Submission on
“Content Regulation in a Converged World”
Discussion Document

October 2015
Submission

1. This submission is made by ThinkTV on behalf of its members, Television New Zealand Limited and MediaWorks TV Limited. ThinkTV is an industry body responsible for representing the common interests of the major free-to-air television broadcasters in New Zealand.

Contact details for ThinkTV are:

Level 12, 19 Victoria Street West, Auckland Central
PO Box 1298, Shortland Street, Auckland 1140

This submission has been prepared by Rob Hoar, General Manager of ThinkTV, who can be reached at rob@thinktv.co.nz or via telephone on 09 280 3804.

2. ThinkTV wishes to make a submission on chapter 6: "Options for Advertising Restrictions".

We are strongly in support of option 4. That is, our members favour removing the current section 81 restrictions on the grounds that they unfairly constrain television broadcasters’ commercial opportunities, are out of date and do not create any legitimate gain for the public. In our view, these restrictions limit the public’s media choices and stifle competition within the advertising market.

Unfair Constraint on Television Broadcasters

3. Section 81 of the Broadcasting Act prohibits the broadcasting of advertisements during the following times:

   a. All day on Good Friday, Easter Sunday and Christmas Day
   b. Anzac Day from 6am to noon
   c. Every Sunday from 6am to noon

These restrictions apply to all television channels other than those channels that are brought in from another country with no change to their signal. A foreign news service such as BBC News or Al Jazeera may broadcast advertising, provided local advertising is not inserted into the programming.

4. The total length of time which is required to be free of advertising is approximately 300 hours per annum, per television channel. Around 60 television channels\(^1\) are affected by these restrictions.

During this time, most other media are permitted to continue their normal advertising patterns:

   a. Radio is prohibited from advertising on the three full-day prohibitions (Good Friday, Easter Sunday and Christmas Day), but is allowed to advertise on all Sunday mornings and Anzac Day morning.

\(^1\) New Zealand’s television landscape is very dynamic with the number of channels changing on an almost weekly basis. At the time of writing, there were 30 channels on the Sky platform that accept local advertising, plus a similar number of national and regional channels on Freeview.
b. Daily newspapers generally do not publish on Christmas Day or Good Friday, but that is a business decision they make for their own reasons; they are not restricted from publishing or presenting advertising on these days.

c. There are no advertising restrictions for online media, magazines, cinema, outdoor billboards or the distribution of flyers and other unaddressed mail.

5. Television competes with all other media for its share of the overall advertising market and to maintain its audience. Many free-to-air television stations rely almost entirely on advertising to sustain their businesses.

With annual television advertising revenue at $614 million\(^2\), down 30 per cent in real terms since its peak in 2005\(^3\), the opportunity to provide three more full days of advertising during two very busy retail periods could be significant. ThinkTV estimates the impact of the advertising ban over the Easter Weekend and Christmas Day to be in the order of $5.0 million to $6.5 million\(^4\).

The addition of Sunday mornings would also add revenue but, due to the smaller audiences, the annual gain is estimated at between $400k and $600k.

6. It is also worth considering the impact on advertisers of banning television advertising during two of the busiest retail periods of the year.

Television is New Zealand’s largest single advertising medium, typically attracting some 25 per cent of all advertising expenditure. It is also a very efficient way for advertisers to reach a mass audience. Television advertising historically has a cost-per-thousand (the costs to reach 1000 people) of 25 to 50 per cent than of magazines, newspapers and radio in New Zealand.

It is not unreasonable to conclude that removing 25 per cent of the advertising inventory significantly increases media placement costs for advertisers.

**Limited Public Benefit from Restrictions**

7. It has not been possible for us to clearly establish what the legislative rationale was for these restrictions.

The motivation was most likely a combination of religious deference and an alignment with the non-trading hours of the time. It is hard to imagine that religious deference did not play some part in the decision as the Shop Trading Hours Repeal Act 1990, which permitted trading on Sunday mornings, was working its way through Parliament at the same time so MPs would have been aware that the non-trading hours were to be relaxed.

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\(^3\) 2005 revenue = $666 million (source: ASA); average annual inflation rate over period = 2.3\% (source: RBNZ)

\(^4\) Calculated as annual advertising revenue of $614m divided by 365 days plus an estimated 30\% uplift to account for the heavy retail nature of Easter Weekend and the Boxing Day sales.
8. Whatever the rationale, we suggest that the restrictions cannot be justified in today’s media, business and cultural environments.

As noted above, the restrictions do not apply to the overwhelming majority of the media market, so they do not meaningfully reduce the overall exposure to advertising during the prohibited times. During commercial-free times, most broadcasters need to play multiple promotions for their other programmes during the ‘ad breaks’, to ensure they stay on schedule.

Anecdotally, we believe most viewers aren’t even aware of the restrictions.

Considering the pluralistic nature of modern New Zealand, it seems anachronistic to argue that television should remain advertising-free during these periods for religious reasons. It is hard to think of any other piece of legislation in which religious beliefs are used to justify similar restrictions.

9. There is a suggestion in the discussion document that the Sunday morning restrictions should be retained to provide commercial-free times for the scheduling of minority or special-interest programming. Ostensibly, the rationale is that if advertising were permitted on Sunday morning, many of these niche programmes subsidised by NZ on Air would be squeezed off the schedule.

There is no reason to believe that this would be the case.

With the ability to monetise these timeslots, broadcasters will finally have an incentive to promote and support these programmes, and to find advertisers interested in reaching their (often hard-to-reach) niche audiences. Indeed, it is reasonable to conclude that NZ on Air will get larger audiences for the programmes it funds if advertising is permitted.

Even if these programmes were squeezed from the Sunday morning schedule, they could still be made available via the broadcasters’ on-demand services. After all, the growing popularity of these online services is one of the reasons for this consultation.

### Impact on Programme Quality

10. It is worth noting that only a tiny proportion of the ‘reserved’ Sunday morning schedules of the 60 affected channels are actually filled by NZ on Air subsidised programmes. Several years the Foundation for Advertising Research undertook a comparative assessment of Sunday morning programming in several countries. It concluded that:

> "The overall impression gained when watching Sunday morning programmes in New Zealand is that they are broadcast at the least possible cost. The choice is very limited.

> New Zealand is alone in the world in having a ban on advertising on Sunday mornings. Clearly the viewers have suffered the consequences of that policy, which were undoubtedly unforeseen at the time. [...] If advertising was allowed on Sunday morning it would allow normal market forces to operate, as they do overseas, with a consequential improvement in the quality, breadth and diversity of programmes."
Conclusion

11. In areas where advertising restrictions do provide a meaningful benefit to the public – for example, restrictions on advertising to children – New Zealand’s television broadcasters have an excellent record of voluntary self-regulation.

There is no advertising in programmes aimed at preschool-aged children.

In school-age children’s programming, there are strict limits on the amount and frequency of advertisements, and restrictions on the type of products that may be advertised (for example, no ‘treat’ foods). Television is also the only medium that operates a standardised clearance and classification service to ensure industry-wide compliance with the Advertising Standards Authority’s Codes of Practice and to ensure advertisements appear in appropriate programming.

Even though other media have no such restrictions, we do not advocate for a change in these self-imposed restrictions. We take seriously our social responsibilities to our audience and in particular, the responsibility we have to our younger viewers.

There are no reasonable grounds to maintain the section 81 restrictions. Whatever their original intention, it is clear that they provide almost no benefit to the general public while requiring broadcasters to forgo millions of dollars of advertising sales. Indeed, there is a strong argument that these restrictions actually harm the public’s choices and impose costs on advertisers.

ThinkTV, and its predecessor The New Zealand Television Broadcasters’ Council, have long advocated for the repeal of Section 81 of the Broadcasting Act. We are heartened that this overdue reform is being considered.

Thank you for the opportunity to make this submission.

Rob Hoar
General Manager - ThinkTV

5 The Commercial Approvals Bureau views, approves and classifies approximately 15,000 television commercials per year before they can be broadcast on any New Zealand television station. See www.commercialapprovals.co.nz for more details.