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Independent Reviewer
AANA Code Reviewer
Suite 2, Level 5
90 Elizabeth St, Sydney 2000

Dear Sir/Madam

Australian Association of National Advertisers Review of *Code of Ethics*

Free TV Australia represents all of Australia's commercial free-to-air (FTA) television broadcasters. Free TV welcomes the opportunity to comment on the Australian Association of National Advertisers (AANA) discussion paper *Review of Code of Ethics*.

Free TV strongly opposes any changes to the AANA code which would further expand, or increase the complexity of the existing regulatory regime governing television advertising.

Appropriate regulation of advertising is of vital importance to commercial FTA broadcasters and commercial FTA broadcasters take very seriously their responsibility to meet community expectations. Australia currently has an extensive range of regulations, both government and industry driven, designed to protect audiences from inappropriate marketing and advertisements on commercial FTA television. In addition to the various codes developed by the AANA, content of advertisements is restricted by the Commercial Television Industry Code of Practice and, in the case of advertisements directed to children, the Children's Television Standards.

Successive Australian Governments have chosen the advertiser-funded television model to deliver public benefit outcomes such as Australian content, children's programming, news and current affairs, and free universal coverage of major sporting events. Any further limitations on the range of permissible television advertising must consider the impact on the continued delivery of these outcomes. Regulatory pressures have already led US FTA broadcasters to make drastic cuts to news divisions heavily reliant on shrinking advertising dollars. This effect is exacerbated by the evolving media market in which other platforms, which are not delivering these public policy outcomes and are not subject to the same level of regulation, have increasing influence (see further below).

In Free TV's view the existing regulatory framework, and in particular the AANA Code of Ethics ("the Code"), is working effectively. The AANA Code is an important and valuable tool for ensuring community standards are met, and both the broadcasters and Free TV's Commercials Advice (CAD) refer to the Code on a daily basis. CAD is careful to reference the Code in its classification decisions, reminding advertisers of the need for compliance.

As an industry-supported initiative the Code provides a particularly adaptable and responsive enforcement mechanism, allowing breaches to be addressed immediately by signatories through methods such as voluntary takedown without the procedural delays inherent in legislated regulatory enforcement. Similarly, the self-regulatory nature of the Code allows it to be more flexible in responding to evolving community standards. This responsiveness is further facilitated by the broad representation on the Advertising Standards Board (ASB), the mechanisms for review and community consultation built into the Code itself, and the steps taken recently to improve community and advertiser engagement with the complaints process. We note the importance of the clear communication of breach findings; however, we feel that the current process for delivering these findings is efficient and effective. Together, these mechanisms ensure that both the Code and ASB decisions flowing from it reflect appropriate and up-to-date community standards.

Before this thorough suite of regulatory mechanisms is amended or expanded, there should be clear evidence that the current AANA Code is deficient. Free TV members are not aware of any evidence to suggest a need to expand the Code.

Discussion Questions

With respect to the specific questions raised by the discussion paper, we wish to respond directly to the following:

Question 3 – What circumstances relating to the portrayal of people should the Code of Ethics address?

Question 4 – What issues, if any, relating to ‘taste and decency’ should be addressed in the Code of Ethics?

Question 8 – What are the benefits, or otherwise, in addressing body image issues in the Code of Ethics?

Question 10 – Is there value in addressing substantiation of claims in ‘advertising or marketing communications’ in the Code of Ethics?

Free TV Australia would strongly oppose any extension of the current *Code of Ethics* into new areas, particularly as these issues are already well regulated through legal forums such as the classification codes and trade practices law.

Question 7 – Should provisions similar to those noted above, or others on distinguishing ‘advertising or marketing communications’, be included in the Code of Ethics?

As with the above, there is no need to address the issue of distinguishing advertising and marketing communications in the Code of Ethics, as it is already adequately covered by the extensive regulations listed in the discussion paper. Additional regulation will only serve to increase complexity and make compliance more difficult.

However, should the Code seek to deal with the issue, its provisions should be drafted to be consistent with the existing regulations. Past determinations based on these regulations have shaped standard industry practice, and it would be concerning if any additional AANA regulation had the effect of overturning or casting doubt upon these established norms.

Question 6 – What ‘test’ or ‘tests’ should the Code of Ethics include?

Free TV supports the removal of specific tests from the Code and agrees with the AANA that inconsistency in the level of detail within the Code’s provisions reduces their clarity for advertisers and community members alike. We also believe that such tests risk unintentionally singling out particular issues or platforms for additional restriction.

In particular, we support removal of references to ‘the relevant programme time zone’ from Section 2.3 of the Code. This test is clearly out of line with other matters cited for consideration in the Code as it only applies to advertisements distributed via select platforms (ie television and potentially radio). It also appears to reference a standard (ie the television programming time zones) which is set by another regulatory instrument, the Commercial Television Industry (CTI) Code of Practice. The question of program time zones is already considered by CAD in its classification process for advertisements, as well as by the ACMA in responding to formal complaints of breaches of the CTI Code’s requirements. Its inclusion in the AANA Code therefore leads to the standard being applied repeatedly, by different organisations, to the same advertisement. This ‘doubling up’ is not only inefficient, it also increases the risk of inconsistent or confusing determinations, as well as compliance costs for advertisers and the likelihood of inadvertent breach.

It is also not clear why the time zone of broadcast ads has been singled out for special attention over other matters of context that may be equally relevant to determining whether an advertisement has been published appropriately, such as the geographic location of billboards or the placement of print ads. In this context the current standard unfairly subjects broadcast advertisements to additional scrutiny. Free TV is of the view that the timing of broadcast advertisements is therefore more appropriately dealt with as part of the general consideration of under 2.3 of whether an ad treats ‘sex, sexuality and nudity with sensitivity to the relevant audience.’

Question 9 - Given the separate government privacy reform process should privacy issues be addressed in the Code of Ethics?

Free TV opposes the regulation of privacy through the AANA Code. The current system of privacy regulation in Australia is already complex and multilayered. As well as the Federal legislation and privacy review referenced in the discussion paper, each of the States has its own regulatory instruments, which often provide overlapping or competing standards and are increasingly being interpreted expansively to cover previously unregulated behaviour (such as the use of peeping tom

laws to shield Princess Mary from the media during her recent trip to Tasmania). In light of the already crowded field with respect to privacy regulation, the introduction of privacy requirements to the AANA Code of Ethics is unnecessary and risks increasing the complexity of the laws to the point where compliance becomes impracticable.

Free TV understands that the AANA's question is primarily aimed at privacy as it relates to online behavioural and targeted advertising. We acknowledge that this is an emerging issue in advertising in which both advertisers and consumers may benefit from clarifying guidelines. If the AANA feels it is desirable, Free TV does not object to specific mention of such matters in the Code, or the establishment of a new AANA subcode on the matter, provided they are clearly defined and address issues specific to this field. Free TV would, however, be concerned with any high-level or vague references to privacy which would pre-empt or duplicate the Federal Government's current reform process.

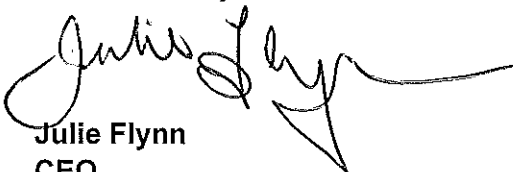
Question 11 - Should online publishers play the same role as traditional publishers in helping to ensure that advertisements are in line with the AANA Code of Ethics and in ensuring that advertisements adjudged to be in breach of the Code by the ASB cease to be broadcast? If not, how might their role differ, what role should they play?

Free TV supports the application of the AANA Code of Ethics to all advertising, regardless of media platform. In 2010 a range of entertainment and information technologies competes for viewers' attention. As well as the traditional media of FTA television, radio, newspapers and magazines, consumers now have access to the internet, pay TV, DVDs, computer games, digital media players and mobile phones. Children and young people in particular increasingly avail themselves of a wide range of alternative media sources that are effectively unregulated.

Experience shows that if advertising is restricted on one platform it merely redistributes to other, less regulated media. Any regulatory action must therefore take a consistent approach across media platforms, and not unduly focus on traditional players such as FTA television. Regulation which only applies to select platforms has a disproportionate regulatory impact on those subject to the tighter restrictions, disadvantaging them in the marketplace without achieving the goal of limiting viewers' exposure to the content.

Thank you again for the opportunity to provide comment on these issues. Please contact me if you would like any further input or require clarification.

Yours sincerely



Julie Flynn
CEO