Investigation report no. BI-659

| Summary |  |
| --- | --- |
| **Online content service provider** | Seven Network (Operations) Limited |
| **Service [type]** | 7plus |
| **Type of service** | Online content service (audio-visual) |
| **Live sporting event** | *NFL (National Football League - American Football: Seahawks vs Panthers)* |
| **Dates of stream** | 12 December 2022 |
| **Date finalised** | 13 June 2023 |
| **Relevant legislation** | *Broadcasting Services Act 1992* (the **BSA**)  *Broadcasting Services (Online Content Service Provider Rules) 2018* (the **Online Rules**) |
| **Findings** | Contravention of section 12 of the Online Rules and consequently, a contravention of subclause 25(1) of Schedule 8 to the BSA  No contravention of subsection 21(1) of the Online Rules |
| **Attachments** | **A** – relevant provisions |

Background

In February 2023, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the BSA into Seven Network (Operations) Limited’s (**Seven**) compliance with the Online Rules. The investigation concerns the live coverage of the NFL American Football game between the *Seattle Seahawks* and the *Carolina Panthers* (**NFL Game**)streamed on the 7plus online content service (**7plus**) on 12 December 2022.

The ACMA received a complaint alleging that a gambling advertisement was streamed during the third quarter of the NFL Game at 10:38 am (AEDT). The complainant was located in Sydney, NSW.

Assessment

An online content service provider must comply with the Online Rules.[[1]](#footnote-2) For the purposes of this investigation, Seven is an online content service provider.

The ACMA investigated Seven’s compliance with the Online Rules, as the online content service provider of the online content service was 7plus.[[2]](#footnote-3)

The ACMA investigated whether an advertisement shown during the NFL Game streamed on 7plus, was ‘gambling promotional content’,[[3]](#footnote-4) and if so, whether the advertisement was provided at a prohibited time, in contravention of section 12 of the Online Rules (**Issue 1**).

The ACMA also investigated whether Seven made records sufficient to enable the provider’s compliance with section 21 of the Online Rules to be readily ascertained (**Issue 2**).

Relevant provisions of the BSA and the Online Rules can be found at **Attachment A**.

Issue 1: Was gambling promotional content provided in conjunction with live coverage of a sporting event in contravention of restrictions in the Online Rules?

Finding

The ACMA finds that Seven contravened section 12 of the Online Rules and, as a consequence, Seven contravened subclause 25(1) of Schedule 8 to the BSA.

Reasons

The ACMA has reviewed submissions from Seven, the audio-visual record of the advertisement and records relating to the NFL Game.

To assess compliance with the prohibition on gambling promotional content during live coverage of sporting events in section 12 of the Online Rules, the ACMA asks the following questions:

1. Did the content fall within the definition of ‘gambling promotional content’?

If yes, then

1. What were the relevant restrictions that applied to the live coverage of the sporting event?
2. Was gambling promotional content shown at prohibited times during live coverage of the sporting event?

**Did the content fall within the definition of ‘gambling promotional content’?**

'Gambling promotional content’ means advertising, sponsorship or promotional content that relates to a gambling service.[[4]](#footnote-5) For the purpose of Schedule 8, ‘gambling service’ includes a service for the placing, making, receiving or acceptance of bets.[[5]](#footnote-6)

Seven provided the audio-visual record of a [Wagering company] advertisement that was streamed during live coverage of the NFL Game on 7plus. The advertisement provided by the [Wagering company] was for a service for the placing of bets.

The ACMA considers that the [Wagering company] advertisement related to a gambling service and therefore met the definition of ‘gambling promotional content’.

**What were the relevant restrictions that applied to the live coverage of the sporting event?**

Section 12 of the Online Rules provides that:

An online content service provider must not provide gambling promotional content on an online content service in conjunction with live coverage of a sporting event in the period beginning at 5:00 am and ending at 8:30 pm.

Subclause 21(1) of Schedule 8 to the BSA states that gambling promotional content is provided *in conjunction* with live coverage of a sporting event if the content is provided on the service during the period between 5 minutes before the scheduled start of the sporting event and 5 minutes after the sporting event has concluded.[[6]](#footnote-7)

**Was gambling promotional content shown at prohibited times during live coverage of the sporting event?**

The live coverage of the NFL Game commenced at 8:25 am AEDT and concluded at approximately 11:25 am AEDT. The game comprised of four 15-minute quarters (interspersed with numerous ‘time-outs’), including a 12-minute break at half-time and 2-minute breaks at the end of the first and third quarters.

Seven submitted to the ACMA that gambling promotional content was streamed on 7plus at approximately 10:38 am AEDT to a small number of end-users.

The ACMA accepts Seven’s admission and notes that it is consistent with the complainant’s allegation that a gambling advertisement was shown during the third quarter of the NFL Game. Seven stated that the gambling advertisement was showndue to an inadvertent human error and that it was an isolated event.

Accordingly, the ACMA finds that gambling promotional content was provided on 7plus in conjunction with live coverage of a sporting event between 5:00 am and 8:30 pm, in contravention of section 12 of the Online Rules.

**Contravention of subclause 25(1) of Schedule 8**

Subclause 25(1) of Schedule 8 to the BSA provides that an online content service provider must not contravene the Online Rules. The ACMA finds that Seven has contravened section 12 of the Online Rules and therefore Seven has contravened subclause 25(1) of Schedule 8 to the BSA.

Issue 2: Did the online content service provider make records sufficient to enable the provider’s compliance with the Online Rules to be readily ascertained?

Finding

The ACMA finds that Seven did not contravene subsection 21(1) of the Online Rules.

Reasons

Under subsection 21(1) of the Online Rules, Seven is required to make records sufficient to enable its compliance with the Online Rules to be readily ascertained, including ‘without limitation’:

1. written records of the date and duration of the content stream of the live coverage of the sporting event and the location of the relevant end-users where known; and
2. audio or audio‑visual records, as the case may be, of the stream of the live coverage of the sporting event.

Seven provided the following records and statements that are relevant to compliance with subsection 21(1) of the Online Rules:

* a copy of the relevant [Wagering company] advertisement transmitted to some end-users during the NFL Game
* the audio-visual recording of the NFL Game, noting that it could not provide ‘a copy without advertisement breaks’ because it retained the broadcast version:

*[…] the 7plus stream of the Game was a direct simulcast from 7mate. This means that, other than the content within the advertising breaks, exactly the same version was streamed/broadcast and therefore Seven only maintains a record of one version (in this case, the broadcast version).*

* Information about the number of end-users that were exposed to the [Wagering company] advertisement during the NFL Game.
* Information about the number of impressions of the [Wagering company] advertisement.

The ACMA notes that Seven’s records were sufficient to ascertain that there had been a contravention of section 12 of the Online Rules and the extent of the contravention.

The ACMA considers that the record keeping should include documenting of the content that was provided to particular end-users, which is usually the complainant.

In this matter, however, the relevant complainant was anonymous and did not provide their 7plus log-in details. It was therefore not possible to test whether Seven was able to ascertain whether this particular end-user was provided with gambling promotional content during the live coverage of the NFL game.

The ACMA considers that, in these circumstances, Seven did make records sufficient to enable the provider’s compliance with the Online Rules to be readily ascertained. This included producing records to show the approximate number of end-users and the exact number of advertising impressions that were served to end-users during the NFL Game, in contravention of the Online Rules.

Accordingly, the ACMA finds that Seven did not contravene subsection 21(1) of the Online Rules.

Attachment A

Relevant provisions

Schedule 8 to the *Broadcasting Services Act 1992*

**2 Definitions**

**gambling promotional content** means:

1. advertising content; or
2. sponsorship content; or
3. promotional content;

that relates to a gambling service. […]

**online content service** has the meaning given by clause 3.

**online content service provider** means a person who provides an online content service.

Note:          See clause 6.

**3 Online content service**

1. For the purposes of this Schedule, online content service means:

(a)  a service that delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of an internet carriage service; or

(b)  a service that allows end‑users to access content using an internet carriage service;

where the service:

(c)  is provided to the public (whether on payment of a fee or otherwise); and

(d)  has a geographical link to Australia;

but does not include a service to the extent to which it is:

(e)  an exempt online simulcast service; or

[…]

**4 Exempt online simulcast service**

1. For the purposes of this Schedule, exempt online simulcast service means a service, or a part of a service, that is provided to end‑users using an internet carriage service, and that:

(a)  does no more than provide a stream of content that is identical to the stream of programs transmitted on:

(i)  a commercial television broadcasting service provided under a commercial television broadcasting licence; or

(ii)  a commercial radio broadcasting service provided under a commercial radio broadcasting licence; or

(iii)  a subscription television broadcasting service provided under a subscription television broadcasting licence; or

(iv)  a subscription radio narrowcasting service; or

(v)  a subscription television narrowcasting service; or

(vi)  a broadcasting service provided by the Special Broadcasting Service Corporation; and

(b)  provides that stream of content simultaneously, or almost simultaneously, with the transmission of that stream of programs.

1. For the purposes of subclause (1), in determining whether a stream of content is identical to a stream of programs, disregard any differences that are attributable to the technical characteristics of the provision or transmission (for example, video resolution or sound quality).
2. For the purposes of subclause (1), in determining whether a stream of content is identical to a stream of programs, disregard the presence or absence of:

(a)  a watermark‑type logo; or

(b)  a watermark‑type insignia;

that is not gambling promotional content. […]

**6  Online content service provider**

(1)  For the purposes of this Schedule, a person does not provide an online content service merely because the person supplies an internet carriage service that enables content to be delivered or accessed.

(2)  For the purposes of this Schedule, a person does not provide an online content service merely because the person provides a billing service, or a fee collection service, in relation to an online content service.

[…]

**18 Gambling service**

For the purposes of this Schedule, gambling service means:

(a) a service for the placing, making, receiving or acceptance of bets; or

(b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets; or

(c) a service for the conduct of a lottery; or

(d) a service for the supply of lottery tickets; or

(e) a service for the conduct of a game, where:

(i) the game is played for money or anything else of value; and

(ii) the game is a game of chance or of mixed chance and skill; and

(iii) a customer of the service gives or agrees to give consideration to play or enter the game; or

(f) a gambling service (within the ordinary meaning of that expression) that is not covered by any of the above paragraphs.

**21 Gambling promotional content provided in conjunction with live coverage of a sporting event**

(1) For the purposes of this Schedule, gambling promotional content (other than a commentator betting odds promotion or a representative venue-based promotion) is provided on an online content service in conjunction with live coverage of a sporting event if, and only if, the content is provided on the service during the period:

(a) beginning 5 minutes before the scheduled start of the sporting event; and

(b) ending 5 minutes after the conclusion of the sporting event.

(2) However, if coverage of the sporting event is delayed, this clause has effect as if there were a corresponding delay to the period mentioned in subclause (1).

[…]

**25  Compliance with the online content service provider rules**

(1)  An online content service provider must not contravene the online content service provider rules.

[…]

*Broadcasting Services (Online Content Service Provider Rules) 2018*

**12 Prohibition of gambling promotional content (other than a commentator betting odds promotion or a representative venue-based promotion)**

An online content service provider must not provide gambling promotional content on an online content service in conjunction with live coverage of a sporting event in the period beginning at 5:00 am and ending at 8:30 pm.

Note 1: Gambling promotional content (other than a commentator betting odds promotion or a representative venue-based promotion) is provided on an online content service in conjunction with live coverage of a sporting event if, and only if, the content is provided on the service during the period:

(a)     beginning 5 minutes before the scheduled start of the sporting event; and

(b)    ending 5 minutes after the conclusion of the sporting event. (See subclause 21(1) of Schedule 8 to the BSA.)

Note 2:    For the avoidance of doubt, promotion of odds is a kind of gambling promotional content to which this section applies. Section 11 deals with commentator betting odds promotions and representative venue-based promotions.

[…]

**21               Record of placement of gambling promotional material to be kept**

1. An online content service provider who provides gambling promotional content on an online content service in conjunction with live coverage of a sporting event must make records sufficient to enable the provider’s compliance with these rules to be readily ascertained, including without limitation:
2. written records of the date and duration of the content stream of the live coverage of the sporting event and the location of the relevant end-users where known; and
3. audio or audio‑visual records, as the case may be, of the stream of the live coverage of the sporting event.
4. A written record, made in accordance with paragraph (1)(a), must be retained in the online content service provider’s custody for at least 6 months after the day the live coverage of the sporting event to which the record relates was provided on the online content service.
5. An audio or audio‑visual record, made in accordance with paragraph (1)(b),  must be retained in the online content service provider’s custody:
6. for at least 6 weeks after the day the live coverage of the sporting event to which the record relates was provided on the online content service; or
7. if, before the end of those 6 weeks, the provider becomes aware that a complaint has been made about compliance with these rules, in respect of that sporting event—for at least 90 days after the day the live coverage of the sporting event was provided.

1. See clause 25 of Schedule 8 to the BSA. [↑](#footnote-ref-2)
2. As defined in section 2 of Schedule 8 of the BSA. [↑](#footnote-ref-3)
3. As defined in clause 2 of Schedule 8 to the BSA. [↑](#footnote-ref-4)
4. See clause 2 of Schedule 8. [↑](#footnote-ref-5)
5. ‘Gambling service’ is defined in clause 18 of Schedule 8. [↑](#footnote-ref-6)
6. See also note 1 after section 12 of the Online Rules. [↑](#footnote-ref-7)