

Two new online BSA publications

Two new publications are available on the BSA's site. The first is:

Children's media use and responses: a review of the literature
by Sue Jackson, Jason Low, Susan Gee and Carly Butler from Victoria University, and James Hollings from Massey University

The researchers note that 'new media' invites interactive communication where users need to be mindful about purpose, authority, validity, and intentionality, and ask, 'Are children explicitly mindful about such facets in new media?'

They note that while there are reports that children can traverse the digital divide, there is little research separating what children say they can do with new media, and what they actually do and think about new media (especially when so much of new technology is used in the privacy of the bedroom).

The researchers conclude that rather than being naïve and unsophisticated, children are active agents in their relationships with media and bring with them a host of skills and knowledge, and that the challenge for the future is to study in an inter-disciplinary theoretical and methodological fashion how children's cognitive, social, and ecological development interfaces with their media use and responses.

This review has assisted in the formation of questions for a major survey of children's media use and responses by Colmar Brunton for the BSA in September this year. The survey findings will be published in 2008.

The second new publication is:
Media Literacy Information in New Zealand: a comparative assessment of current data in relation to adults
by Margie Comrie, Franco Vaccarino, Susan Fountaine and Bronwyn Watson of Massey University (Palmerston North)

The introduction locates the review in the context of changing media technologies, international trends, and local development. It moves on to a brief consideration of the multiple definitions of media literacy, using the Ofcom (UK Office of Communications) definition as a starting point.

A section on international empirical research focuses largely on Ofcom's benchmark work but includes other major studies with a particular emphasis on international activities aimed at addressing media literacy issues among adults.

The New Zealand section, the core of the report, begins with information about access and amount of use, considerations of types of use (what we know about competencies), then moves to discuss protection and other issues, and the limited data on creative use of media. It concludes with a section on activities aimed at increasing media literacy among adults in New Zealand.

The conclusion summarises the major findings and gaps in our knowledge of media literacy in New Zealand and briefly addresses issues the BSA may consider as it develops a media literacy strategy.

Broadcasting conference guest Andrea Millwood Hargrave

The BSA is participating in the forthcoming broadcasting conference 'New Broadcasting Futures: Out of the Box' on 28 and 29 August at Te Papa Tongarewa.

We are delighted to be hosting respected researcher and advisor Andrea Millwood Hargrave from the UK to be a panellist at the conference. Andrea has just completed a report on how regulation can be used to promote cultural diversity across broadcast media which she will be discussing at one of the conference sessions.

Andrea has published widely on media content issues on a range of topics. Previous reports and reviews include *Multicultural Broadcasting: concept and reality* (2002), *How Children Interpret Screen Violence* (2003), *Harm and Offence in Media Content* (2006) and *Issues facing broadcast content regulation* (2006) which was jointly commissioned by the BSA and the Ministry for Culture and Heritage, and is available on our website.

Andrea's current roles include Associate of the Programme in Comparative Media Law and Policy, Centre for Socio-Legal Studies, University of Oxford, and Director of the Institute of International Communications (IIC). She chairs the UK Chapter of the IIC and convenes the annual International Regulators' Forum.

Before her current role, Andrea was Research Director of the UK's Broadcasting Standards Commission and the Independent Television Commission (now Ofcom).

QUARTERLY

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Proposed Amendments to the Broadcasting Standards Authority's Complaints Process

Late last year, the BSA met with broadcasters to discuss the results of a survey focussed on broadcaster satisfaction with the BSA complaints processes.

The BSA has now completed a discussion paper which investigates matters raised, and proposes solutions to them.

Interested parties have the opportunity to make submissions on the proposed amendments. To read the background and

detail of what is proposed, go to www.bsa.govt.nz and follow the link provided in the 'Recent Publications' column on the home page.

We would appreciate hearing your opinion on the proposals. The closing date for comment is 7 September 2007.

Note that feedback on this matter constitutes public information that may be released by the BSA at its discretion or upon request.

If there are any aspects of the paper that you would like to discuss, feel free to contact Legal Manager, Christina Sophocleous, on 04 382 9508.

Comments on the paper are due at the BSA by 5pm, 7 September 2007, and should be sent to

Legal Manager, Broadcasting Standards Authority, PO Box 9213, Wellington.

Viewers' and Listeners' Complaints Guide

We have produced updated versions of the free brochure 'Television and Radio Complaints: A guide for viewers and listeners'. It is available in English and Te Reo. Broadcasters should have a stock of these on hand to assist in dealing with complaints. To order copies of the brochure, phone 0800 366 996 or email trishc@bsa.govt.nz



Public consultation on broadcast content regulation

The current broadcast content complaint system has been in place for almost 20 years and is based on the traditional concept of broadcasting: general transmission of content at scheduled times to an audience. However, with the vast technological advances of recent times, clearly this concept of broadcasting has changed. But, as yet, no regulation covers broadcast-like content on the internet or mobile devices such as cell phones.

We expect the government to issue a public discussion paper in the near future seeking views on the kind of standards regime New Zealand should have in this new broadcasting era. There will be questions about whether regulation should be extended to the internet and mobile phones; what future role a state regulator such as the BSA should play; and whether the statutory concepts themselves – including good taste and decency, balance, and accuracy – should remain the same.

The BSA encourages its newsletter readers to make submissions on the paper and questionnaire which, when issued, will be available on our site www.bsa.govt.nz and the Ministry for Culture and Heritage's www.mch.govt.nz

New Legal Advisor



We are pleased to welcome Matthew Dearing to the position of Legal Advisor. Matthew started in June. Previously Matthew worked as a hearing manager at the Wellington Registry for the Environment Court.

Directory

The current members of the Broadcasting Standards Authority are:
Joanne Morris (Chair), Tapu Misa, Diane Musgrave and Paul France.
Contact us at:
2nd Floor, Lotteries Commission Building, 54-56 Cambridge Terrace,

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Phone: 64 4 382 9508
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Email: info@bsa.govt.nz
Website: www.bsa.govt.nz
Editorial enquiries: info@bsa.govt.nz

0800 Number

The Broadcasting Standards Authority's free phone number is

0800 366 996

A recorded message explains the complaints process, and a connection through to the office is provided.

DECISIONS

The BSA issued 27 decisions between April and June 2007

Decisions of interest included the following:

Hidden camera footage – *Close Up*

Two decisions involved use of hidden camera footage by current affairs programme *Close Up*.

The first item looked at whether there had been an increase in ‘backyard brothels’ in suburban New Zealand since the passing of the Prostitution Reform Act 2003. The programme included hidden camera footage of a woman greeting an undercover reporter in her doorway. Later in the programme, hidden camera footage also showed the undercover reporter inside the house talking to a different woman. A reporter was also filmed outside a property which she identified as being a suburban brothel.

The owner of that property complained that the hidden camera footage breached his privacy and that of his wife (who had been filmed answering the door), and that the item was inaccurate and unfair to them because they were not operating a suburban brothel.

Looking at the accuracy standard, the BSA followed the approach previously taken in Decision No. 2006-021 (the Viking Homewares decision). TVNZ was unable to provide any evidence upon which the BSA could reasonably conclude that the man’s property was a brothel at the time of the broadcast, and therefore it upheld the accuracy complaint.

Having found that the man’s property was inaccurately identified as a suburban brothel, and that by implication his wife was identified as a prostitute, the BSA upheld the complaint that the broadcast was unfair to the man and his wife.

The BSA also upheld the privacy complaint. It said that the complainant’s wife had an interest in solitude or seclusion when she was filmed with a hidden camera opening the door to their home. Referring to Decision No. 2005-129 (a case concerning the filming of a pit in which dogs were buried), in which the BSA said that the right to privacy was not ‘limited to situations where the complainant was present at the time of the intrusion’, the BSA found that the complainant’s interest in solitude or seclusion extended to the inside of his home even though he was not shown in the broadcast.

The BSA ordered TVNZ to broadcast a statement, pay compensation to the man of \$1,000 and to his wife of \$1,500 for the breach of their privacy, costs to the Crown of \$3,000 and costs to the complainant of \$1,152.50. **Decision ref. 2006-087**

Another item on *Close Up* reported that the programme had received an anonymous letter stating that Jayden Headley (a six year old boy who had allegedly been kidnapped by his maternal grandfather) was being kept on a farm near Dargaville.

The owner of the property, Noel Russek, was interviewed by the reporter and one of the private investigators hired by the show, and he was shown on camera denying that Jayden had been on his property. The private investigator who had interviewed Mr Russek stated that he thought Mr Russek was a ‘nice guy’ and that he had not played a part in Jayden’s disappearance.

Mr Russek complained that the broadcast breached his privacy and was unfair to him.

The BSA upheld the privacy complaint, noting that Mr Russek was approached and filmed while working on his private property, approximately two kilometres from his farmhouse. The camera was not visible to the complainant, and TVNZ did not advise him that he was being filmed. The BSA concluded that the broadcaster’s actions in filming Mr Russek amounted to an intentional interference in the nature of prying.

The BSA also considered that filming the complainant on his private property a considerable distance away from his farmhouse, where he had a reasonable expectation of privacy, amounted to an intrusion the ordinary person would find offensive. Because the footage did not disclose anything of legitimate concern to the public, the BSA found that the public interest defence did not apply.

Mr Russek’s fairness complaint was that he was portrayed in a negative light. However, the BSA found that he was portrayed as a good-natured and helpful citizen, and the private investigator was heard concluding that he had ‘no doubts he had nothing to do with this whatsoever’. It did not uphold the fairness complaint.

The BSA ordered TVNZ to pay \$1,000 to the complainant for the breach of his privacy, \$574.65 in costs to the complainant, and \$1,500 costs to the Crown. **Decision ref. 2007-016**

Privacy – *The Last Laugh*

The entertainment programme *The Last Laugh* relied on family and friends to nominate practical jokers who would then become the subject of a practical joke. In one episode, a 17-year-old woman was invited to model in a set-up fashion shoot in which she had to dress in ridiculous outfits and pose with a male model. The crew also visited her home, filmed inside her bedroom and picked up some of her possessions.

The young woman complained that the broadcast was unfair and breached her privacy. TVNZ upheld the fairness complaint, acknowledging that the series had been filmed four years prior to the broadcast and the woman had not consented to the programme going to air. The woman referred her privacy complaint to the BSA.

The BSA considered whether broadcasting the footage of the complainant’s bedroom breached her privacy. It found that the broadcaster intentionally interfered, in the nature of prying, with the woman’s interest in solitude or seclusion. The presenter was seen in the programme picking up and commenting on several of her possessions such as her magazines, hairdryer, and hairbrush. Various items of her clothing and underwear were visible on her bed. The BSA decided that an intrusion of this nature would be highly offensive to the objective reasonable person.

The BSA also noted that the complainant’s family could not consent to the invasion of her privacy, and that there was no public interest in broadcasting the footage of the complainant’s bedroom.

The BSA ordered TVNZ to pay the woman \$500 compensation for the breach of her privacy. **Decision ref. 2007-023**

Appeals and Other Court Proceedings

South Park ‘Bloody Mary’

The appeal by the Catholic Bishops Conference over the *South Park* decision (2006-022) heard in the High Court in Wellington on 21 May 2007 has been dismissed.

It was a one day hearing before Justice Wild. The Conference argued that the act shown (that of spraying menstrual blood onto a person) on its own is an offensive act. It argued that to consider the context of the depiction of this act would be inappropriate because it might legitimise the broadcast of an act which, by its nature, was offensive. The added involvement of religious figures in this case was of incidental relevance.

Among other points, TV3 argued that the New Zealand public had a right to view such material.

In dismissing the appeal, Justice Wild reaffirmed the BSA’s approach in these cases and confirmed that context is indeed important in assessing broadcasting complaints of this nature.

XY Stake Out Appeal

The appeal by CanWest MediaWorks over the *XY Stake Out* decision (2006-014) was heard in the High Court in Auckland on 6 July 2007. The judge has reserved his decision.

KW Close Up Appeal

An appeal has been lodged by TVNZ over the *KW Close Up* decision described above (2006-086). TVNZ has also made a claim for a judicial review of the case.