Submission by
Free TV Australia Limited

Department of Communications,
Information Technology and the Arts

Proposed Reforms to the broadcasting regulatory powers of the Australian Communications and Media Authority

21 December 2005

Executive summary

- Since 1992, the commercial television broadcasting industry has been governed by a co-regulatory system. This has resulted in speedier and more effective complaint resolution for viewers, and lower costs for the industry and the regulator. Broadcasters have a constructive and transparent relationship with ACMA, characterised by high levels of compliance with industry Codes, Standards and Licence Conditions, and a non-litigious approach to resolving disputes. Broadcasters would be concerned if the introduction of stronger enforcement powers changed the cost-effective and efficient nature of co-regulation.

Civil penalties

- Free TV does not support the proposal to grant ACMA the power to impose civil penalties in relation to breaches of commercial television broadcasting licence conditions except in serious cases where the conduct of the broadcaster is wilful, reckless or in flagrant disregard of the licence condition.
- Commercial television broadcasters have a very good record of compliance with licence conditions and a positive compliance approach to licence conditions. Free TV questions the extent to which civil penalties are necessary.
- There is no need to expand the range of deterrence strategies available to ACMA and no need to expand the penalties applicable to licence conditions on commercial television broadcasters.
- Free TV supports ACMA being granted the power to seek civil penalties against breaches of the requirement not to provide an open narrowcast service contrary to the conditions of the relevant class licence, and failure to comply with a notice issued under s137 of the *Broadcasting Services Act* (a direction to cease provision of a broadcasting service without an appropriate licence).

Injunctions to breach of civil penalty provisions

- Free TV supports injunctive relief for ACMA where a person has failed to comply with a notice issued under s.137 of the BSA (providing a broadcasting service without the appropriate licence).
- Free TV would not support injunctive powers in relation to breaches of licence conditions.

Enforceable undertakings

- Free TV does not support expansion of ACMA's enforcement powers to include enforceable undertakings.
- Enforceable undertakings are neither necessary nor desirable in the broadcasting context.
- The speed and flexibility of voluntary undertakings serves viewers well.

On-air statements

- Free TV strongly opposes this proposal.
- The Code already contains a provision requiring members to make reasonable efforts to correct significant errors of fact at the earliest opportunity.

- There are important freedom of speech and legal reasons why the decision as to whether to broadcast a correction should be left to the relevant broadcaster. Fundamentally, editorial content should be determined by the media operator, not by the Government or Government Agencies.
- Broadcasters are committed to the Code of Practice and are already highly accountable on complaints. Complaints processes are well publicised and broadcasters' record of Code complaints indicates that the public is satisfied with the quality of broadcasting services.
- ACMA issues press releases for all Code breaches and in most cases these receive media coverage.

Infringement notices

- Any power granted to ACMA to issue infringement notices should be subject to guidelines and take into account each of the recommendations of the Australian Law Reform Commission.
- Infringement notices should only be used in relation to serious breaches and in certain circumstances, and decisions in relation to their use should take account of whether the broadcaster takes all reasonable steps to rectify the breach.

Introduction

Free TV Australia (**Free TV**) is the peak body representing all commercial free-to-air television licensees in Australia.

Free TV welcomes the opportunity to make a submission in response to the Department of Communications, Information Technology and the Arts (**the Department**) Issues Paper on Proposed Reforms to the Broadcasting Regulatory Powers of the Australian Communications and Media Authority (**ACMA**).

Free TV strongly supports the current co-regulatory approach to broadcasting regulation which has been in place since 1992 with the enactment of the *Broadcasting Services Act* (**BSA**). Prior to that, the matters that are now regulated by the Commercial Television Industry Code of Practice (the **Code**) were the subject of specific standards which had the status of delegated legislation. This led to a highly interventionist and legalistic approach to broadcasting regulation. The intention behind the current Act was to move away from formalities and legalism to a much more co-operative and less interventionist approach to regulation.[1]

Free TV believes the current system works well. The industry is responsible for developing the Code following public consultation and stations must consider and respond to complaints in the first instance (with ACMA as the final arbiter). This means that the industry has both ownership of the process and a day to day understanding of the Code requirements. It also provides stations with a very transparent monitoring process and enables them to gauge community standards from feedback on material broadcast.

The level and pattern of complaints and breaches, all of which are reported and published, is a process which allows any weaknesses in the operation of the system to be identified. Issues identified through the complaints process are able to be dealt with by stations on an on-going basis, in conjunction with ACMA in the course of breach findings, and in the process of reviewing the Code.

The co-regulatory approach provides stations with an incentive to address the concerns of complainants up-front rather than necessitating an overly defensive stance that would arise out of more adversarial enforcement powers. This has resulted in speedier and more effective complaint resolution for viewers, and lower costs for the industry and the regulator.

In short, Free TV considers that the current co-regulatory approach is flexible, responsive to community views, transparent and accessible for viewers. Broadcasters have a constructive and transparent relationship with ACMA, characterised by high levels of compliance with the Code, Standards and Licence Conditions, and a non-litigious approach to resolving disputes.

Broadcasters would be concerned if the introduction of stronger enforcement powers changed the cost-effective and efficient nature of co-regulation and led to the more interventionist approach that characterised the pre-1992 regulatory system.

[1] Explanatory Memorandum to the Broadcasting Services Bill, 1992 (clause 5).

1 Civil penalties

1.1 Broadcasting licence conditions

Free TV's members regard compliance with licence conditions as a very serious matter. All broadcasters have practices and procedures in place to ensure that they comply with licence conditions and the Code of Practice.

Free TV's members have a specific process for review of advertisements before broadcast to ensure that licence conditions relating to the prohibition on tobacco advertising (Schedule 2 clause 7(1)(a)), advertising relating to medicines and the broadcasting of political matter (clause 7(1)(j) are observed) as well as classifying advertisements to ensure that they are broadcast in the correct classification time zone. These advertisements are reviewed by Commercials Advice Pty Limited. An advertisement is not cleared for broadcast or allocated a key number unless Commercials Advice is satisfied that the advertisement meets the requirements of the licence conditions and other regulatory requirements on broadcasters.

Broadcasters employ experienced legal and regulatory staff, company secretaries, accountants and classification personnel amongst others to ensure that licence conditions and Code requirements are observed, including those relating to compliance with program standards and HDTV quotas, limitations on control of the broadcasting licence, requirements to keep financial accounts and the prohibition on broadcast of certain films.

Free-to-air commercial television broadcasters have a very good record of compliance with licence conditions. Over the past 5 years, only ten breaches have been found against commercial television broadcasters. These breaches have been in relation to 9 separate licence conditions. They have generally been of a technical and inadvertent nature and were neither systemic nor repeated In fact, no broadcaster has breached a particular licence condition more than once over that 5 year period.[2] This demonstrates that the current system is working well, and that existing penalties are an adequate deterrent.

ACMA's more recent practice of issuing press releases for all breach findings as well as seeking undertakings from licensees in some circumstances has also acted as an effective deterrent against further breaches. Broadcasters have responded to breach findings by putting steps in place to ensure that further breaches are avoided.

In light of this excellent record of compliance and broadcasters' positive approach to licence conditions, there is no need for further enforcement powers to be granted to ACMA in relation to commercial television broadcasting licence conditions. There is no evidence of repeated breach or of indifference to breaches by commercial television broadcasters. There is no demonstrated need to expand the range of deterrence strategies available to ACMA and no need to expand the penalties applicable to licence conditions on commercial television broadcasters except in the most serious cases where the breach is wilful, reckless or flagrant. Broadcasters are already committed to ongoing compliance and are demonstrating this commitment with their record of compliance.

[2] See ACMA and ABA Annual Reports for the years ending 2000/01 to 2004/05. Breaches were found in respect of licence conditions relating to the requirement to caption local news, broadcast of political matter, broadcast of a non-C program in a C period, breach of a Children's Television Standard (requirement not to encourage children to engage in activities dangerous to them), failure to maintain a copy of matters broadcast for required period, broadcasting a tobacco advertisement, failure to broadcast a C program, and broadcasting an advertisement for a medicine without prior approval.

If, notwithstanding this submission, the Government is minded to introduce civil penalties, ACMA should consult with industry to put in place clear guidelines setting out the circumstances in which civil proceedings will be pursued by ACMA. Federal Court proceedings would impose a considerable financial and managerial burden on both ACMA and the broadcaster against which proceedings are instituted. Free TV submits that proceedings should only be considered where there is repeated breach by a particular broadcaster of a licence condition; where the broadcaster has received a prior warning of likely action in the event of further breach; and where a further breach has occurred in circumstances which suggest a wilful, reckless or flagrant approach. Civil penalties should not be pursued for inadvertent breaches in response to which a licensee has put steps in place to ensure further breaches are avoided.

1.2 Broadcasting without licence

Free TV supports ACMA being granted the power to seek civil penalties against breaches of the requirement not to provide an open narrowcast service contrary to the conditions of the relevant class licence, and failure to comply with a notice issued under section 137 of the BSA (a direction to cease provision of a broadcasting service without an appropriate licence).

2 Injunctions to prevent breach of civil penalty provisions

Free TV supports injunctive relief for ACMA where a person has failed to comply with a notice issued under section137 of the BSA (providing broadcasting service without the appropriate licence). Broadcasting without a licence is a fundamental and serious matter that warrants immediate and preventative legal action. Injunctive relief provides an appropriate mechanism to quickly and effectively address any such activities.

3 Enforceable undertakings

Free TV does not support the expansion of ACMA's enforcement powers to include enforceable undertakings. Enforceable undertakings are neither necessary nor desirable in the broadcasting context.

A key element of the co-regulatory system governing the content of material broadcast on television is the Commercial Television Code of Practice. A new Code was introduced in July 2004 following an extensive public consultation process designed to ensure that the Code reflects community standards.

The Code is an integral part of commercial television practice across all areas of productions, sales, classification, scheduling and complaints handling. Relevant staff are well versed in the provisions of the Code and it is applied on a daily basis. The complaints process set down in the Code makes television stations highly accountable.

Where a matter is investigated by ACMA and a breach found, the compliance issue can be addressed by a range of sanctions available to ACMA, from a public finding of breach and voluntary undertakings, to imposition of licence conditions and the possibility of financial penalties. This existing graduated range of sanctions, extending also to the possibility of suspension or cancellation of licence, provides sufficient and effective enforcement measures for ACMA in relation to commercial television broadcasters.

The Code works very effectively for broadcasters and viewers. Over the first 12 month period following introduction of the new Code, less than 9% of complaints received by broadcasters were referred to ACMA for investigation. Of these less than half of the

complaints referred to ACMA were upheld.[3] The complaints upheld related to a range of Code provisions.[4] As noted earlier, each of the breach findings was the subject of a press release by ACMA which addressed the action taken by the licensee to address the compliance issue. In most cases, these releases receive significant press coverage.

Last year, ACMA published a summary of investigations conducted between 1996 – 2004 which resulted in breach findings. ACMA reported that the highest number of breaches in a year occurred in 1998-99 (57), but since then the number of breach findings had decreased every year. The lowest number of breach findings was made in 2003-2004 (15). This demonstrates that compliance with the Code is extremely high, and has steadily improved over the past five years to 2003-04. This strong and improving compliance record suggests that enhanced penalties are unwarranted and unnecessary.

Importantly, the current system of Code enforcement allows a quick resolution of the compliance issue for viewers and the industry. It also allows a flexible approach to resolving the compliance issue. Voluntary undertakings have been sought by the regulator and agreed by the licensee in numerous cases in recent years. In 2004/05 the ABA (now ACMA) initiated a requirement that licensees provide a written undertaking to take certain steps to ensure compliance with a licence condition or Code that was breached.[5] Although voluntary, the content of undertakings are the subject of ACMA media releases and media reporting and the broadcaster is therefore accountable both to ACMA and to its viewers. There is no doubt that breach of a voluntary undertaking would have repercussions for the broadcaster if there was a subsequent breach of the same Code provision, for example, by the imposition of a licence condition. The broadcaster is also likely to be subject to unwelcome media and viewer attention.

It is Free TV's view that the speed and flexibility of voluntary undertakings serves viewers well. If undertakings were to be potentially subject to court enforcement proceedings, any undertakings to be given by broadcasters would be scrutinised by lawyers and would only be given if legal advisors were satisfied that, if necessary, broadcasters could prove their compliance by producing evidence acceptable to a court.

The prospect of enforceable undertakings is also likely to create a more litigious approach to ACMA's investigation findings. At present, it is rare for a commercial broadcaster to contest a breach finding made by ACMA, even where the broadcaster considers that the finding is incorrect. However, if the broadcaster felt that the finding was likely to be accompanied by court enforceable undertakings, there would be a much stronger incentive to refer ACMA's decision to the Administrative Appeals Tribunal (AAT). This would only further delay the complaint resolution process, and could substantially increase the legal costs for both ACMA and the industry.

Accordingly, Free TV disagrees strongly with statements in the Issues Paper that "enforceable undertakings of this kind would give ACMA greater flexibility in responding to regulatory issues and allow industry and ACMA to resolve issues in a more timely, consultative and effective fashion." Free TV believes that the current system of voluntary undertakings achieve these objectives.

Free TV notes that enforceable undertakings are generally used by bodies such as the ACCC and ASIC to deal with conduct has resulted in some kind of economic loss to an individual or business, and which, if not resolved will likely result in further losses. These sorts of undertakings often involve refunding money and/or paying compensation to consumers or investors and developing compliance programs to correct behaviour which is,

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[3] Free TV Australia, Commercial Television Industry Code of Practice, Annual Code Complaints Report 2004/2005. Of 86 complaints referred to ACMA, 30 were upheld.

[4] ACMA Annual Report 2004/2005, Appendix 5, Investigations into Potential Breaches by Licensees 2004-2005.

[5] ACMA Annual Report 2004/2005, page 43.

for example, having a substantial lessening effect on competition. In the absence of enforceable undertakings, such conduct would warrant legal action to rectify the wrongdoing.

Free TV submits that the purposes served by enforceable undertakings in these contexts do not apply to broadcasting. In the broadcasting context, enforceable undertakings would not serve the viewer, whose main interest is for speedy resolution and a flexible approach to finding the most appropriate way to address the compliance issue.

Rather, enforceable undertakings would encourage a legalistic and litigious approach to Code investigations and compliance solutions. It may also cause broadcasters to re-consider the drafting of the Codes, which are currently written in a manner intended to be accessible and understandable for members of the public, rather than narrow and legalistic.

4 On air statements

Free TV strongly opposes this proposal.

The Code already contains a provision requiring members to make reasonable efforts to correct significant errors of fact in News and Current Affairs programs at the earliest opportunity (clause 4.3.11). Broadcasters comply with this provision and broadcast on-air corrections or apologies when that is considered to be appropriate in the circumstances. Some recent examples include:

- In October 2005, *60 Minutes* published an on-air correction in relation to a story regarding New Idea
- In November 2005 *Channel 9 News* published an on-air correction in relation to a story on the Western Bulldogs
- In June 2005 *Today Tonight* broadcast a clarification in relation to a story concerning a court case against Australian House-sitters
- Two corrections in 2003 on *Business Sunday*, one in relation to Woolworths and one in relation to Malcolm Turnbull, one in 2004 on the *AFL Footy Show* and one in 2003 on *A Current Affair* regarding a termite story.
- Several on-air corrections on Today Tonight over the last 12 months, including a correction in relation to assaults in a Melbourne school and another in relation to the number of complaints about Telstra.
- Two on-air corrections on Seven News over the past 12 months. One was a mistaken identification of a sun fish as a white pointer shark which was corrected in the same bulletin. The other was a correction about the quantity of ground water Coca-Cola Amatil was taking from near Newcastle which was broadcast two nights after the original broadcast.

There are several important reasons why the decision whether to broadcast such corrections should be left to the relevant broadcaster. The principle of freedom of speech is fundamental to democracies such as Australia. For the media, this principle requires that editorial content is determined by the media operator, not by Government or Government agencies. No regulatory body in Australia has ever had the power to direct media operators to broadcast or publish certain statements determined by that authority.[6]

Further it is difficult to assess whether material broadcast is incorrect as it is often the case that the material broadcast in an interpretation of the story at hand. It is our view that

[6] ACMA's power in relation to the ABC and SBS is limited to *making a recommendation* to broadcast a statement , including an apology or retraction. In response to the 2001 Discussion Paper, the ABC and SBS strongly opposed the ABA being given the power to order the national broadcasters to make on-air statements.

broadcasters are best placed to make that assessment and it would be unsound policy to allow Government, the Regulator, or other interested persons or groups, to require correction of matters which in their view (unsupported by the broadcaster) are in error.

Professor Ramsay's Report recommends that if this proposal were adopted, ACMA would have the power to specify the wording of the statement, and the time or times when the statement is to be broadcast.[7] Such unprecedented powers would intrude upon the established independence of media operators from Government and Government agencies in relation to the determination of media content.

Like all Commonwealth powers, the power to regulate broadcasting is subject to implied Constitutional constraints. One such important implied constraint which has been recognised by the High Court is the freedom of communication, at least in relation to communications concerning government affairs and political matters. It is possible that an ACMA direction to broadcast a breach finding, for example in relation to the accuracy of a news report concerning political matters in circumstances where the broadcaster does not agree with ACMA's findings, could infringe this important constitutional principle.

There are also important legal reasons relating to defamation proceedings why the decision whether to broadcast such corrections should be left to the relevant broadcaster. The general policy of broadcasters is to rely upon legal advice in relation to the broadcast of corrections. Where there is a threat of litigation, it is important that the station retains the ability to decide whether or not to broadcast a correction. The reason for this is that if a correction is broadcast, it will usually have the effect of removing many defences to defamation proceedings that might otherwise be available.

Professor Ramsay has rejected this reason on the basis that the recommendation is limited to an order to broadcast the findings of a breach of licence or Code of Practice (not to broadcast an apology).[8] In Free TV's view the effect is the same. There is still a real likelihood that a statement of breach finding would nullify defences to defamation proceedings. A particular concern for broadcasters is that an on-air statement may well influence a jury in a defamation case. he ACMA decision would be binding on the broadcaster. If the ACMA decision found a broadcaster in breach of the truth and accuracy provisions, for example, a truth defence may be undermined in the minds of jurors. Similarly, if ACMA found that the broadcaster had not acted reasonably as that decision is binding, ACMA would in effect be pre-empting the decision of the Court in relation to any reasonableness aspects of a defamation case.

Professor Ramsay also points to regulatory arrangements in New Zealand. Where the Broadcasting Standards Authority orders a broadcaster to publish a statement, the statement is deemed to be a notice published on the authority of a court for the purposes of the New Zealand Defamation Act, and the statement therefore receives the protection of qualified privilege.[9] The qualified privilege defence in this situation attaches to the on-air statement, so as not to create a new course of action from repeating the allegedly defamatory statement.. The defence does not attach to the broadcast of the originally alleged defamatory statement. In Free TVs view, the broadcast of any breach finding, even if subject to qualified privilege would still leave broadcasters exposed to legal liability for the broadcast of the original material.

Finally, Professor Ramsay states that few ACMA investigations involve defamation and where they do, the fact that defamation proceedings are underway or threatened could be a factor ACMA considers in deciding whether to make an order to broadcast an on-air

[7] Professor Ian Ramsay, *Reform of the Broadcasting Regulator's Enforcement Powers*, Sydney, November 2005, at page 123.

[8] Ibid at 124.

[9] Ibid.

statement. Free TV submits that the fact that defamation proceedings affect only a few ACMA investigations is not relevant. The fact remains that viewers can (and do) choose both to sue and to complain to ACMA. Also a viewer may wait for the outcome of an ACMA investigation before instituting (or even threatening) defamation proceedings. This means that if, for example, ACMA directed the broadcast of a correction, the complainant could immediately sue and the broadcaster may be placed in a difficult position in defending their legal liability. Defending any defamation proceedings is a significant and costly exercise for broadcasters.

Free TV submits that there are other practical problems associated with on-air statements. The statement would presumably have to repeat the original allegations in order to explain the breach finding. This could further aggravate the complainant. Further, if the basis of the finding is rejection of the fairness or accuracy of views expressed by a member of the public who has appeared in the report, an on-air statement could expose the broadcaster to defamation proceedings by that person.

It is noteworthy that Professor Ramsay recommends that a power to order on-air statements not apply to the national broadcasters. The reasons set out by Professor Ramsay include that:

- the national broadcasters are accountable to Parliament; and
- the national broadcasters are subject to legislation which ensures their independence from directions by or on behalf of the government and allowing [ACMA] to order on-air statements by the national broadcasters may be in conflict with these provisions.[10]

Free TV submits that the substance of these reasons apply equally to commercial broadcasters. Free-to-air commercial broadcasters are highly accountable to the public on complaints. The complaints process set down in the Code requires stations to:

- promote the Code and the complaints process across all viewing zones
- record and pass on to key staff the substance of all telephoned complaints
- advise callers how to lodge a formal written complaint
- investigate and respond in writing to all written Code complaints within strict timeframes
- advise complainants they may refer their complaint to ACMA for investigation
- provide quarterly reports to ACMA on the number and substance of all Code complaints
- provide an annual Code Complaint Report for release to the public.

Furthermore, in relation to news and current affairs broadcasts, the Code requires that licensees:

- must present factual material accurately and represent viewpoints fairly; and
- make reasonable efforts to correct significant errors of fact at the earliest opportunity.

Where a matter is investigated by ACMA and a breach found, the breach finding is widely publicised. As noted above, since February 2005, ACMA has adopted a policy of issuing news releases in relation to breach findings. It also publishes the findings on its website and in its annual report. News releases are also made in relation to some investigations. Breach findings and some investigations are regularly reported on in the wider media.

It is Free TV's view that the media attention given to investigations and Code breaches, already creates a distorted impression about the overall level of breaches. In fact, the

[10] Ibid at page 123.

number of breaches is very low. Only 9% of the complaints received by stations in the 2004/2005 period were referred to ACMA for investigation, and only one- third (30 of 86) were upheld. In Free TV's view, a requirement for broadcasters to provide on-air statements regarding breach findings would only exacerbate the already distorted impression received by the public regarding the overall level of breaches. Broadcasters are highly accountable to the public for the content of material broadcast. Further, the Code of Practice is reviewed every 3 years and is amendable by Parliament under Part 9 of the *Broadcasting Services Act*..

Commercial broadcasters are not subject to legislation which ensures their independence from directions by or on behalf of the Government, however, as discussed above, the principle of independence and freedom of speech is no less fundamental.

Finally, Professor Ramsay's report states that the justifications for granting this power to ACMA include enhancing the accountability of broadcasters, promoting the importance of codes of practice and maintaining and increasing public confidence in the quality of broadcasting. For the reasons discussed, it is Free TVs view that broadcasters are already highly accountable, that broadcasters are committed to the Code of Practice, which is promoted on each channel at least 365 times a year, and that the record of Code complaints indicates that the public is highly satisfied with the quality of broadcasting services.

5 Infringement notices

Free TV submits that any power granted to ACMA to issue infringement notices in respect of alleged breach of the offences set out in the Issues Paper should take into account each of the recommendations of the Australian Law Reform Commission set out in Professor Ramsay's Report.[11] In particular that:

- the payment of an amount specified in an infringement notice will act as a bar to proceedings in respect of the alleged contravention;
- the issue of an infringement notice constitutes no more than an allegation of a breach and that payment does not constitute admission for any purpose;
- no public announcement should be made about the issue of an infringement notice to, or the payment or non-payment of the amount by an identified or identifiable person;
- any public reporting of infringement notices must be on an aggregate or anonymous basis;
- the amount payable under an infringement notice should not exceed a small proportion of the maximum penalty that might be imposed if the matter was to be dealt with by a court, or set penalty specified in the legislation;
- the consequence of failing to pay an amount set out in an infringement notice should be an action to seek a penalty for the alleged offence or contravention, and not an alternative or substitute penalty such as licence suspension or cancellation;
- only one notice should be issued for each offence or contravention;
- the recipient of the infringement notice should have the right to request a written copy of any information considered relevant by the regulator in making the decision to issue the infringement notice;

[11] Professor Ian Ramsay, *Reform of the Broadcasting Regulator's Enforcement Powers*, Sydney, November 2005, at page 112–114.

- the recipient of the infringement notice should have the right to seek to have the infringement notice withdrawn by presenting material demonstrating that the factual basis on which the notice was issued was erroneous.
- Guidelines should be developed by the regulator on how they will exercise their discretion to issue, withdraw and correct infringement notices.

Free TV submits that before an infringement notice is issued a broadcaster should be given a written warning and the opportunity to give reasons for the alleged breach. Where reasonable grounds are given or the breach is inadvertent, an infringement notice should not be issued. For example, it is sometimes difficult to immediately detect changes in foreign interest, due to the complex nature of institutional shareholdings and the dynamic nature of electronic share trading.

It is our view that infringement notices should only be able to be used in relation to serious breaches and in certain circumstances. Any provisions introducing infringement notices should stipulate the circumstances in which they may be issued, for example in cases of flagrant or intentional breaches and should also require that decisions in relation to their use should take account of whether the broadcaster has taken all reasonable steps to rectify the breach.

Free TV Australia
21 December 2005