



ANNUAL REPORT: APRIL 2002 TO MAY 2003

INTRODUCTION

1.

Both National and International circumstances have had a telling impact on the work of the Commission during the current year. The Middle-east conflict led to several complaints emanating from South African supporters of the two sides involved in the conflict. The war in Afghanistan also led to some complaints, but in this case the general impact on our work was less serious. The Broadcasting Amendment Act 2002 granted the Independent Communications Authority of South Africa the authority to make regulations which repealed the Broadcasting Code and replaced it with what has become known as the ICASA Code. This Commission is bound by this Code and, as from 7th March 2003, all broadcasters that fall under the jurisdiction of this Commission (approximately 50 in number) have been subject to the new Code.

2.

After the Constitutional Court decided in April 2002 that the Broadcasting Code was too wide in its prohibition relating to material that is harmful to relations between sections of the population, several judgments of this Commission were published in

the light of the new criteria. The criterion laid down by the Constitutional Court is that the old provision should be limited to material that makes propaganda for war, incites to violence, and also material that amounts to the advocacy of hatred based on race, ethnicity, gender or religion, and which constitutes incitement to cause harm.

Thereafter, the first complaint that faced this Commission was a song written by a well known South African songwriter, Mbongeni Ngema. The Commission held that the song, which severely criticised Indians involved in commerce in Durban, was of such a nature that it amounted to the advocacy of hatred based on race, which incited to harm. The Tribunal, which dealt with the complaint from the Human Rights Commission on this matter, based its decision on the sweeping generalisation that is to be found in the song and the direct accessibility of the song via the airwaves. The Tribunal held that the harm which was likely to result from the song was especially to be found in the risk which it posed to the right to security of Indian families living in Durban. It was, according to the Tribunal, irrelevant whether the song amounted to a call to arms. The true question was whether it instilled substantial fear in the minds of the minority Indian community, and in that manner also attacked their dignity. The Tribunal found in favour of the SABC insofar as it held that since the song was broadcast as part of a news programme on this matter, the documentary nature of the programme exempted the songs broadcast in that instance.

When Radio Islam broadcast opinions of a particularly threatening nature that were expressed by a visiting scholar against Jews, a Tribunal of the Commission once again

held this to be hate speech based on race.

However, when a presenter on East Coast Radio made offensive remarks about the Sri Lankan cricket team after it had rejoiced at drawing with the South African team (which effectively excluded South Africa from further participation in the World Cup), it was held that the scathing remarks were in especially questionable taste, but that they were not based on negative attitudes regarding race, ethnicity or gender. The remarks were directed at the team as such, and no wider implication of race or ethnicity was clearly apparent.

HATE SPEECH AND RELIGION

3.

A subject on which views have differed quite dramatically during the 10 years of the existence of the BCCSA, has been the question as to whether the taking in vain of the Lord's name amounts to a contravention of the Broadcasting Code. The general approach of the Commission has been that where this kind of language forms part of a fictional work, and where it is directed at adult listeners or viewers, the taking in vain of the Lord's Name does not amount to a contravention of the Code. In order to address sensitivities in this area the Commission has, however, held that during children's listening or viewing time, language of this nature, as well as coarse language, should be excised by a broadcaster. Furthermore, during family time, such language should be excised as far as is practically possible. After the watershed, however (20:00 for M-Net and 21:00 for the SABC), on a sliding scale, no cuts would generally be necessary. The solution, according to the policy of the

Commission and workshops with the television channels, is that classification and age restriction, as well as verbal warning before a broadcast, would usually suffice. Parents should be made aware of the fact by the broadcasters that 21:00 is the watershed: a watershed which indicates that more controversial material might be screened after it, and that the material could include what is usually, in lay terms, termed to be blasphemous material.

The Constitutional Court has, in its April 2002 judgment, also brought more clarity to this controversial area: only when religiously controversial material amounts to the advocacy of hatred based on religion that constitutes incitement to cause harm, will the Broadcasting Code be applicable. This criterion will not have very much effect on the existing policy of the Commission. The Commission has, over the years, held that blasphemy has a limited juridical meaning, and that before blasphemy can be found to have been present in the programme, it must have amounted to a scathing attack against God. Of course, all material must be judged within context.

Although a tolerant approach has been adopted with regard to the inclusion of the taking in vain of the Lord's name in fictional works broadcast after the watershed, the Commission has held that it expects *presenters* not to use such language. This is especially so when the taking of the name in vain takes the form of "Jesus Christ" or "Christ".

THE CONTROVERSY ABOUT BALANCE

4.

Although the Broadcasting Code allows broadcasters to have a point of view, it also

requires that broadcasters, when dealing with matters of public importance, should be fair by also broadcasting views which do not accord with that broadcaster's view.

A matter which has become quite acute during the past 14 months, has been whether balance is also required when matters of importance relating to foreign countries are broadcast here. The general approach of this Commission has been that the mere fact that a foreign incident is reported on does not make it of public importance for South Africa. The Commission clearly distinguishes between that which is interesting and that which is legally of public importance. The rule that balance should be present in programmes of public importance is primarily directed at the South African situation. It is also, from a practical point of view, almost impossible to afford listeners and viewers a balanced rendition of events in a foreign country.

Accordingly, when M-Net broadcast a film on the Middle-east crisis, and the film showed certain sympathies towards the Palestinian situation, it was held by the Commission that balance was not required in this instance. In another instance, however, when John Pilger's film *Palestine is still the issue* was broadcast by e-tv, it was held that, since the film was introduced into a news commentary programme (*Third degree*), balance was required. The Tribunal, which dealt with several complaints against the film from the Jewish community, held that balance had been provided in the matter as a whole by means of a debate held between Mr Ronny Kasrils and a delegate from the Jewish Board of Deputies.

When a complaint was received from local South Africans that a news programme on the war in Afghanistan did not give a balanced picture of the Taliban cause, it was held that the film should be regarded as a "war film" and that, in any case, balance was not required in such a film, which dealt with a foreign issue.

INDECENCY AND OBSCENITY

5.

In pre-Constitutional times, many works were prohibited as a result of their having been judged indecent or obscene. Attempts at defining the words "indecent" and "obscene" were not successful. Ultimately, especially in the 1980's, a solution was found in the imposition of age restrictions. When it became clear that a new Constitution would be introduced in 1994, the last three years before the adoption of the new Constitution saw a substantial number of soft pornography publications being published in South Africa. The New Films and Publications Act 1996 advised Government that such publications be sold from licensed premises, and this solution to the matter seems to have been reasonably successful.

6.

In 1996 the Constitutional Court ruled that the words "indecent" or "obscene" in the Indecent or Obscene Photographic Matter Act 1967 were constitutionally invalid as a result of their vagueness and their over-breadth of meaning, and the fact that they would also have related to works of artistic importance.

Nevertheless, the Broadcasting Code continued to contain these words. The

Commission has, however - especially since 1998 - steered a course clear of applying these words. Problematic areas remain coarse language, especially on radio during the early morning hours when children are being driven to school.

In 2002 the Tribunal of this Commission held that the words "indecent" or "obscene" should be read down to what is prohibited in Schedule 6 of the Films and Publications Act. The material that is brought under Schedule 6 of the said Act generally amounts to child pornography, bestiality, explicit sex combined with violence, and extreme instances of violence and the effects thereof. In the light of this approach the Commission held that a programme on so-called "swinging" broadcast by e-tv after 8-o'clock in the evening, did not amount to indecent or obscene material. It was also held that the material was not so explicit that it should only have been broadcast after the watershed.

The matter has now been clarified by the new ICASA Broadcasting Code: very definite protection is given to children insofar as violence, coarse language and the like are concerned. However, once the watershed hour has been reached, the only limitation lies within Schedule 6 of the Films and Publications Act: child pornography and other material referred to above. Age restrictions and advisories are crucial, and must be adhered to according to the Code.

7.

The Commission has, through its website, maintained contact with the public. Constant contact with the Canadian, English and German authorities has also been

of particular importance for the Commission. The Commission was invited to contribute to an international conference in Benin during May; since the notice given was rather short, however, we could not attend. Nevertheless, we sent them a paper in French, which drew very favourable comment from the Conference.

A workshop for radio broadcasters and other workshops with particular radio stations were also held. We are grateful to Cape Talk for having organised such a workshop in Cape Town where the Commission's chair had the opportunity to address radio broadcasters. It was with great sadness that the Commissioners learnt of the untimely death in a motorcar accident, of the very talented Lucia Venter, who had organised a workshop for us in Cape Town.

CERTIFICATION OF COMPLIANCE

8.

This Commission can certify that all the broadcasters which are subject to its jurisdiction and listed hereunder, have complied with all the directives of this Commission, and have given their full support to the procedures before the Commission. The National Association of Broadcasters has also given good support to the Commission in funding its reasonable costs under the contract which we have with it.

GENERAL COMMENT

9.

Although it is not the task of this Commission to express an opinion on the standard of

broadcasting in South Africa, it has in the past been criticised in the press for not having done so. Accordingly, we wish to make one observation: we have found that the broadcasters have illustrated particular independence during this year. In fact, we have found a growing tendency towards independence throughout the past 10 years. A complaint that the SABC failed to show independence in omitting to report that the Scorpions were investigating the involvement of the Deputy President in what has become known as the Arms Scandal, was rejected by the Commission. It was held that the decision whether to broadcast or not falls squarely within the realm of the particular broadcaster. However, where a chain of events had been reported on in the past, and those events were of public importance, the omission to publish a subsequent event in that chain, could be regarded as a contravention of the Code. In **Rogers v SABC 05./2003** however, it was held that the fact that the SABC did not report such an investigation when a weekly newspaper had reported thereon, did not amount to such an omission. In any case, the SABC published the item two weeks later - an item which included a response by the President himself. The judgment of the Tribunal accentuates the fact that many people simply accept that when a person is charged or investigated, such a person is already guilty. This is so in spite of the Constitutional presumption that a person is innocent until proven guilty before a court of law. The President's comment ensured that the said presumption remained intact. This was broadcast, and gave the necessary balance to the matter.

CONCLUSION

10.

I wish to thank my colleagues for the splendid co-operation which the office has received during the term reported on – a co-operation we have enjoyed in past years as well. Each person concerned leads a busy life, and we are grateful for the expertise they have provided to this Commission.

11.

The Registrar of the Commission, Mrs Martin, has, once again, rendered outstanding and professional service to the Commission. The Secretary, Ms D Mohamed, has been supportive of this work, and is also thanked for her splendid work.

We would also like to thank Ms Lara Kantor for the admirable manner in which she looked after the interests of this Commission in her capacity as the Executive Director of the National Association of Broadcasters. We also wish her everything of the best for the future in taking up her post of General Manager: Policy and Regulatory Affairs of the South African Broadcasting Corporation. We welcome Mr Johann Koster, who previously headed the Monitoring Department of the ICASA, as new Executive Director.

KOBUS VAN ROOYEN SC
CHAIRPERSON
7 June 2003

BCCSA SIGNATORIES AS AT MAY 2003

- ❖ Association of Christian Broadcasters
- ❖ Abaqulusi Community Radio

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- ❖ Bush Radio - 14/08/01
 - ❖ Campus Bay FM (CBFM)
 - ❖ Can-I Community Radio
 - ❖ Cape Talk
 - ❖ Classic FM
 - ❖ East Coast Radio
 - ❖ e-tv
 - ❖ Fine Music Radio - 19/09/01
 - ❖ 94.7 Highveld Stereo
 - ❖ IFM 102.2
 - ❖ Jacaranda 94.2 FM
 - ❖ KayaFM
 - ❖ KFM
 - ❖ M-Net
 - ❖ Matie FM
 - ❖ OFM
 - ❖ P4 Radio Cape Town
 - ❖ Radio 702
 - ❖ Radio Lusofonia
 - ❖ Radio Algoa
 - ❖ Radio Alpha
 - ❖ Radio Islam
 - ❖ Radio Pulpit
 - ❖ Radio Puk
 - ❖ Radio Rippel
 - ❖ Radio Rosestad
 - ❖ Radio Pretoria 24/08/01
 - ❖ Radio Tuks
 - ❖ Rainbow Christian Community Radio - 25/08/01
 - ❖ The South African Broadcasting Corporation
 - ◆ Radio Sunshine Ligwalagwala FM
 - ◆ Mughana Lonen FM Radio Metro
 - ◆ Ukhozi FM CKI Stereo
 - ◆ Good Hope FM Bop Broadcasting
 - ◆ Motsweding FM Radio 2000
 - ◆ RadioSonderGrense PhalaPhala FM
 - ◆ 5FM SAfm
 - ◆ Thobela FM Radio Lotus
 - ◆ Lesedi FM Ikwekwezi FM

- ◆ Umhlobo Wenene FM
 - ❖ Trinity Broadcasting Network
 - ❖ Vaal Community Radio
 - ❖ Voice of Wits
 - ❖ YFM
- SABC TV: 1, 2 & 3