



**FreeTV**  
Australia

**Submission by  
Free TV Australia Limited**

Australian Communications and Media  
Authority

Response to the Australian  
Communications and Media Authority's  
Review of the Children's Television  
Standards (the "Review")

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## 1 Executive Summary

- Free TV supports ACMA's evidence-based decision not to introduce bans on food advertising to children.
- Free TV supports the content restrictions for advertising to children but the provision on the use of celebrity figures has been very broadly drafted and Free TV proposes drafting amendments.
- Free TV also welcomes ACMA's decision not to increase the quotas for C and P programming and the additional flexibility resulting from some of the proposed changes to the Childrens' Television Standards (CTS) such as the increased flexibility in the areas of block programming, displacement requirements and allowing disclosure of cash prizes.
- However, several areas of the CTS requiring structural and administrative change were not addressed in the Review.
- The amendments around scheduling, quotas and assessment processes do not go far enough in addressing the increasing burden on broadcasters of the obligation to provide children's programming. There are a number of key areas which ACMA does not propose to reform.
- There should be greater flexibility to schedule children's programming in the early morning with an earlier start time of 6am for the C and P band.
- Similarly, Free TV continues to support the P band being extended to Saturdays, Sundays and Public Holidays. The increasing numbers of children in formal and informal daycare reduce the numbers of children available during the viewing week. Weekend viewing provides additional flexibility for children.
- Free TV remains of the view that additional weighting for C drama should be implemented. These programs are relatively costly to produce and should be encouraged as occurs for Australian drama programs in the Australian Content Standard.
- The proposal to extend the displacement provisions for C programs to P programs is well intended but has limited practical effect without the capacity to schedule displaced P programs on the weekend.
- The period for displacement should be extended to 14 days to enable networks to reschedule a program at the same time the following week and to provide routine and certainty in programming material for the child audience.
- Free TV does not support the additional reporting requirements. Free TV believes these have been imposed on broadcasters without evidence or a resultant benefit to viewers.

## 2 Introduction

Free TV provides this submission in response to the Australian Communications and Media Authority's Review of the Children's Television Standards (the "Review"). Free TV provided a submission dated 31 August 2007 to the first phase of ACMA's review.

Free TV provides this submission on behalf of all commercial free to air licensees in Australia.

The Review has resulted in some important and necessary amendment to the CTS. Free TV supports ACMA's evidence-based approach to considering the issue of food and beverage advertising to children and ACMA's recommendations that advertising bans should not be implemented and that quotas for C and P programs not be increased. Free TV also welcomes ACMA's proposal to permit block scheduling of C programs.

However, Free TV is disappointed that many areas identified as requiring structural and administrative change were not addressed in ACMA's review.

The obligation on broadcasters to provide 390 hours of children's and preschool programs is unique. No other media platform here in Australian or in overseas jurisdictions is subject to this requirement.

The obligation to provide high quality programming remains notwithstanding demonstrable fragmenting child audiences. The regulatory and administrative burden is heightened by the additional bureaucratic processes proposed through the review. There has been no demonstrated failure necessitating the additional notification processes.

Broadcasters have consistently demonstrated, since the inception of the CTS 20 years ago, their commitment to quality children's programming. Many programs have run for several seasons with obvious benefits for the child audience. Producers of children's programming have proven expertise which is made quite evident by the high success associated with the pre assessment process.

It would seem to follow then that many of the rigid processes contained in the CTS would be relaxed in the face of this demonstrated compliance. This is not the case.

ACMA does not propose to revamp the pre assessment process during this review, preferring to defer to an industry forum process. This is unsatisfactory and the continual cost imposition on broadcasters will not be accompanied by a resultant viewer benefit.

The availability of the child audience has shifted significantly since the last CTS review and a corresponding amendment to the P and C bands is sensible. Without an extension of the P bands to weekends and public holidays and an increase to 14 days of the displacement period, the amendments to the displacement provisions have little practical utility.

The commercial free to air model continues to feel the impact of the change in children's viewing habits. A relaxation of the cost of providing these programs should have been a major priority of the review. Broadcasters are concerned that the costs to broadcasters of the CTS requirements were not sufficiently recognised during the review.

This submission addresses the following topics:

**Section 3** sets out Free TV's arguments for an immediate amendment of the Pre-assessment Process to exempt subsequent series from the process.

**Section 4** presents further evidence which justifies an extension of the C and P bands to 6am on weekdays and the P band to weekends and public holidays.

**Section 5** discusses the C drama sub quota and credits for out of band programming and puts forward arguments for flexibility in these areas.

**Section 6** discusses the displacement provisions and provides arguments for flexibility for P programming in particular.

**Section 7** argues against the proposed notification requirements on the basis that there is no justification for increased formal processes.

**Section 8** provides drafting suggestions for the provisions banning the use of celebrity characters in advertising

**Section 9** calls for a reconsideration of the introduction of Tradeable Quotas.

### 3 Pre-assessment Process

The pre-assessment process imposes a significant administrative and cost burden on broadcasters. However ACMA does not propose any substantive amendment to the process at this time.

Free TV argued for amendments to the pre assessment procedure in its submission to the Review. Broadcasters' demonstrated compliance with the CTS criteria and high level of success with programs submitted to the ACMA pre assessment process were cited as justifying a more flexible approach. There was no evidence proffered during the Review which contradicted this fact.

The current system imposes high administrative and cost burden on networks but do not deliver an equivalent public benefit. This situation is contrary to one of the principles behind the BSA which is that it is parliament's intention that ACMA regulate broadcasting services in the public interest without imposing unnecessary financial burdens on networks.

Pre assessment of subsequent program series should not be subject to the same detailed administrative processes as new program series. Currently, a new classification application must be submitted for any subsequent series in a program. Applicants are requested to provide details of any changes from the original series of the program so ACMA can assess these new elements against the classification criteria. However, applicants are still required to complete the form in its entirety in the same way as if the program was an original series.

For example, *Its Academic* on the Seven Network has been in production since the 1960's and *Totally Wild* on the Ten Network is now in its 17<sup>th</sup> season – over this time the programs' formats have not changed. Yet producers of such series are required to complete the 15 page Application for C and P Program Classification Form ACMA B13 including specifying the target audience, how the program satisfies the CTS 2 criteria such as how the program is entertaining and is appropriate for Australian children, and respond to CTS 11 criteria such as providing the citizenship/residential status of the producer and other key creative personnel associated with the program.

Such detailed information is not required to be submitted to demonstrate compliance with the *Australian Content Standard 2005*.

Free TV proposes that subsequent series should only be required to complete a "summary" form that specifies any changes from the previous year rather than filling out the detailed information requests in Form ACMA B13. Free TV submits that there is no justification or identifiable public interest for delaying this amendment.

Furthermore, Free TV previously proposed a less onerous pre-assessment process for accredited producers. The proposal has the following features:

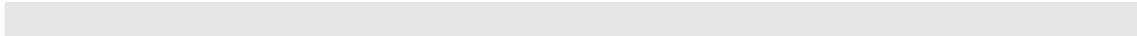
- An accredited producer is one who has produced at least two C series;
- Accredited producers are only required to submit half of a series' scripts to comply with the pre-assessment process (supported by a statement that they are representative of the of the series);
- Subsequent script amendments would not be required.



While networks are disappointed that such a major procedural issue has not been dealt with in the Review, they will participate in industry forums to explore classification options more fully.

The industry forums should be organised immediately on completion of the CTS review with the results and recommendations being finalised no later than a year after commencement of the new standard. Networks require certainty in relation to classification decisions as many programming decisions are being made now for future seasons

Reducing unnecessary administrative burden and approval times should be a key objective of any proposed reform of the pre-assessment process. If Free TV's proposed process for accredited producers is not incorporated into the CTS Review, it should be a key item for consideration in the industry forums.



## 4 C and P Bands

### 4.1 6am start for C and P Bands

While Free TV welcomes ACMA extending the early morning C band to 8:30am, broadcasters are disappointed that ACMA has rejected Free TV's submission calling for P and C bands to commence earlier on weekday mornings and to extend the P band to Saturdays.

That is, the C band should be revised to:

- 6.00am to 8.30am Monday to Friday;
- 4.00pm to 8.30pm Monday to Friday;
- 6.00am to 8.30pm Saturday, Sunday and School Holidays.

The P band should be revised to:

- 6.00am to 4.30pm Monday to Friday;
- 6.00am to 8.30pm Saturday, Sunday and School Holidays.

The resulting lack of flexibility means that broadcasters are not providing C and P programs at the times when children are readily available i.e. early on weekday and weekend mornings for C programs and at all on weekends for P programs.

ACMA has noted that OzTAM data from 2006 indicates low child audience numbers before 7am and that accordingly there is no demonstrable need for children's programming at this time.

However, the low child audience numbers at those times is directly related to the lack of children's programming offered. The programs in the early morning on all networks are generally a magazine/news format with limited child appeal.

Having children's programming available at 6am would be of great benefit for the child viewer and their parents and would also provide networks with some much needed flexibility. In particular, an extension of the C band commencement time would allow networks to effectively utilise ACMA's proposal to allow block scheduling of C programs under the new Standard.

For example, the Seven Network broadcasts the news driven and adult oriented *Weekend Sunrise* on Sunday mornings from 07:30am. Permitting Networks to commence C programming at 06:00 would allow a continuous 1.5 hour block of programming specifically produced for children at a time of the morning when children have previously not been catered for.

### 4.2 P band on Saturdays, Sundays and Public Holidays

Networks have argued for an extension to the P band to mirror the C band on Saturdays, Sundays and public holidays. The P band amendments sought by the networks is 6am – 8:30pm Saturdays, Sundays and Public Holidays.

The child audience is more available on the weekends and an extension of the P band is sensible to enable programming appropriate for pre-schoolers to be shown outside the work week. The ACMA paper does not provide data which supports maintaining the status quo here.

Data from the Australian Bureau of Statistics supports the view that pre-school children are more available on the weekends than during the work week.

An Australian Bureau of Statistics publication in 2005 showed an upward trend in the number of children attending formal and informal child care during the week.<sup>1</sup> The study showed that 46% of children aged 0 – 12 received some type of child care (formal or informal) in the reference week. This was an increase from 2002. Long day care and before and after school care are the most commonly used types of formal care. Of those children who used any type of child care, 70% used care on weekdays only. Almost all children (99%) who had only used formal care had used that care on weekdays alone. In contrast, 30% of children who had only used informal care had used that care on a weekend (either together with weekdays or on weekends alone).

The increasing numbers of children in care during the week (formal or informal care and including before and after school care) reduces the child audience available for pre-school and children's programming during the week. Children in formal care are not available to view programs broadcast while they are in formal care (predominantly weekdays).

The high numbers of children in formal care on weekdays and the low number of children in care (formal or informal) on weekends indicates that children are more available on the weekends to view children's programming.

The CTS as currently drafted however does not reflect this fact. While children's programming (C programs) is available during the week and importantly on weekends, programs for pre schoolers (P programs) are not available on the weekends. This is inconsistent with the reality reflected in the ABS data that children are more available on the weekends to view children's programming.

Notwithstanding the availability of the P band on weekdays, broadcasters rarely nominate a P period during school hours on weekdays. The 3:30pm time slot is sometimes nominated for shows such as *Hi-5* on the Nine Network. Networks understand their audience availability and schedule programs when the greatest numbers of viewers is available. If the pre-school audience was available during school hours on weekdays, then networks would be more inclined to nominate a P period at this time.

The trends and audience availability clearly supports Free TV's submissions for an extension of the P band to Saturdays, Sundays and Public Holidays.

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<sup>1</sup> Publication 4402.0 Childcare, Australia, Jun 2005 (presenting information about the use of, and demand for, child care for children aged 0 – 12 years\_

## 5 Quota Requirements

### 5.1 Additional weighting Australian C Drama

Free TV welcomes ACMA's view that the quotas for C and P programming should not be increased but is concerned that ACMA has not considered greater weighting for C drama.

However, Free TV's members face increasingly fragmenting audiences and audience numbers for C drama continue to fall. The cost of production for C drama is very high and advertising revenue is increasingly difficult to attract. The current CTS provides no incentive for producing quality children's programming.

While the *Australian Content Standard* provides additional format factor weighting for relatively more expensive Australian drama programs (and hence increased drama score points to satisfy quotas), there is no similar incentive in relation to children's programming quotas.

Free TV maintains its view that at the very least C drama should be attributed additional credit under the quota system.

### 5.2 Credits for appropriate out of band programming

Free TV remains of the view that the CTS should have a mechanism for including programs in a network's quota requirements which are targeted to and watched by children but not broadcast during a P and C band.

ACMA's review paper did not address this issue.

Free TV has argued for an extension of the P and C band to include 06:00 – 07:00am, weekdays, weekends and public holidays.

Networks consistently broadcast programs with appeal to children time on Saturdays. Average 0 - 14 Audience in 2006 for 06:00 – 06:29 is 18,000 and between 06:30 – 06:59 is 53,000, indicating that a child audience is available at this time. If the C and P bands are not extended, then networks should be able to claim credit for these programs which are broadcast outside of the bands.

An example of a program which is broadcast outside of the C band but which is educational and has popular child appeal is *The Total News (TTN)* which is broadcast at 11.30am on Tuesdays in all licence areas. This time is chosen because of the availability of school children during school hours. Educational material is available for teachers for use in the classroom in conjunction with the program.

## **6 Displacement Positions**

### **6.1 Displacement of P programs**

The proposal to extend the displacement provisions for C programs to P programs is well intended but has limited practical effect in its current draft form.

The proposed amendments to allow programs to be displaced for events of state or territory importance and where a sporting event can reasonably be expected to run over time are welcomed by Free TV.

While P programs can now be displaced and rescheduled in more situations, without an extension of the P band it is unlikely that broadcasters will be able to utilise this increased flexibility. This is compounded by the short period within which programs can be rescheduled. In practice, 7 days is simply too short a period and broadcasters are of the view that the period should be extended to 14 days. Further arguments in support of this position are presented below at 6.2.

At the very least, the CTS should be amended to allow displaced P programs to be broadcast on weekends during the C band. Free TV submits that this proposed amendment is sensible and that there is no evidence that the child audience will be harmed by the increased flexibility for networks. Failing this, Free TV requests that the restriction against broadcasting more than one program in a series during a C or P period should be removed to allow for practical flexibility in the rescheduling of displaced programs.

### **6.2 Period for rescheduling**

There is no evidence that extending the period for rescheduling displaced programming from 7 to 14 days would harm the child audience. In its original submission Free TV argued that a longer period for rescheduling was required to enable networks to reschedule a program at the same time the following week (due to block programming this is now possible). It was argued that the proposed amendment would provide routine and certainty in programming material for the child audience.

The Review showed that children and their parents look for certainty in the scheduling of C and P programs.

It would benefit children and networks if the period for rescheduling was increased to 14 days as this would allow a program to be scheduled at the same time either the following week or the week after and enable them to watch a double episode of their favourite show at its usual time.

## **7 Notification Requirements**

The ACMA review proposes additional reporting requirements on broadcasters. These are proposals which will require annual notification of P and C periods to be scheduled by a broadcaster and a formal notification process for displaced programs. Free TV strongly opposes these proposals.

The Review also proposes mandating how and when a network notifies the audience about a change in scheduling. Free TV argued against mandating promotions in its submission to the Review.

The scheduling of promotions for displaced programs or otherwise is a commercial decision which must be left with broadcasters. Broadcasters are best placed to determine the most effective way of promoting their programs. It is in broadcasters' interest to attract the maximum possible audience and broadcasters make their promotions decisions accordingly. There is not justification for imposing a rigid requirement on what is essentially a commercial decision.

There is no justification offered for these additional reporting requirements and broadcasters were not given an opportunity to comment during the first phase of the Review. There has been no evidence of regulatory failure or child viewer confusion with regard to existing notification requirements

There is no evidence that additional notification processes are necessary or that the viewer will benefit from the additional regulatory burden.

## **8 Advertising to Children**

Broadcasters recognise and welcome ACMA's research and view that food advertising to children should not be banned. Despite extensive research, ACMA found that the association between food advertising and obesity is quite modest and there is limited research on the benefit of banning food advertising. Furthermore, ACMA recognised the significant financial impact such bans would have on broadcasters' revenue and ability to provide children's programming as required by the CTS.

ACMA has suggested amendments to two provisions which regulate the content of advertising to children; they are the provisions on the use of premiums and celebrity figures in advertising. The provision on the use of celebrity figures has been very broadly drafted and Free TV proposes drafting amendments.

### **8.1 Premium advertising**

Free TV acknowledges community concern in relation to advertising utilising premiums and understands ACMA's view that further clarification in the Standards was required.

Free TV supports the new drafting proposed for CTS 21(2) and CTS 31(3).

Free TV is however, concerned in relation to the new provision in CTS 31(4).

CTS 31(4) overrules a prior decision of the Australian Broadcasting Authority (ABA, now ACMA) which had the effect that advertising for products which always included an "add on" being treated as a bundled offering and so not subject to the restrictions on the use of premiums. ACMA's review has shown that only 6 out of the 76 submissions raised concerns about the advertising of food and non food products.

Free TV is concerned that ACMA has reacted to concerns raised in only 7% of submissions with such a wide prohibition which overrules a prior decision of the Authority. Free TV's view is that the addition of CTS31(4) is not required to protect children from the possible harmful effects of television.

If ACMA proceeds with the inclusion of CTS 31(4), under the section as drafted it is unclear whether CTS31(2) and (3) apply to determine if the non food component is incidental to the food component.

## **8.2 Advertising using popular characters**

Free TV is concerned that ACMA has proposed a major shift in focus for advertising utilising "personalities" in C programs at this stage of the review.

In the Issues Paper for the Children's Television Standards Review, ACMA identified a number of issues which were not specifically addressed in the Paper. ACMA noted that "the evidence gathered to date provides no suggestion that the current CTS provisions relating to the issues outlined in this section are operating ineffectively."<sup>2</sup>

The evidence examined by ACMA subsequent to release of the Issues Paper does not support a change in approach. Less than half of the submissions received (38%) addressed the issue of promotions and endorsements by program characters.<sup>3</sup> Not all of those submissions supported a prohibition such as the one recommended by ACMA.

While Brand's literature review "found that the use of program characters and other celebrities in promotions and endorsements to children influence their purchasing choices . . . "Free TV submits that this finding must be read in context of ACMA's other research into the general association between advertising and product choice. In the context of food advertising and obesity, the current evidence is that the association is quite modest.<sup>5</sup> If the association between advertising and obesity is modest at the very most, then the influence of marketing techniques such as the use of personalities can be no greater than "modest". Such a tenuous link is not sufficient evidentiary basis for such a wide reaching restriction.

The prohibition as drafted goes far further than any restriction in overseas jurisdiction.

We understand that ACMA has not examined similar restrictions in overseas jurisdictions. Reviewing the success of similar prohibitions elsewhere would be a key indicator of whether or not similar provisions should be employed here in Australia. Such a review should be a necessary step before implementing such wide reaching regulation.

ACMA research acknowledges that the use of celebrities may increase the popularity of the product advertised. However the ACMA proposed restriction draws no distinction as to whether or not the celebrities association with the product may be

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<sup>2</sup> Issues Paper for the Children's Television Standards Review, 2007, page 24

<sup>3</sup> Report of the Review of the Children's Television Standards Review, page 14

<sup>4</sup> Ibid, page 14

<sup>5</sup> Ibid, page 12

beneficial to the child viewer. Nor is a distinction drawn between “celebrities” with child appeal and those without.

There are many examples of advertisements which seem to be caught by this prohibition. For example, a sportsperson promoting a child’s sports team, or sporting equipment, would be regarded as a positive association. These endorsements however are prohibited under the current drafting. Alan Border could not promote a child’s cricket set. Other scenarios prohibited under the section include, for example:

- Adam Gilchrist promoting a child’s cricket set for Christmas;
- Stephanie Rice promoting a banana;
- Cricketers promoting Weet-Bix;
- Grant Hackett promoting a muesli bar;
- The Wiggles promoting books for children.

These would all be prohibited under the proposed restriction.

Celebrities with no appeal to children are also caught. The section does not limit the definition of:

- popular program or movie character;
- popular cartoon, animated or computer generated character; or
- popular personality or celebrity,

to those with resonance or appeal to children. For example, John Travolta could not promote a product during a C program. This is nonsensical because there is no evidence that John Travolta would have any more power of persuasion with a child as an unknown actor.

CTS 33(1)(e) includes “licensed character” within the prohibition. Free TV understands that ACMA’s intention is to capture third party endorsements, however this is not clear on the drafting.

Licensing refers to a business arrangement in which a firm with proprietary rights over certain technology or trademarks etc grants permission to a group or company to manufacture or distribute that product (or make use of that proprietary material) in return for specified royalties or other payment. A branded product is not necessarily a licensed product. An exception for “equity brand characters” should be included. Equity brand characters are those developed by the manufacturer of the advertised product themselves, such as Barbie, Thomas the Tank Engine and the Streets Paddle Pop lion.

The restriction proposed in CTS 33(1) is far greater than anything employed in overseas jurisdictions.

- In the United Kingdom licensed characters and **celebrities popular with children** can only be used with a **due sense of responsibility**. This prohibition does not however extend to **advertiser created equity brand characters**;
- In NZ, such promotions are prohibited in so far as they are used to **undermine a healthy diet**. The Code of Advertising of Food provides that

“Persons, characters or groups who have achieved particular celebrity status with children shall not be used in advertisements to promote food in such a way so as to undermine a healthy diet taking into account Food and Nutrition Guidelines for children.”<sup>6</sup>

- In Sweden outside of children’s programming, there is a prohibition from using **certain persons/characters from children’s programming** in commercials. <sup>7</sup> Chapter 7. Section 4 of the Radio and Television Act provides “individuals or characters who play a prominent role in programmes which are primarily addressed to children under 12 years of age may not appear in commercial advertising in a television broadcast.”<sup>8</sup>
- In the Netherlands “a **children’s idol** is not allowed to actively commend a good product and/or related “premiums” (free gifts) or services in radio and/or television advertisements specifically aimed at children”<sup>9</sup>
- In the United States, the *Children’s Advertising Review Unit Self-Regulatory Guidelines* <sup>10</sup> provide that “Advertisers should recognise that the mere appearance of a celebrity of authority figure with a product can significantly alter a child’s perception of the product. Advertisers **may use such personalities** as product endorsers, presenters, or testifiers, but they must take great care to **avoid creating any false impression** that the use of the product enhanced the celebrity’s or authority figure’s performance.”
- In Canada the *Broadcasting Code for Advertising to Children*<sup>11</sup> provides that “Puppets, persons and characters (including cartoon characters) **well known to children and/or featured on children’s programs must not** be used to endorse or personally promote products, premiums or services. The mere presence of such well known puppets, persons or characters in a commercial message does not necessarily constitute endorsement or personal promotion.” The prohibition in Canada does not apply to “puppets, persona and characters created by an advertiser which may be used by advertisers to sell the products they were designed to sell as well as other products produced by the same advertiser or by other advertisers licensed to use these characters for promotional purposes”.

Free TV’s view is that the section should be redrafted to specifically exclude equity brand characters from the prohibition on licensed characters. Further, the restriction for popular program or movie character, popular cartoon, animated or computer generated character; or popular personality or celebrity, should only apply to personalities with child appeal. The use of personalities with child appeal should only be used with a due sense of responsibility.

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<sup>6</sup> Principle 3(f) Code for Advertising of Food <http://www.asa.co.nz/code-food.php>

<sup>7</sup> In Sweden there is a general prohibition on all advertising to children.

<sup>8</sup> The Radio and Television Act [http://www.rtvv.se/\\_upload/uk/download/rtvact.pdf](http://www.rtvv.se/_upload/uk/download/rtvact.pdf)

<sup>9</sup> Clause 2(j) [INSERT REFERENCE]

<sup>10</sup> <http://www.caru.org/guidelines/guidelines.pdf>

<sup>11</sup> *Broadcasting Code for Advertising to Children*

<http://www.adstandards.com/en/clearance/clearanceAreas/broadcastCodeForAdvetisingToChidren.asp>

**9 Tradeable Quotas**

Free TV remains of the view that further investigation into a system of tradeable quotas is warranted. A properly devised system could provide networks with much needed flexibility in a time of increasing pressure on networks and fragmenting child audiences.

Free TV supports a scheme which enabled quota obligations to be met through showing children's content on digital multi-channels or through sub-licensing to national broadcasters, community television services or to narrowcasting and datacasting services could more appropriately position the CTS for the future media environment.

Free TV is happy to contribute to an industry forum on this issue.