



ACTA  
AUSTRALIAN COMMUNITY  
TELEVISION ALLIANCE

c/o C31, Level 1, 501 Swanston St, Melbourne, Victoria 3000

18 December 2013

The Hon. Malcolm Turnbull MP  
Minister for Communications  
Parliament House  
Canberra ACT 2600

Dear Minister,

**Re: Deregulation – Initiatives in the Communications Sector**

The ACTA welcomes this opportunity to provide input to the Government's deregulation initiative.

The CTV sector accepts a certain level of regulation as a necessary consequence of having access to broadcasting spectrum without paying a licence fee. The most important factor of the regulation of community television is the mandating of the not-for-profit nature for community television licensees. This ensures that the licences are not used for commercial purposes to generate dividends for members or other stakeholders.

Community television is unique in that the vast majority of its programming is produced locally, often by volunteers and amateurs. Community television stations do not pay for programming content; instead they offer a broadcast platform so that local program makers can access free-to-air television broadcasting, which is still the dominant communications medium for long-form video content.

Community television stations are not funded by the Government, and so need to source their own streams of operational revenue. To a large extent this comes from the selling of sponsorship announcements, which are analogous to the advertisements on commercial television.

The ongoing operational viability of community television licensees relies on stations being able to source sponsors, and the ability of volunteer program makers to create content. Regulations which infringe on these areas should do so in a way which does not impose unnecessary restrictions.

We offer two proposes for a change in regulations. One is designed to assist program makers in seeking support to produce their programs. The other is proposed to ensure that community television stations can raise the funds necessary to both carry on their operations and expand the service they offer to the public.

We look forward to working with you and your team to streamline the regulations placed on community television for the overall improvement of community television services across Australia.

Yours sincerely,

Richard McLelland  
ACTA Secretary

# Deregulation Proposal #1

## Program Sponsorship Acknowledgements

### A1. Description of relevant regulation

The existing legislation regarding sponsorship and advertising on community television is a hybrid of the community radio legislation and some of the provisions applied to the SBS in the *Special Broadcasting Service Act 1991*. As may be imagined, the result that has come from melding together these two disparate sources has created a somewhat unwieldy set of regulations which do not necessarily reflect the practicalities of community television production and broadcasting.

Schedule 2 Clause 9(1)(b) of the *Broadcasting Services Act 1992* imposes a licence condition on community broadcasting services which prevents them from broadcasting advertisements. There is an exemption to this in Schedule 2 Clause 2(1) of the Act, which states that matter of an advertising character is not to be taken as advertising if its inclusion is incidental or accidental to the broadcasting of other material, and no payment is received for the broadcasting of the matter.

Whilst there is a prohibition on screening advertisements, community broadcasters are able to screen a certain amount of sponsorship announcements. Schedule 2 Clause 9(3) of the Act allows a community television licensee to broadcast seven minutes per hour of sponsorship announcements. Clause 9(4) states that a sponsorship announcement may only be broadcast during periods before program commence, after programs end, or during natural program breaks (this is the same limitation as is imposed on the SBS).

These announcements may contain material of an advertising character, but are not taken to be advertisements. Schedule 2 Clause 2(2)(b) of the Act states that:

<p>[...] the broadcasting by a community broadcasting licensee of [...] 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:</p> <ul style="list-style-type: none"><li>(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</li><li>(ii) promotes activities, events, products, services or programs of the person</li></ul> <p>[...] is not taken to be the broadcasting of an advertisement.</p>
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In practice, the ACMA has interpreted this to mean that any person or organisation which provides financial support is a sponsor, and any acknowledgement of that financial support on air is a sponsorship announcement, whether or not the announcement contains any material of an advertising character.

This definition of a sponsorship announcement creates an extraordinarily wide range to the kinds of material which could fall into that category. It potentially includes on-air acknowledgement of donations, philanthropic and government grants, and people who become subscribers or members of a licensee. All of these, on a CTV service, have to be quarantined outside of program content, and contribute towards the seven minute per hour limit, even though they have no advertising character to them.

### A2. Policy underlying regulation

Section 87A(1) of the *Broadcasting Services Act 1992* states that intent of regulating community television is to ensure that services are not operated in the same way as commercial services. In the main, this is addressed by the licence requirement in Schedule 2 Clause 9(2)(e) of the Act that licensees must not be operated for profit or as part of a profit making enterprise.

It is noted that despite the intention stated in section 87A(1) of the Act, the revenue generation model for community television as described in the Broadcasting Services Act, involving sales of sponsorship and program airtime, is very much constructed along the lines of commercial broadcasting. Since there is no government funding of CTV services, they must be operated in a quasi-commercial model via the sale of sponsorship time in order to be financially self-sufficient.

### A3. Reasons the regulation could be amended

We believe that the definition of “sponsorship announcement” which arises out of Schedule 2 Part 2(2) of the *Broadcasting Services Act 1992* is too broad. The overall effect of the legislation as it currently stands is to limit the ability of community broadcasters and their volunteer program makers to diversify and optimise their income support streams.

As an example of this, consider that most government and philanthropic grants require the funding to be publicly acknowledged. A television program made with the support of such a grant usually needs to acknowledge the support on-air. It must not occur within the program itself, as that would breach the licence conditions of the station under Schedule 2 Clause 9(4) of the Act. The acknowledgement can only be made as a sponsorship announcement, which consequently reduces the amount of sponsorship time available for the station to support its own operating costs.

The nature of the current sponsorship legislation and its subsequent interpretation by the ACMA prohibits any acknowledgement of financial support within a community television program, even in the end credits of the program. The two images in Figure 1 are taken from the end credits of *The Slap*, broadcast on ABC1. On a community television service, the inclusion of such material in the end credits of a program could be deemed as a breach of the service’s licence conditions, as the acknowledgement of investors and providers of free products could be taken to constitute a sponsorship announcement.



Figure 1. Images from the end credits of “The Slap”, transmitted by ABC1 on 13 October 2011.

Allowing similar acknowledgement of community television program supporters should not be seen as commercialising community television any more than the acknowledgements in Figure 1 commercialise the ABC.

Under the current interpretation of the Broadcasting Services Act, thanking a sponsor for their support within a program would be deemed to be a sponsorship announcement, and therefore not allowed. Potentially, even just using the innocuous phrase “thanks to our sponsors” within a program, without any further embellishment, could be construed to be a breach of the Act, as any acknowledgement of financial support, whether or not the name of the sponsor is specified, falls into the category of a sponsorship announcement.

Many community television program producers have sought the ability to briefly thank their sponsors within the body and the end credits of their program, without any call to action, or details about the sponsor’s products or services. Producers feel that this would assist them in seeking support for their program. There is no advertising value in such a mention for a sponsor, but it does generate goodwill.

#### **A4. Proposal for amendment**

It is proposed that the legislated definition of “sponsorship announcement” should only include an acknowledgement of financial support which incorporates advertising material. The regulations regarding the scheduling of sponsorship announcements would remain, thus ensuring that the broadcasting of paid material of an advertising character is limited in duration, and only appears in natural program breaks.

With the aim of encouraging sustainable program production and content provision by members of the community, the ACTA proposes creating an allowable form of acknowledging support by program sponsors, distinct from sponsorship announcements. These acknowledgements would not contain material of an advertising character such as contact details or information about goods or services, and would be allowed to be included within program content. Acknowledgements of this kind must by necessity be brief, as they would be only a simple statement of fact that a person has provided support to the program.

**Broadcasting Services Act 1992**  
**Schedule 2 – Standard Conditions**

**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

**DELETE:** *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*

**ADD:** *or program sponsor acknowledgement; 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.

**ADD:** (3) *For the purposes of this Schedule, a sponsorship announcement, in relation to a community broadcasting service, means an announcement that acknowledges financial support by a person of the licensee or of a program broadcast on a service provided under the licence and contains material of an advertising character; and does not include:*

- (a) *an announcement that acknowledges financial support by a person of the licensee or of a program broadcast on a service provided under the licence where the financial support takes the form of:*
  - (i) *a grant, including from philanthropic or government bodies; or*
  - (ii) *subscriptions, memberships or donations; or*
- (b) *a program sponsor acknowledgement.*

**ADD:** (4) *For the purposes of this Schedule, a program sponsor acknowledgement, in relation to a community broadcasting service, means a brief verbal or visual acknowledgement of financial support by a person of a program broadcast on a service provided under the licence which contains no material of an advertising character other than the name and/or business logo of the sponsor.*

## **A5. What impact amendment will have on the industry**

The proposed amendments will:

- reduce compliance costs by giving greater clarity to community licensees on regulatory issues relating to sponsorship and advertising.
- improve sector self sufficiency in sustainable local content production.
- provide volunteer program makers with an opportunity to acknowledge program sponsors in a non-commercial manner without introducing material of an advertising character into program content.
- allow greater financial support for program production without impinging on the licensee's ability to raise revenue to cover service operating costs.

By implementing this change, licensees would be able to retain sponsorship announcement time to cover the costs of operating the service, whilst program producers could acknowledge financial support from donations, grant activity and similar sources either as discrete announcements or within the body of their programs.

Importantly, the proposed amendments would support community members in having the resources to actively participate in program content provision. Members of the community would be better able to participate as program makers through being able to acknowledge their sponsors and supporters, in a way which is non-commercial.

We believe that implementing this amendment will increase investment in community television production and promote growth in the industry by facilitating greater numbers of people to be part of community television. Stimulating production of local and Australian content for community television contributes to the diversity of voices in the medium of free-to-air television, and produces material which reflects the Australian identity.

One of the ACMA's Enduring Concepts is the idea that "*citizens should enjoy reasonable and equitable access to communications infrastructure, services and the content necessary to promote their effective participation in society and the economy. Increasingly, this extends to digital literacy.*" Participation in community television production affords everyday citizens access to free-to-air television, the dominant communications medium of our times. By participating in program provision, people increase and improve their digital literacy. Implementing this proposal for legislative amendment will make it easier for more people to become involved in community television.

## **A6. What impact amendment will have on consumers / individuals**

The amendment has been designed so that it will not introduce any additional material of an advertising character into community broadcasting services. Audiences will not be exposed to any greater amount of commercial material than under the current regulations.

# Deregulation Proposal #2

## Sponsorship Announcement Duration

### **B1. Description of relevant regulation**

Schedule 2 Clause 9(3)(a) of the *Broadcasting Services Act 1992* limits the amount of sponsorship announcements on a CTV service to seven minutes per hour. Comparatively, Clause 9(3)(b) allows community radio stations to broadcast only five minutes per hour of sponsorship announcements.

### **B2. Policy underlying regulation**

Section 87A(1) of the Act states that it is the intention of Parliament that services provided under CTV licences be regulated in a manner that causes them not to operate in the same way as commercial broadcasting services. However, the Broadcasting Services Act allows for community broadcasters to sell sponsorship time (essentially equivalent to advertising). In the absence of any ongoing government funding to cover operating costs, it is necessary for CTV broadcasters to embrace this quasi-commercial model in order to meet their operating overheads.

The differing limit of five minutes per hour of sponsorship for radio and seven minutes per hour for television was introduced as part of the *Broadcasting Legislation Amendment Bill (No. 2) 2002*. The Explanatory Memorandum to this bill states that the increased amount of sponsorship for CTV licensees “is intended to assist the revenue raising ability of the CTV sector.” This is in recognition that the costs of operating a community television service are greater than those of a community radio service. It is arguable, though, that the quantum of difference in costs is greater than the potential revenue accruing from just two extra minutes per hour.

### **B3. Reasons the regulation could be amended**

Operating costs of CTV stations are ever increasing. CTV stations do not receive a discount on services for being not-for-profit community based organisations. They pay full commercial rates for transmission costs, rental costs, award wages, etc. The basic costs of operating the service are such that it is difficult for licensees to generate some level of surplus so that they can grow and evolve as a business and improve the services they offer to the community, or to put aside contingency funds to cover future expenses. By increasing the amount of sponsorship time per hour, CTV licensees would be better placed to raise revenue in excess of their base operating costs so that expansion and increasing community participation can be afforded.

### **B4. Proposal for amendment**

Schedule 2 Clause (3)(a) of the Broadcasting Services Act 1992 be changed to read:

if the licensee is a community television broadcasting licensee – 10 minutes in any hour of broadcasting on that service; or
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### **B5. What impact amendment will have on the industry**

CTV services and commercial networks operate in different advertising sectors. Increasing the amount of sponsorship allowable on CTV services should therefore not impact upon other television service operators.

When the *Broadcasting Legislation Amendment Bill (No. 2) 2002* was debated in Parliament, there were concerns raised that increasing the number of allowable sponsorship minutes for community television might see CTV licensees impinging on the commercial television networks. With the benefit of a decade of practical experience, it has been found to be the case that sponsors of CTV licensees tend to be small to medium sized enterprises that do not have an advertising presence on the commercial networks. Community and commercial television broadcasters work in different markets.

Additionally, the local nature of CTV services and the fact that the stations around the country are not networked mean that community television does not meet the benchmarks required by major media buyers who are seeking to book national campaigns.

Whilst this amendment should not have any impact on the television industry at large, it is predicted that it will have a positive influence on community television. Increasing the ability of CTV licensees to raise revenue and be self-supportive means that they can improve their operations, expand community participation, and have a contingency fund against future expenses.

#### **B6. What impact amendment will have on consumers / individuals**

The standard length of a community television program is currently 48-50 minutes in the hour, with two sponsorship breaks per half hour. Increasing the allowable amount of sponsorship time from seven to ten minutes per hour would have the effect of increasing the amount of sponsorship per break by less than one minute. The amount of sponsorship would still be significantly lower than the 13-16 minutes of advertising allowed on commercial services.