Investigation report no. BI-429

| Summary |  |
| --- | --- |
| **Broadcaster** | TCN Channel Nine Pty Ltd |
| **Station** | Nine |
| **Type of service** | Commercial—television |
| **Name of program** | *Today Extra: Saturday* |
| **Date of broadcast** | 17 February 2018 |
| **Relevant code** | Commercial Television Industry Code of Practice 2015 (revised 2018) |
| **Date finalised** | 6 November 2018 |
| **Decision** | No breach of clause 5.7.2 [audio levels and loudness] |

**Background**

In August 2018, the Australian Communications and Media Authority (the ACMA) commenced an investigation under the *Broadcasting Services Act 1992* (the BSA) about the loudness of advertisements broadcast during the program *Today Extra: Saturday* (the program).

The program was broadcast on Nine by TCN Channel Nine Pty Ltd (the licensee) on 17 February 2018, from 10.00 am to 12.00 pm. It included advertisements at approximately 11.48 am, though the complaint also referred to the loudness of the advertisements more generally.

The complainant was concerned that the advertisements broadcast were louder than the adjacent programming.

The ACMA has investigated the licensee’s compliance with clause 5.7.2 [audio levels and loudness] of the Commercial Television Industry Code of Practice 2015 (revised 2018) (the Code).

**The advertisements**

The advertisements within the program broadcast on 17 February 2018 at approximately 11.48 am, were alleged to be broadcast at a louder volume than the adjacent programming.

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, 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.[[1]](#footnote-1)

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

Issue: Audio levels and loudness

Relevant code provision

**5.7 Additional Requirements**

[…]

5.7.2 A Licensee will only broadcast a Commercial that complies with the requirements of Free TV’s Operational Practice Notes 48 (Audio Levels and Loudness) and 59 (Measurement and Management of Loudness in Soundtracks for Television Broadcasting), as amended from time to time. This will be satisfied if a person submitting the Commercial certifies compliance with all requirements.

**Relevant Practice Notes**

Free TV Operational Practice Note 48 (Audio Levels and Loudness) (OP 48) provides a ‘loudness level’ that must be complied with. Its aim is to prevent ‘excessively noisy or strident content’.[[2]](#footnote-2)

Operational Practice Note 59 (Measurement and Management of Loudness in soundtracks for Television Broadcasting) (OP 59) provides guidance in how to achieve compliance with OP 48. OP 59 refers to the measurement of audio loudness as distinct from audio level. It sets out guidelines for measuring and matching the loudness of programs, and advertisements, to avoid excessive loudness contrasts.[[3]](#footnote-3)

**Free TV Australia Operational Practice OP-48 (Audio Levels and Loudness)**

[…]

**2. CERTIFICATION.**

Producers will be required to certify that their commercials comply with this OP as a condition of acceptance for broadcast.

This certification must be in the form of either:

* inclusion of an additional field in the Visual Identification, as specified in Free TV OPs 24, 29 and 36, between the alignment signal and the countdown indicating compliance with OP48; or
* by prior arrangement with the broadcaster a written certification by the person submitting the commercial that the commercial complies with OP48.

**3. LOUDNESS CONSIDERATIONS.**

The factors contributing to perceived loudness are complex but the correct alignment of audio levels through the various stages of production and the careful management of dynamic range and spectral content are key factors in preventing extreme variations in loudness.

 […]

**6. Loudness Measurement**

After the final mix, all commercial soundtracks must be measured using an ITU-R Recommendation BS 1770-32 loudness meter to ensure compliance with the reference loudness level of -24LKFS. Refer to Free TV OP59 for correct loudness measurement and management techniques.

Free TV Australia Operational Practice OP-59 (Measurement and Management of Loudness in Soundtracks for Television Broadcasting)

OP 59 is recommended by Free TV Australia and refers to the measurement of audio loudness as distinct from audio level. It sets out guidelines for measuring and matching the loudness of programmes, promotional spots and commercial advertisements that are presented alongside in digital television broadcasting on Australian television services. It is intended as an aid to avoiding the excessive loudness contrasts that can be annoying to consumers.[[4]](#footnote-4)

Free TV Commercial Advice Classification Handbook

**Audio levels and Loudness**

 […]

Producers will be required to certify that their commercials comply with OP 48 as a condition of acceptance for broadcast. This will require a declaration of compliance on the CAD Online Application System when submitting the commercial to CAD for classification. Compliance with OP 48 should also be noted on the visual identification.

Free TV’s Operational Practice 59 *– Measurement and Management of Loudness in Soundtracks* sets out guidelines for measuring and matching the loudness of programmes and commercials that are presented contiguously in digital television broadcasting on Australian television services, to assist with compliance to OP48 when producing soundtracks for television commercials.

Finding

The licensee did not breach clause 5.7.2 of the Code.

Reasons

It is considered that the intention behind clause 5.7.2 is to allow the licensee to rely on a certification provided by a person, submitting a commercial, that the requirements for OP 48 and OP 59 have been met.

To assess compliance, the ACMA has addressed the following question:

* Has the person submitting the commercial certified compliance with Free TV’s Operational Practice Notes 48 (Audio Levels and Loudness) and 59 (Measurement and Management of Loudness in Soundtracks for Television Broadcasting)?

The complaint is that advertisements within the program were broadcast at a louder volume than the adjacent programming.

The licensee submitted to the ACMA detailed information about the compliance process for sound processing. The steps undertaken in sound processing and certification include:

1. **Production company** – Advertisers or agencies submit commercials to Free TV’s Commercials Advice (CAD) for review prior to the advertisement being sent to the broadcaster. A production company cannot proceed with a CAD review unless they have confirmed (by ticking a box) that their commercial is compliant with both OP 48 and OP 59.
2. **CAD compliance** – Commercials receive CAD certification if they are compliant with the Code.
3. **Written certification** – Licensee does not obtain written certification from commercial producers about compliance with OP 48. However, commercials that are provided to the licensee are provided with CAD certification and the associated metadata includes certification of compliance with OP 48.
4. **National Playout Centre (NPC)** – All content that is processed, through the NPC used by the licensee, pass through two phases that act as safety checks to ensure sound compliance:
* ***Audio processing*** – The NPC ingest process includes passing all commercials through an audio processor that ensures the audio loudness is compliant with OP 48.
* ***Continuous linear processing*** – The relative audio level between commercials and program content is normalised for transmission using continuous linear audio processing, in accordance with OP 59.

The licensee submitted that the person providing the commercial to CAD confirmed that it was compliant with both OP 48 and OP 59. The ACMA, therefore, is satisfied that compliance with OP48 and OP 59 was certified in accordance with the Code. The ACMA also notes the additional safety checks, in addition to the CAD review, that ensure compliance with OP 48 and OP 59.

Accordingly, the licensee did not breach clause 5.7.2 of the Code.

Attachment A

**Complaint**

***Extracts of complaint to the ACMA dated 17 February 2018:***

Channel 9 consistently run A Current Affair with low audio levels but not so the advertising. But, today they are caught doing this during their Today Extra program, breaking to an ad the audio was significantly increased a split second before the break at 11:48am.

**Extracts of complaint to the licensee dated 12 May 2018:**

This complaint is about channel 9 overall. During morning shows and A Current Affair, News at 6, etc, they deliberately increase audio to uncomfortable levels for advertising and their program promotions, simply because they know there is no moderation control by the governing bodies. This is not acceptable and please don’t bang on about averaging algorithms coming into play.

***Extracts of complaint to the ACMA dated 13 August 2018:***

It's not just the shows I mention but others as well. When the shows cross to interviews, audio levels are deliberately low. A brief cross-back to the show's compere/'s and just before a marketing segment, or advertisement, audio will resume at the higher level. This practice has been ongoing and is a ploy for the viewer to be invaded by their commercial interests. This practice needs to stop.

Attachment B

Licensee’s response and submissions

***Extracts of licensee response to the complainant dated 13 June 2018:***

[…]

The Commercial Television Industry Code of Practice 2015 (the **Code**) has additional requirements to ensure that advertisements comply with the following provision:

Clause 5.7.2: A Licensee will only broadcast a Commercial that complies with the requirements of Free TV’s Operational Practice Notes 48 (Audio Levels and Loudness) and 59 (Measurement and Management of Loudness in Soundtracks for Television Broadcasting), as amended from time to time. This will be satisfied if a person submitting the Commercial certifies compliance with all requirements.

Nine requires that advertisements receive a clearance from Free TV prior to broadcast, and we ensure our advertisements abide by the loudness guidelines.

For the reasons outlined above, we maintain we have complied with the Code in this instance.

[…]

***Extracts of licensee submission to the ACMA dated 26 September 2018:***

[…]

7. Nine also provides the following information to clarify the process of compliance with clause 5.7.2 of the Code.

8. All commercials that are broadcast from the National Playout Centre (**NPC**) used by Nine are Operational Practice (OP) 48 compliant. The NPC ingest process includes passing all commercials through an audio processor that ensures the audio loudness is compliant with OP 48.The audio processor used by the NPC for this purpose is a Dolby DP600, which is specialist broadcast technology equipment equipped to ensure that material passed through is compliant with OP 48.

9. In addition to NPC's processing protocols, Nine is aware that its commercial distribution suppliers, Adstream and IMD, that deliver commercials to the NPC also ensure that the commercials it delivers are compliant with OP 48. Where commercials are provided to Adstream or IMD in uncompliant form, both providers apply processes to adjust audio loudness levels to a level compliant with OP 48 before the commercials are delivered to the NPC.

10. Nine's program content also undergoes similar audio processing to ensure that it is at a consistent audio level that matches the commercial content. In the case of both program content and commercial content, audio loudness processing is applied to all incoming feeds and applied again on all transmission feeds leaving NPC.

11. Nine does not obtain written certification from commercial producers in relation to compliance with OP 48. However, commercials that are provided to Nine are provided with associated metadata, and that metadata will include an indication of their compliance with OP 48.

12. In addition, Nine understands that in the CAD online application, when advertisers or agencies are submitting commercials to CAD for CAD review, they cannot proceed unless they have confirmed (by ticking a box) that their commercial is compliant with both OP 48 and OP 59.

13. In any event, should there be any commercials that are provided and are not already compliant with OP 48, there are multiple stages of audio processing applied - first by Nine's commercial suppliers, then by the NPC itself. Each of these processes acts as safety checks to ensure that the commercials broadcast are compliant with OP 48.

14. As well as ensuring all commercials comply with OP 48, the relative audio level between commercials and program content is normalised for transmission using continuous linear audio processing, in accordance with OP 59.

15. For the reasons set out above, Nine maintains the broadcast of advertisements and the relative audio loudness between program and commercials in its broadcasts are compliant with the Code.

[…]

1. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-1)
2. [http://www.freetv.com.au/content\_common/pg-cad-operational-practices.seo](http://www.freetv.com.au/content_common/pg-cad-operational-practices.seo%20%2C%20accessed%201%20November%202018.) [↑](#footnote-ref-2)
3. [http://www.freetv.com.au/content\_common/pg-cad-operational-practices.seo](http://www.freetv.com.au/content_common/pg-cad-operational-practices.seo%20%2C%20accessed%201%20November%202018.) [↑](#footnote-ref-3)
4. <http://www.freetv.com.au/media/Engineering/Free_TV_OP59_Measurement_and_Managemnt_of_Loudness_for_TV_Broadcasting_Issue_3_July_2016.pdf> [↑](#footnote-ref-4)