods or services.

This material does not require a tag. However, where payment in cash or kind is received, the material must be counted towards the hourly sponsorship limit.

Examples of on-air promotions

- on-air promotions of the station's call sign and frequency;
- an announcement about a promotional barbecue organised by the licensee;
- on-air competitions run by the station;
- the sale of station T-shirts, bumper stickers and other paraphernalia; and
- announcements promoting an outside broadcast by the licensee.

A popular way for a licensee to promote its service is to offer giveaways, such as concert tickets, CDs or DVDs, to its audience.

The Act states that 'material that promotes the licensee's products, services or activities for the broadcast of which the licensee does not receive any consideration in cash or kind' is not considered to be advertising or a sponsorship announcement. That is, the duration of these announcements do not need to be included in the hourly sponsorship time limit.

Whether or not a particular announcement is covered by this exemption is assessed on a case-by-case basis. However, ACMA has previously taken the following matters into account:

- whether the references to a commercial entity are contextual and necessary. For example, do the references to the concert date, venue location and performer provide relevant information to audience members to allow them to decide whether or not they wish to enter the competition?;
- whether the announcement contains repeated references to a commercial entity that are not contextual. For example, repeated references to concert details may take the focus of the announcement away from the competition and therefore the licensee's service, and on to the concert itself;
- whether the prize has been provided by a not-for-profit organisation; and
- whether the individual or organisation who has donated the prize is also a sponsor of the station or a program provided under the licence.

4.2.3 SPONSORSHIP ANNOUNCEMENTS

Who is a sponsor of a licensee or program?

A sponsor is an individual or organisation who provides payment in cash or in kind to a community broadcasting licensee or a program provided under the service. This could be by way of a cash donation or contribution of goods or services that would otherwise be an expense for the licensee in operating the service. The key feature of a sponsorship

announcement is its acknowledgment of the financial or in-kind support given by a sponsor to a community broadcasting licensee or a program provided under the service.

The announcement may also promote the activities, events, products, services or programs of the sponsor, provided that it contains an acknowledgment of financial or in-kind support by the sponsor of the licensee or a program.¹⁰

Sponsorship announcements must be genuine. A licensee must be able to demonstrate (if asked) that the sponsors featured in announcements are actually financial supporters (in cash or in kind) of the licensee or a program provided under the service.

What is a sponsorship ‘tag’?

A sponsorship ‘tag’ is a common term that refers to the on-air label affixed to material that enables a licensee to acknowledge support in cash or in kind given by a person or an organisation to a licensee or a program provided under the service.

What information must a tag contain?

A tag must state the name of the person or organisation that has given support in cash or in kind to the licensee or the program.

Examples of sponsorship of a licensee

- 1FM, sponsored by XYZ.
- XYZ Pty Ltd, sponsor of 1FM.

Examples of sponsorship of a program

- The Chamber Music Program is sponsored by Paganini Violin Strings of Black Forest Road—string-makers to the world’s great quartets.
- Paganini Violin Strings of Black Forest Road—sponsors of The Chamber Music Program.

A tag should:

- be attached to each individual sponsorship announcement. It is not sufficient to broadcast one tag covering a block of announcements;
- be clearly heard or visible and understood; and
- be in the same language as the sponsorship announcement.

Where should tags and announcements be placed?

Community radio

• Tag placement

Tags can be placed in any part of a sponsorship announcement, provided it is clear to listeners that the information to be broadcast and/or that has been broadcast is a sponsorship announcement. However, licensees might prefer to put the tags at the start or the end of each announcement to ensure clarity.

¹⁰ Clause 2(2)(b)(ii) of Schedule 2 to the Act.

- **Sponsorship announcement placement**

The Act does not restrict the placement of sponsorship announcements for community radio broadcasting licensees. However, where sponsorship is of a particular program, the association between the sponsorship and the program concerned does need to be clear.

Community television

- **Tag placement**

The Community Television Code of Practice specifies:¹¹

placement of a ‘sponsor’ watermark in a corner of the screen for at least 10 seconds at the beginning of the announcement;

‘pull through’ text at the bottom of the screen; or

a text and spoken word ‘station/program sponsor announcement’ at the beginning or end of one, or a bracket of more than one, sponsorship announcement.

- **Sponsorship announcement placement**

The Act specifies that community television broadcasting licensees may broadcast sponsorship announcements only before or after programs, or during natural program breaks.¹²

How many minutes of sponsorship announcements are permitted?

Sponsorship announcements must not run in total for more than:

- seven minutes in any hour for community television licensees; or
- five minutes in any hour for community radio licensees.

It is important when timing sponsorship announcements to count the whole announcement, including the tag and music, exactly as it is broadcast.

To ensure that the five-minute (for radio) or seven-minute (for television) limit is not exceeded, licensees should count the time spent broadcasting sponsorship announcements from the start of each hour.

There is no limit on the number of sponsorship announcements that may be broadcast in each hour, as long as their combined duration does not exceed the permitted number of minutes in any hour of broadcasting.¹³

How does ACMA calculate the allowable minutes?

If ACMA receives a complaint about a licensee exceeding the statutory limit for the broadcast of sponsorship announcements in any given hour of broadcast, it would generally:

- ask the relevant licensee for a copy of the broadcast for that hour. Any hour of broadcast is taken from the start of each hour;
- review the material and identify the duration of all sponsorship announcements, inclusive of tags and music (translations are obtained from independent NAATI-accredited

¹¹ Clause 6.5 of the *Community Television Code of Practice September 2004*.

¹² Clause 9(4) of Schedule 2 to the Act.

¹³ Refer Part 2.3 for what announcements do not need to be included in the time limit for sponsorship.

(National Accreditation Authority for Translators and Interpreters) sources for all non-English broadcasts);

- calculate the duration of each sponsorship announcement to determine whether or not the licensee has, in the hour of broadcast, exceeded the statutory limit.

Who is responsible for sponsorship announcements in sold airtime?

The term ‘sale of airtime’ describes a practice where a licensee enters into any arrangement under which a person accepts consideration in cash or in kind from an individual or organisation in return for allowing that person or organisation to select or provide program material during an agreed timeslot.

This practice should be approached with caution in circumstances where the licensee has also permitted that person to sell sponsorship time. Licensees engaging in this practice generally sell airtime in 30-minute or one-hour blocks. In some cases, licensees sell the airtime excluding the sponsorship minutes, which they sell separately. In other cases, licensees sell airtime inclusive of the sponsorship minutes, which a broadcaster may then on-sell to other individuals or organisations.

The licensee is ultimately responsible for ensuring that all material broadcast on its service, including material broadcast under sale of airtime agreements, does not breach the terms of its licence. This includes ensuring that:

- any sponsors referred to in sponsorship announcements have actually given support in cash or in kind to the licensee or a program broadcast by the licensee;
- sponsorship announcements are correctly tagged;
- sponsorship announcements do not exceed the statutory limit; and
- (for television licensees) any sponsorship arrangement complies with the strict limits on the amount of time that may be sold to a single person.¹⁴

Who is responsible for retransmitted or syndicated programming?

Each licensee that retransmits programs from other community services or broadcasts syndicated programs from commercial stations or any other source remains responsible for the retransmitted or syndicated programming broadcast on their service.

Broadcasting programming not produced by the licensee but obtained from other sources is increasingly a feature of community radio and community television. However, licensees that broadcast retransmitted or syndicated material remain responsible for compliance with the Act and any applicable codes of practice.

What licence conditions are at risk of being breached?

Retransmitting community programming runs the risk of a licensee exceeding the statutory limit for sponsorship announcements of five minutes in any hour of broadcasting for radio or seven minutes in any hour of broadcasting for television.¹⁵

¹⁴ The Act contains restrictions on the sale of airtime for community television (section 87A). The rules allow CTV licensees to earn income towards the costs of running the service by selling access to airtime to profit-making enterprises. However, it places a strict limit on the amount of airtime that may be sold to any one profit-making enterprise. For the purposes of this provision, the Act defines the term ‘sell’ as covering *any* arrangement under which a person receives consideration in cash or in kind for the provision of access to airtime. This includes arrangements such as the appointment of an agent or broker for access to airtime or sponsorship.

If programs are obtained from other community services, a licensee should be aware that sponsorship announcements in that retransmitted material may breach the ban on advertising. Such announcements are only permitted where the sponsor is:

- a financial or in-kind supporter of the licensee that broadcasts the announcement; or
- a sponsor of the program being retransmitted.

Broadcasting programming syndicated from commercial stations also means a licensee runs the risk of breaching the licence condition not to broadcast advertisements.¹⁶

Some broadcasters mistakenly believe that if they do not receive any payment for advertisements that appear in a syndicated commercial feed, they are not in breach of the licence condition ban on advertisements. However, any advertisement broadcast, paid or unpaid, could potentially breach the licence condition.

What can a licensee do to ensure compliance?

To overcome the potential for a breach of the ban on advertising or, where applicable, the statutory limit on sponsorship, a licensee retransmitting community programming should ensure that the sponsorship announcements in them are removed where a sponsor has not provided support in cash or in kind to that licensee or the program being broadcast.

Licensees broadcasting programming syndicated from commercial stations should ensure that the advertisements in them are removed to overcome the potential for a breach of the ban on advertising. Simply adding a tag to an advertisement in retransmitted or syndicated programming where there is no relationship between the licensee broadcasting the announcement and the sponsor does not ensure compliance.

¹⁵ Clause 9(3) of Schedule 2 to the Act.

¹⁶ Clause 9(1)(b) of Schedule 2 to the Act.

5. Extracts from the *Broadcasting Services Act 1992*

Schedule 2—Standard conditions

PART 1—INTERPRETATION

[...]

2 Interpretation—certain things do not amount to broadcasting of advertisements

(1) For the purposes of this Schedule (other than paragraphs 7(1)(a), 8(1)(a), 9(1)(a), 10(1)(a) and 11(1)(a)), a person is not taken to broadcast an advertisement if:

(a) the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and

(b) the person does not receive payment or other valuable consideration for broadcasting the advertising matter.

(2) For the purposes of this Schedule (other than paragraph 9(1)(a)), the broadcasting by a community broadcasting licensee of:

(a) community information material or community promotional material; or

(b) a sponsorship announcement that acknowledges financial support by a person of the licensee or of a program broadcast on a service provided under the licence, whether or not the announcement:

(i) specifies the name and address of, and a description of the general nature of any business or undertaking carried on by the person; or

(ii) promotes activities, events, products, services or programs of the person; or

(c) material that announces or promotes a service provided under the licence, including material (whether by way of the announcement or promotion of activities, events, products, services or otherwise) that is likely to induce public support, whether financially or otherwise, or to make use of, the service or services provided under the licence;

is not taken to be the broadcasting of an advertisement.

PART 5—COMMUNITY BROADCASTING LICENCES

9 Conditions applicable to services provided under community broadcasting licences

(1) Each community broadcasting licence is subject to the following conditions:

[...]

(b) the licensee will not broadcast advertisements, and the licensee will not broadcast sponsorship announcements otherwise than as mentioned in this clause;

[...]

(3) A community broadcasting licensee may broadcast sponsorship announcements on a particular community broadcasting service. However, they must not run in total for more than:

(a) if the licensee is a community television broadcasting licensee—7 minutes in any hour of broadcasting on that service; or

(b) in any other case—5 minutes in any hour of broadcasting on that service.

(4) A community television broadcasting licensee may broadcast sponsorship announcements only during periods before programs commence, after programs end or during natural program breaks.

(5) In working out the length of time devoted to the broadcasting of sponsorship announcements, account is not to be taken of the broadcasting by a community broadcasting licensee of any of the following:

(a) material that publicises programs to be broadcast by the licensee;

(b) material that promotes the licensee's products, services or activities for the broadcast of which the licensee does not receive any consideration in cash or in kind;

(c) community information or community promotional material for the broadcast of which the licensee does not receive any consideration in cash or in kind;

(d) sponsorship announcements consisting of moving text that is overlaid on a test pattern.

(6) Paragraph (1)(b) applies to a community broadcasting service targeted, to a significant extent, to one or more remote Indigenous communities as if the words "for which the licensee receives any consideration in cash or in kind" were inserted after "advertisements".

PART 6—COMMUNITY BROADCASTING LICENCES

87A Additional conditions on CTV licences

Policy underlying additional conditions

(1) It is the intention of the Parliament that services provided under CTV licences be regulated in a manner that causes them not to operate in the same way as commercial television broadcasting services. Conditions relating to sale of access to air-time

(2) Each CTV licence is subject to the condition that the licensee must not sell access to more than 2 hours of air-time in any day to a particular person who operates a business for profit or as part of a profit-making enterprise, unless the person is a company that has a sole or dominant purpose of assisting a person in education or learning.

(3) Each CTV licence is subject to the condition that the licensee must not sell access to a combined total of more than 8 hours of air-time in any day to people who operate businesses for profit or as part of profit-making enterprises.

(4) Each CTV licence is subject to the condition that the licensee must not sell access to more than 8 hours of air-time in any day to a particular person.

(5) For the purposes of the conditions imposed by subsections (2), (3) and (4), the sale of access to air-time to any of the following is taken to be the sale of access to air-time to a company:

(a) the sale of access to air-time to any person in a position to exercise control of the company;

(b) the sale of access to air-time to any related body corporate (within the meaning of the Corporations Act 2001) of the company.

(6) The ABA may, by written determination, impose other conditions on all CTV licences relating to sale of access to air-time.

[...]

Definitions

(12) In this section:

access, in relation to air-time, means the right to select or provide programs to be broadcast during the air-time.

air-time means time available for broadcasting programs on a community broadcasting service.

sell, in relation to access to air-time, means enter into any arrangement under which a person receives any consideration in cash or in kind in relation to provision of the access to air-time.