Foreign content in TV ads

Martin O'Shannessy discusses the new foreign content restrictions for television ads

and argues that while the reforms are a step forward there are still problems

The Australian Broadcasting Tribunal will shortly release a final draft of a standard to manage the use of imported footage in Australian advertisements.

The standard will almost certainly be based on total advertising time transmitted by broadcasting licensees rather than the existing 'per advertisement' restriction.

The first round in the debate over whether the Australian television commercial production sector should be protected occurred in 1984. It was then that the Sydney agency of Saatchi & Saatchi mounted a legal challenge to the Australian Broadcasting Tribunal's power to make the standard which effectively banned most foreign advertisements.

In terms of total years and effort devoted to the inquiry, the foreign content issue rivals even the Industry Assistance Commission's (IAC) involvement in steel industry protection. Major ad industry magazines have even created special logotypes which accompany each weekly instalment of the debate. Those logos are about to become redundant.

New system

The fundamental difference between what is now proposed and the existing system is that the new standard will require licensees to monitor and possibly police a quota based on 20 per cent of the total advertising time transmitted by the licensee in a year.

In the past, no such requirement was placed on the licensee as Television Programme Standards (TPS) 18, 19 and 20 set up restrictions on all advertisements that prohibited the broadcast of ads that had more than 20 per cent imported footage and made exceptions for some types of advertisements with more.

Now advertisements that are wholly foreign will be able to gain clearance by the Federation of Australian Commercial Television Stations (FACTS) but the individual licensee's ability to show these ads will depend upon the overall amount of air-time devoted to imported footage.

To parallel this fundamental change, there has been a move away from the distinction between advertisements on the basis of their product or eventual use.

In the past unpaid community service announcements, ads for overseas film videos, music recordings and live performances were all exempted to a greater or lesser degree.

Archival footage related to particular products also had an exemption and test market advertisements could be fully imported but only used under very restrictive conditions. The new standard provides a blanket exemption for most of these types of footage, neither counting them as Australian or foreign.

The distinctions made between different footage types (archival, animation and part works) has been removed and a set of qualitative definitions have been developed so that whole advertisement productions may be classed as local or foreign on the basis of majority compliance with a set of production criteria.

As a result, flexibility in compliance with the requirements for being Australian as well as the opportunity to be foreign where needs dictate have been provided by the most recent draft.

In practice

Provided industry concerns over the actual wording of the recent draft are met, the final standard should see that the majority of advertisements currently defined as Australian remain so.

If this is the case, best estimates of likely demand for the screening of imported advertisements indicate that no licensee should reach the point where 20 per cent or more of their total advertising time is devoted to imported footage.

Clearly this is the most desirable outcome as licensees would feel that the system had failed if faced with the impossible decision of rejecting bookings on the basis of having exceeded the 20 per cent quota for foreign ads.

The treatment of advertisements produced by New Zealanders remains a problem.

The latest draft standard allows advertisements produced in New Zealand to be treated as though they had been produced in Australia but does not extend the allowance to ads produced by New Zealanders in other parts of the world.

This has generated strong responses from New Zealand industry bodies and the Ministry of External Relations and Trade.

Review

The start date envisaged by the Tribunal is January 1, 1992. Many licensees say that they will be unable to comply with the standard by this time as they face severe management upheavals as regional broadcaster are aggregated into larger licence areas. Metropolitan licensees, on the other hand, believe that they will be able to meet the proposed start date.

The definitions of what is an Australian ad remained a problem in the last draft as advertisers were concerned that current practices in the use of music and images should not be outlawed by a standard which ostensibly sets out to improve flexibility.

This concern gives rise to the qualifications that must be placed on any assessment of the practical impacts of the standard made in this article.

The Tribunal plans to review the practical operation of the standard after 12 months of operation. This process should provide the parties directly affected with the opportunity to seek changes that will ease any problems that crop up in getting the new system underway.

Advertisers, licensees and agencies have all based their responses to the latest draft on the assumption that a true and effective review will take place.

Fundamental changes to the system of managing foreign content have been made. There is also an abiding uncertainty created by the quota approach adopted by the Tribunal.

These factors mean that the opportunity to revisit the decision and improve on it as time goes by will be the only way of ensuring smooth functioning of the advertising process in the future.

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