Investigation report no. BI-418

| Summary |  |
| --- | --- |
| **Licensee** | West TV Limited |
| **Station** | West TV (WTV) |
| **Type of service** | Open narrowcasting—television |
| **Name of program** | *RT World News* |
| **Date of broadcast** | 20 February 2018 |
| **Relevant code** | ASTRA Open Narrowcast Television Codes of Practice 2009 |
| **Date finalised** | 27 September 2018 |
| **Decision** | No finding in relation to Code 1.2 [present accurate and fair news and current affairs programs] Breach of Code 2.4 [respond to complaints within 60 days] |

Background

In July 2018, the Australian Communications and Media Authority (the ACMA) commenced an investigation under the *Broadcasting Services Act 1992* (the BSA) into an episode of *RT* *World News* (the program).

The program was broadcast on West TV (WTV) by West TV Limited (the licensee) on
20 February 2018.

The ACMA received a complaint alleging that the program was 'propaganda' that contained material which 'propagate[d] lies, distortions, false news stories, onesided reporting’, and that the licensee had not responded to the original complaints.

The ACMA has investigated the licensee’s compliance with Codes 1.2 and 2.4 of the ASTRA Open Narrowcast Television Codes of Practice 2009 (the Codes).

The complaint also raised concerns that the licensee did not display advice or warnings that RT is ‘Russian propaganda’ and that providing such programming was an abuse of their licence. It further queried whether RT paid the licensee to broadcast RT programming. These matters do not form part of this investigation as they are not matters covered under the Codes or licence conditions set out in the BSA.

**The program**

*RT World News* is broadcast on WTV on weekdays for one hour between 8.00 am and
9.00 am. It is an RT news program, which is described as follows:

RT is the first Russian 24/7 English-language news channel, which brings the Russian view on global news.[[1]](#footnote-1)

Assessment and submissions

When assessing content, the ACMA considers the meaning conveyed by the material, including the natural, ordinary meaning of the language, context, tenor, tone, images and any inferences that may be drawn. This is assessed according to the understanding of an ‘ordinary reasonable’ viewer.

Australian courts have considered an ‘ordinary reasonable’ viewer to be:

A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower, but can and does read between the lines in the light of that person’s general knowledge and experience of worldly affairs.[[2]](#footnote-2)

Once the ACMA has ascertained the meaning of the material that was broadcast, it then assesses compliance with the Codes.

This investigation has taken into account the complaint (at **Attachment A**) and submissions from the broadcaster (at **Attachment B**). Other sources are identified in this report where relevant.

Issue 1: Accuracy and fairness

Relevant Code provisions

Code No. 1 General Guidelines for Programming

1.2 Narrowcasters will present accurate and fair news and current affairs programs, and where practicable, will ensure that:

 (a) factual material will be clearly distinguished from commentary, analysis or simulations; and

 (b) news or events are not simulated in a way that misleads or alarms the audience.

Finding

The ACMA is unable to make a finding on the licensee’s compliance with the accuracy and fairness provisions of the General Guidelines for Programming in the absence of a copy of the *RT World News* program, as broadcast on 20 February 2018.

Reasons

In order for the ACMA to assess compliance with most requirements under the Codes, including the accuracy and fairness provisions, it is necessary to view a copy of the material in the form that it was broadcast on the relevant date.

On opening the investigation, the ACMA contacted the licensee and requested a recording of the broadcast, or if this was not available, a copy of the relevant material accompanied by an explanation of any difference between the material provided and the program as broadcast on 20 February 2018.

The licensee submitted:

…we do not have a copy of broadcast of the Russia Today program of the 20/02/2018
8:00:00 AM. There is public access to the Russia Today programs available at [https://www.rt.com/bulletin-board/news/]. Given that this would be a copy and not an original we could not guarantee or verify the content is identical with what WTV broadcast on the 20/02/2018 as these programs are subject to editing…Further, we cannot compare the version on the website with the original broadcast, as we do not have a copy of the original broadcast.

As the licensee was unable to provide a copy of the broadcast or information confirming how the online material and the broadcast material differed, no finding can be made on compliance with the accuracy and fairness elements of the Codes in respect of this complaint.

Issue 2: Complaints handling

Relevant Code provisions

Code No. 2 Handling Complaints

[…]

2.4 Written complaints will be acknowledged and answered in writing, within sixty days from the receipt of the complaint. If the complainant has not received a response within sixty days they may refer the complaint to ACMA.

Finding

The licensee breached Code 2.4 of the Codes.

Reasons

*A timeline of the complaint process*

The complainant initially contacted the ACMA in February 2018 to make a complaint about the compliance of *RT World News* with the accuracy and fairness provisions of the Codes. The ACMA responded with information about how to make a Code complaint under the co-regulatory broadcasting scheme including that complaints should generally be submitted to the broadcaster in the first instance.

According to the complainant, following receipt of the ACMA’s advice, they made three separate complaints to the licensee as follows: first complaint – date unknown via WTV’s ‘contact us’ page on the WTV website; second complaint – 8 March 2018 via the ‘contact us’ page; third complaint – 15 March 2018 via WTV’s information email address.

Under the BSA, a complainant may refer their complaint to the ACMA if they are dissatisfied with the response they receive from the licensee or if they have not received a response after 60 days. On 27 April 2018 the complainant contacted the ACMA to escalate the complaints. As 60 days had not yet elapsed from the time of submitting their second complaint (where the date was known), the matter was deferred until 10 May 2018. At this time, the ACMA sought and obtained confirmation from the complainant that they had not received a response from the licensee. The complainant also subsequently provided their records for two of the three complaints they had made to the licensee.

The ACMA’s initial approach to resolving the matter was to clarify whether the licensee had received the three complaints identified by the complainant. The ACMA contacted the licensee and on 11 May 2018, the licensee advised that it had not received the relevant complaints about *RT World News*. At this time the licensee also confirmed that the contact details on its website were correct and that the online contact form was functioning properly. The licensee subsequently offered to respond directly to the complainant. With the consent of the complainant, on 30 May 2018 the ACMA forwarded the two complaints that it had been provided. The licensee responded to the complaints on 22 June 2018. However, as the complainant was not satisfied with the response, the matter was referred back to the ACMA.

*WTV’s complaints handling*

In its submissions to the ACMA, the licensee noted that once it became aware of the complaints, it agreed to respond and did so within 60 days in accordance with the Code.

The licensee also advised that during February and March 2018, WTV was moving its operation from one web-hosting service to another and that a technical failure arising in the move disabled the contact email address and the online contact form. As a result of this unforeseeable technical issue, WTV did not receive the complaints.

The ACMA acknowledges the licensee’s efforts to respond once it was made aware of the complaint, and that the absence of a response was the result of a technical failure beyond its control. However, the ACMA is of the view that the obligation to respond to complaints is not absolved by the subsequent and much later response following the ACMA’s intervention. Further, the ability to respond relies upon licensees maintaining a functional and accessible complaints handling system at all times—for email-based and other online complaint facilities this includes actively monitoring operations during system upgrades and transitions and/or implementing appropriate alternative arrangements.

In its submission to the ACMA’s preliminary report findings (that WTV did not respond to the complaint within the required timeframe), the licensee asserted that the complainant ‘did not send a written complaint via mail which the code requires’.

The ACMA does not agree with this description of the complaints handling requirements as outlined in the Codes. The Codes acknowledge that complaints may be made by phone or in writing and importantly, where complaints are made in writing, there is an explicit obligation on licensees to respond in writing within 60 days of receipt of the complaint.

For clarity, the ACMA notes that for the purposes of the Codes, complaints made ‘in writing’ do not preclude complaints sent via direct email or electronic complaint facilities hosted on a licensee’s website. Indeed, these are useful, efficient and commonly used complaint mechanisms both of which were used by the complainant in this matter.

Accordingly, by failing to acknowledge receipt of the complaints and respond substantively to the complainant within the Codes specified timeframe, the licensee breached Code 2.4 of the Codes.

Attachment A

Extracts of complaints to the licensee and the ACMA

***Complaint to the licensee as recorded by the complainant dated 8 March 2018:***

This is my second complaint via this page. This complaint concerns your daily 8 am weekday broadcasts of Russia Today, aka 'RT'. Russia Today is recognized as Russian government propaganda. Your broadcast of this programming is a possible violation of ACMA ASTRA code:

1.2 Narrowcasters will present accurate and fair news and current affairs programs, and where practicable, will ensure that:

(a) factual material will be clearly distinguished from commentary, analysis or simulations; and

(b) news or events are not simulated in a way that misleads or alarms the audience.

Your RT broadcasts contain dis-information regarding news. RT is Russian Government-funded programming representing the Russian government political position. The broadcasts disguise this as actual news.

If you were not aware of this code, you now are. I am entering into the formal complaint process with the ACMA. Statutorily, you have 60 days to reply to this email. However, acting in good faith under your broadcasting license, I hope you will respond sooner.

***Complaint to the licensee dated 15 March 2018:***

I have written two complaints via your contact page and have had no response. I am now sending it via your info email.

This is my third complaint concerning your daily 8 am weekday broadcasts of Russia Today, aka 'RT'. Russia Today is recognized as Russian government propaganda. Your broadcast of this programming is a possible violation of ACMA ASTRA code:

1.2 Narrowcasters will present accurate and fair news and current affairs programs, and where practicable, will ensure that:

(a) factual material will be clearly distinguished from commentary, analysis or simulations; and

(b) news or events are not simulated in a way that misleads or alarms the audience.

The RT broadcasts contain dis-information regarding news. RT is Russian Government-funded programming representing the Russian government political position. The broadcasts disguise this as actual news.

If you were not aware of this code, you now are. I am entering into the formal complaint process with the ACMA. Statutorily, you have 60 days to reply to this email. However, acting in good faith under your broadcasting license, I hope you will respond sooner.

***Complaint to the ACMA dated 27 April 2018:***

[…] I wrote to the ACMA with a complaint about West TV in Perth Western Australia, specifically concerning their daily one-hour broadcast of the Russia Today English language program (RT). I was directed to the ACMA website and told to follow procedure. I contacted West TV three times over the specified 60 days, twice through their website, once through general email. A sample is attached. West TV have not replied. Now I return to the ACMA to continue my complaint.

**Background:**

Russia Today is internationally recognized as a Russian government news and propaganda organ. This is what the Columbia Journalism Review says about it:

Russia Today was conceived as a soft-power tool to improve Russia’s image abroad, to counter the anti-Russian bias the Kremlin saw in the Western media. Since its founding in 2005, however, the broadcast outlet has become better known as an extension of former President Vladimir Putin’s confrontational foreign policy.” https://archives.cjr.org/feature/what\_is\_russia\_today.php

The New York Times Magazine said in a Sept 17, 2017 article:

RT and the rest of the Russian information machine were working with “covert intelligence operations” to do no less than “undermine the U.S.-led liberal democratic order,” <https://www.nytimes.com/2017/09/13/magazine/rt-sputnik-and-russias-new-theory-of-war.html>

West TV is currently airing an hour of RT daily in the 8 am time slot with no disclaimer that this is Russian government controlled news. This is a possible violation of ACMA ASTRA code 1.2:

‘Narrowcasters will present accurate and fair news and current affairs programs, and where practicable, will ensure that:

(a) factual material will be clearly distinguished from commentary, analysis or simulations; and

(b) news or events are not simulated in a way that misleads or alarms the audience.’

**My complaint:**

1. RT’s reports are in frequent violation of both 1.2 (a) and 1.2 (b).

2. West TV displays no on-screen reference or warning that RT is Russian Government propaganda.

3. Does RT pay West TV to air the programming?

**Conclusion:**

Press freedom in Australia is not constitutionally guaranteed, but the High Court has ruled that language in the constitution implies a right to freedom of expression, and the government generally respects this principle.
*Freedom House* https://freedomhouse.org/report/freedom-press/2015/australia

I do not dispute West TV’s right to air these broadcasts as long as they comply with Australian Communications and Media Authority standards. I feel the RT broadcasts should carry a disclaimer, and the airing of the broadcasts should not be paid by Russia or instruments of any foreign organisation.

I do not make these complaints frivolously or casually. We live in a dangerous time when media is being hi-jacked all over the world and used to destabilize free democracies. I do not want to see this happen in Australia.

Attachment B

Extracts from licensee’s response and submissions

***Licensee response to the complainant dated 22 June 2018:***

Your concerns have been investigated by us, and assessed against WTV’s standards for accuracy, fairness and the requirements of the ASTRA Open Narrowcast Television Codes of Practice 2009 Code No1 General Guidelines for Programming Rule 1.2.

WTV’s investigation of the complaint has resolved that your complaint is about the ”Russia Today” program in general, not about a specific broadcast or program nor any of its specific broadcasted content. You are unilaterally imputing that any content broadcasted by “Russia Today” is “Russian government propaganda”. You claim that the “Russia Today” broadcasts provide “disinformation regarding the news”. However, your complaint does not provide any evidence to support these serious allegations, nor does your complaint, relate to any specific broadcasted content, which WTV could investigate and reply to.

Subject to being presented with evidence to the contrary, we currently believe that the “Russia Today” program meets the accuracy and fairness standards in the ASTRA Open Narrowcast Television Codes of Practice 2009 Code No1 General Guidelines for Programming Rule 1.2.

***Licensee submission to the ACMA dated 10 July 2018:***

We note the following submissions:

**General**

1. On the 11/5/2018 WTV was informed by ACMA that complaints had been made by [Complainant] in respect to its broadcasting of “Russia Today” programs, which ACMA was commencing an investigation.

2. On the 28th May 2018, WTV informed ACMA that it had not received those complaints

due to communication breakdown which prevented WTV from receiving them. WTV requested that the complaint be re-submitted for response pursuant to the Code. The complaints were re-submitted and responded to by WTV within the 60 days.

3. [Complainant], unsatisfied with WTV’s response, has made a complaint in respect to our “Response to his complaints dated 22nd June 2018”.

4. [Complainant] on the 25th June 2018 responded to “our response” by making a new detailed complaint about the “Russia Today” program, which WTV is currently investigating and will respond to within 60 days of receipt of this complaint.

5. ACMA is exercising its powers under Section 170 of the Broadcasting Services Act 1992 (“the Act”) as confirmed in your email of the 9th July 2018.

 […]

**Code 1.2, 1.2(a) & 1.2(b) Complaints**

7. [Complainant]’s concerns have been investigated by WTV, and assessed against WTV’s standards for accuracy, fairness and the requirements of the ASTRA Open Narrowcast Television Codes of Practice 2009 Code No1 General Guidelines for Programming Rule 1.2, 1.2(a) 7 1.2(b). WTV’s investigation of the complaint resolved that [Complainant]’s complaints about the “Russia Today” program are general, not about a specific broadcast or program nor any of its specific broadcasted content. [Complainant] is unilaterally imputing that any content broadcasted by “Russia Today” is “Russian government propaganda”. [Complainant]’s claims that the “Russia Today” broadcasts provide “disinformation regarding the news”. However, his complaint does not provide any evidence, other than opinion, to support these serious allegations, nor does his complaint, relate to any specific broadcasted content, which WTV could investigate and reply to. Subject to being presented with evidence to the contrary, we currently believe that the “Russia Today” program meets the accuracy and fairness standards in the ASTRA Open Narrowcast Television Codes of Practice 2009 Code No1 General Guidelines for Programming Rule 1.2, 1.2(a) & 1.2(b). […]

**Code 2.4 Complaint**

8. During February-March 2018, WTV was in the process of moving its operation from one web-hosting service to another (From [company name] to [company name]). We were not aware that the contact email address – info@wtvperth.com - and the website contact form had been disabled.

9. On the 28th May 2018, WTV informed ACMA that it had not received those complaints due to this communication breakdown which prevented WTV from receiving them. WTV requested that the complaint be re-submitted for response pursuant to the Code. The complaints were re-submitted and responded to by WTV within the 60 days in accordance with the Code.

10. It was an unforeseeable technical issue that caused WTV not to receive the complaints, which was remedied by WTV, as soon as it became aware of the situation.

**Copy of Russia Today Program**

11. We refer to our email of the 28th May 2018 and note that we do not have a copy of broadcast of the Russia Today program of the 20/02/2018 8:00:00 AM. There is public access to the Russia Today programs available at [https://www.rt.com/bulletin-board/news/]. Given that that this would be a copy and not an original we could not guarantee or verify the content is identical with what WTV broadcast on the 20/02/2018 as these programs are subject to editing. We also attach a copy for your convenience. Further, we cannot compare the version on the website with the original broadcast, as we do not have a copy of the original broadcast.

***Licensee submission to the ACMA dated 20 September 2018:***

We refer to your correspondence of the 6th September 2018 and note the

following:

1. In respect to your finding that WTV did not answer the complaint

within the required period. Please note that the complainant did not send a written complaint via mail which the code requires and which the complainant chose not to do.

2. WTV on becoming aware of the complaint addressed it immediately;

3. WTV has since the technical issues adopted a policy of monitoring

the relevant email address on a regular basis to ensure the same issue does not arise again;

4. WTV has changed its Website complaints notice to read:

"WTV welcomes all complaints via the Australian Post which viewers or the public may make in writing. Please provide your name and a return address which; can be a Po. BOX. Please send all complaints to the following address:

 WTV Channel 44

 Level 2, 30 Fielder Street

 East Perth WA. 6004

Please note that you may send written complaint via electronic means, but WTV has no 24/7, direct technical control over its digital platforms operated by third party and assumes no responsibility for content, questions and/or complaints submitted via only electronic form. If you not receiving acknowledgement by five working days after emailing your complaint, PLEASE resend it via AU Post to the above address in order to get an immediate acknowledgement/response.

If you are not able to use the above forms of contact, please call us at 08 9221 5355 and leave a detailed message with a return telephone number. "

5. WTV has not intentionally ignored the complaint."

1. *https://www.yourtv.com.au/guide,* Perth TV Guide,accessed on 6 July 2018. [↑](#footnote-ref-1)
2. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-2)