



Response by the Trinidad & Tobago Publishers & Broadcasters Association (hereinafter referred to as “TTPBA”) to the proposed Broadcast Code Draft Consultation Document dated July 11<sup>th</sup> 2008 as formulated by the Telecommunications Authority of Trinidad & Tobago (hereinafter referred to as “the Authority.”)

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## **INTRODUCTION:**

This submission is in addition to all earlier written comments to the Telecommunication Authority of Trinidad and Tobago (hereinafter called “the Authority”) by the TTPBA on the proposed Broadcast Code and should there be any conflict or ambiguity with respect to previous submissions and the content of this document, the position of the TTPBA is that as stated in this submission.

Attached is the previous submission by the TTPBA marked as Appendix I.

It is acknowledged that broadcasters are in the category of entities within the control of the Authority and are governed by the provisions of the Telecommunications Act Chap. 47:31(hereinafter referred to as the “Act”) and that the print media and other entities involved in the dissemination of information to the public are outside of such control, regulation or governance. It would therefore be unfair to seek to control the voice of broadcasters with the full knowledge that the others arms of the press and media would not be subject to such regulations or control. And quite frankly, any attempt to control the printed press would be met with such great opposition that no steps would be made in such a dangerous direction. That

the Code is being proposed for broadcasters as part of a statutory requirement does not mean that the Code should be used as a law making device or a mechanism of unjustifiable control especially since it will only be relevant to one branch of the free press. The challenge therefore is to ensure that the Code sets standards for the industry without interfering with the guaranteed freedom of expression of thought and opinion within the operation.

The TTPBA wishes to re-iterate that a Broadcast Code must have as its main thrust the maintenance of a balance between the rights of concessionaires and the interests of the general public.

Further, the Code must reflect an appreciation of the value of cultural, racial and religious diversity and the need to safeguard and promote the diversity of the various expressions. Commendation is given to the Authority for the public consultations on the proposed Code and it is expected that the contributions made by citizens and the suggestions contained in this document will be given meaningful consideration.

It is in this regard that the TTPBA believes, as has been undertaken and achieved by other statutory regulatory bodies, that the Authority ought to implement a Code which sets out minimum criteria or standards that have to be met by each concessionaire and that focus be placed by the Authority on ensuring that each concessionaire, by virtue of its internal regulatory system, satisfies the Authority that it can, at the very least, achieve the minimum criteria/standards as set.

This has been the approach adopted by the Accreditation Council of Trinidad and Tobago (hereinafter referred to as "ACTT") in the regularization of the post secondary and tertiary level education and to date the ACTT has been undeniably successful in ensuring that each institution that offers programmes in this stated category of education has met or surpassed minimum standards to ensure excellence in the delivery of its programmes. The Authority may find it helpful to arrange a meeting with the Executive Director of the ACTT in order to benefit from the expertise of the ACTT in the regulation of the education sector. There will be much to be gained by the Authority should it agree to facilitate such a meeting.

The TTPBA suggests that the Rules **not** the Guidelines, as stated in this submission be treated as analogous to minimum standards that must be met

by each concessionaire and that the Authority establish a mechanism and system to ensure that each concessionaire complies with the general Rules in order to achieve the stated objectives. The draft guidelines which form part of the Code can be adjusted and/or amended and/or reviewed in order to assist concessionaires in understanding the rationale for the revised Rules and the methodology or mechanisms that the concessionaire must implement or establish in its internal daily operations in order to comply with the revised Rules of the Code.

For the avoidance of doubt, the proposed Code should not be used to make new laws or impose rules with guidelines that will have the effect of muzzling the press, compromising fundamental rights and freedoms and adversely affecting fair competition amongst concessionaires. The Draft Code if not reviewed and amended will be a draconian instrument that is unjustifiable in a democratic society that must respect freedom of the media.

It is suggested that the Code be redrafted to set the standards for acceptable conduct within the context of broadcasters and that the Rules of the Code with the amendments as submitted be used as the standards that must be met by each concessionaire.

Should this approach of a hybrid and workable form of self regulation and co-regulation be accepted, the TTPBA feels confident that the Code will achieve the noble objective of ensuring that high standards of conduct are established, upheld and promoted in the broadcast sector of the media. This would redound to the benefit of all stakeholders without any compromise of the fundamental principle and guaranteed constitutional right of freedom of the press.

### **Historical Background**

It is recognized that section 79 (1) of the Act makes provision for the Authority to promulgate a broadcasting code, which admittedly is long overdue in terms of the statutory time frame that had been set by the Act.

By virtue of section 23 of the Act, provision is made for a concession for a broadcasting service to require the concessionaire to adhere to the broadcasting code promulgated pursuant to the Act.

Critical to any discussion on the broadcasting code as proposed by the Authority is the intention of Parliament when the Act was passed in both Houses of Parliament in early 2001. During the debate several members of Parliament indicated their concerns with respect to the proposed broadcasting code, including and especially, whether the provisions of the code (which at the time was not yet drafted) would violate the constitutional rights of individuals as enshrined in sections 4 and 5 of the Constitution of the Republic of Trinidad & Tobago. It was appreciated by Parliamentarians that without the code being in a tangible form, it would be difficult to determine whether it violated the said sections of the Constitution.

Senator Christopher Thomas, during his contribution made on Tuesday March 13<sup>th</sup> 2001, articulated the position as follows-

**“I believe that where we are dealing with a Bill of this kind, we should not anticipate that a broadcasting code would be inconsistent with our fundamental rights of expression. If it turns out that the code does that, then that is a matter we can take up later on...”**

A further issue raised was whether the Code would provide any additional protection in light of existing laws, which laws already protect the public from excesses of the Press. It must be borne in mind that the citizenry is protected from the extremes of the Press although there is no press code.

With this in mind, one can understand and appreciate the point raised by Senator Martin Daly, as he then was, during the debate on the Telecommunications Bill when he stated on Tuesday April 3<sup>rd</sup> 2001-

**“Why do we have to have a broadcasting code at all? ... How will it add to the remedies that citizens could obtain by means of libel, defamation and other things?”**

In response to these matters raised by the Senators, the then Minister of Communications and Information Technology Honourable Ralph Maraj, who piloted the Bill stated on Tuesday April 10, 2001-

**“If it is found that the proposed broadcast code in any way violates sections 4 and 5 of the Constitution, a special majority would be required. These are the ameliorating factors that are in the Bill but, having said that, let me say again that I understand the concerns about the promulgation of the broadcast code. It could be a very dangerous**

**weapon against freedom of the press, for example, if it is so crafted and if it is so intended, and I have very strong views on that... Freedom to me is much more important than power, and that is the principle by which I have lived and still live, and will always live, and I do not want to have any broadcast code or any developmental journalism which, in any way, stifles freedom and can be used against the expression of the people while, at the same time – let me say that there are ameliorating mechanisms in place and the issues must be debated further and I have no doubt we will continue at the committee stage.”**

And the matter was addressed specifically at the Committee Stage with the Parliament agreeing that a specific provision would be made ensuring that the broadcasting code designed to regulate the practices of concessionaires of broadcasting services would not be in breach of sections 4 and 5 of the Constitution.

This assurance is statutorily reflected in section 3 (g) of the Act which states-

**s3. The objects of the Act are to establish conditions for –  
(g) “To regulate broadcasting services consistently with the existing constitutional rights and freedoms contained in sections 4 and 5 of the Constitution.”**

Anything therefore, in the proposed broadcasting code that is in violation of the Constitution would be automatically declared null and void and such provisions would also be in direct violation of the guarantee given in the Act. Thus it would be a grave embarrassment for any regulatory body to move forward with rules and/or guidelines in a Code that are in clear violation of the Act and the Constitution.

### **Breaches of Constitution**

There are specific provisions of the Code, which are in clear violation of the rights enshrined in the Constitution. Each rule with its specific provisions must be tested against s 4 and s 5 of the Constitution to ensure that there is no violation. Suffice to say that the Authority should review each provision, clause by clause, to remove or revise the clauses that are in clear breach. TTPBA wishes to assure the Authority that it is willing and able to provide particulars with respect to this point but would be grateful if some indication

could be given by the Authority whether it has considered this particular matter and/or received legal advice on the subject. In the true spirit of academic camaraderie and in the interest of time TTPBA is confident that the Authority would not consider it presumptuous of TTPBA to have this matter discussed and addressed comprehensively amongst the legal counsel of the Authority and the TTPBA, **before** the Code is laid in Parliament for debate.

A copy of s.4 and s.5 of the Constitution are attached as Appendix II.

### **Approach to Regularization**

There is no objection with the principle of regularization however, the process must be one that is internally driven by the concessionaire and appropriately monitored and approved by the Authority. It would be very instructive if the Authority indicated the process that would be used to ensure compliance with the proposed Code by the concessionaire over and above the reactive regulation approach as contemplated in the proposed Code. The ‘complaint and cure’ procedure will not be an efficient mechanism for ensuring compliance and lends itself to abuse and allegations of inconsistency on the part of the Authority.

Of even greater benefit, would be workshops organized by the Authority with the specific purpose of addressing matters raised in the proposed Code and providing meaningful working and practical guidelines to the concessionaries, by way of examples, as what might or will be considered a breach of the Code. That this has not yet been done is of great concern because even with the guidelines provided in the Code, some concepts remain nebulous at the very least. Once again, mention must be made of the ACTT, which has been able, through comprehensive and regular workshops with stakeholders, to ensure compliance with its standards for regularization.

TTPBA respectfully submits that the Code ought not to be a recital of restrictive provisions but rather an articulation of stated objectives and standards, which must, at the very least, be achieved by each concessionaire in the operation of its business.

There is, therefore, no objection in the main part to some of the objectives as recited in the Draft Broadcasting Code, however, it must be stated that in

some instances the objectives as currently crafted must be amended and in other cases, wholly removed from the proposed Code.

## **RECOMMENDATIONS:**

TTPBA respectfully suggests that the Rules and Objectives be amended or revised as indicated below:

### **1. Protecting children and young persons**

**Objective: To ensure that children and young persons are neither harmed nor misled by the transmission of inappropriate and/or inaccurate material.**

*TTPBA Position: - Agrees with Objective as stated*

#### **Rationale:**

There is nothing objectionable in seeking to protect a specific group of the population, in this case persons under the age of fourteen (14) years, especially in light of current circumstances, which indicate that this group is particularly vulnerable to the criminal element. In any event, every reasonable society would readily accept that all must be done to protect the impressionable minds of young person from material, which would adversely affect their holistic development. There are laws that deal specifically with the protection of young persons and we are informed that these laws will soon be amended to provide stiffer penalties for existing offences and to create new offences as it relates to children. Concessionaires, like natural persons, are subject to the laws of the land and therefore would not be exempt from liability or culpability should they violate the law.

### **2. Harm and Offence**

**Objective: To ensure that standards are applied to provide adequate protection for listeners and viewers against harmful or offensive material.**

*TTPBA Position: - Rules and Objective to be deleted entirely.*

#### **Rationale:**

Giving offence is not only acceptable but also necessary in a healthy democratic society because sometimes it is necessary to give offence to

protect what really matters. And it is in multi racial, multi ethnic Trinidad and Tobago that giving offence has meaning for it is in such a plural society that conflicting viewpoints with vigorous public debate is required in order for progressive movements for change to flourish and for each individual to be given the information to uncover the truth without having the Authority impose censorship via the broadcast code.

A full discussion of this Rule is attached as Appendix III.

### 3. Crime

**Objective: To ensure that material likely to encourage or incite the commission of crime or to lead to disorder is not broadcast.**

*TPBA Position: - Delete the words “or to lead to disorder”*

#### **Rationale:**

Each concessionaire is bound by the laws of Trinidad and Tobago, which make it an offence to participate in the commission of a crime.

The word “disorder” is defined in the Guideline to Rule 3.1 as follows:-

“Disorder refers to acts that may lead to or provoke the commission of crime. This definition is already contemplated and included in the Objective and there is no need for repetition.

### 4. Race

**Objective: To ensure that programmes do not involve any abusive treatment of persons on the basis of the racial group to which they may belong and to treat all groups with due impartiality.**

*TPBA Position: - To ensure that programmes do not involve any abusive treatment of persons on the basis of the racial group to which they belong.*

*Delete the word “may” and the words “and to treat all groups with due impartiality.”*

**Rationale:**

Impartiality is achieved from the expression of a plurality of viewpoints. Impartiality in the given context cannot be achieved by legislation but rather by the Authority ensuring that there is a multiplicity of voices from which the public can choose.

What is required is respect for all racial groups and that principle is already encompassed in the Objective which seeks to prevent abrasive treatment based on race.

5. **News and Public Affairs**

**Objective: To ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality.**

*TPBA Position: - Delete the word “due” and the words “and presented with due impartiality.”*

**Revised Objective: To ensure that news, in whatever form, is reported with accuracy.**

**Rationale:**

This Objective and the provisions impact directly on freedom of thought and expression and arguably, freedom of the press.

Further, in its current form, especially Rule 5.2, this provision could adversely affect healthy and reasonable competitive advantage for a concessionaire. This would not be considered reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

6. **Elections**

**Objective: To ensure that citizens receive a sufficient range of information, views and opinions, as well as facts, so that they can make well-informed political decisions.**

*TPBA Position: - Remove Rule and Objective*

**Rationale:**

Broadcasters cannot be dealt with in isolation but as a multiplicity of broadcasters and other media voices because it matters not where the public get their information be it radio, television or press. The important thing is that they get it. The stated objective can be achieved without any provision in the Code.

**7. Fairness**

**Objective: To ensure that broadcasters avoid unjust or unfair treatment of individuals or organizations.**

*TPBA Position: - Remove Rule and Objective.*

**Rationale:**

This rule has a chilling effect on broadcast programming. Fairness is a subjective concept that is fluid and dynamic and depends on the particularity of person, time and circumstance.

If a concessionaire is forced to follow this stated edict, talk show programmes will have the consistency of baby food – soft, tasteless, with no spice and solids. Creativity would be effectively neutered. No one brought up in vibrant, exciting Trinidad and Tobago is going to accept such dull programming and there will be a mass exodus to cable television along with advertising revenue. This will be unfair to local broadcasters and will do nothing to boost the local entertainment industry. Any suggestion that this part of the proposed Code will result in a nice, well-mannered society which displays social grace and civil behaviour must be viewed as a deliberate attempt to disguise the real and dangerous effect of the provision which is the loss of freedom of speech. This violation of the Constitution is unjustifiable in a democratic society.

In any event, concessionaires are bound to operate within the law and to have a proper respect for the rights and freedoms of the individual.

## 8. Privacy

**Objective:** To ensure that broadcasters respect the privacy of individuals in programmes and in connection with obtaining material included in programmes.

*TTPBA Position:* - Remove Rule and Objective

### Rationale:

The Code is not about making law. In fact the provisions of the Code cannot go outside of existing laws including and especially the Constitution. Each concessionaire is bound by the law and must adhere to the provision of the Constitution including s.4 (c), which provides for the right of the individual to respect for his private and family life.

## 9. Right of Reply

**Objective:** To ensure that members of the public are able to correct inaccuracies or misleading information broadcast in relation to them or organizations to which they are affiliated.

*TTPBA Position:* This Rule ought to be divided into 2 sub rules, one dealing with the right of reply of a concessionaire against whom a complaint has been made and a separate rule dealing with the correction of an inaccuracy as broadcast by a concessionaire.

*The suggested review is as follows:*

### 9 (A) “Investigation of Complaint”

**Objective:** To ensure that the Concessionaire against whom the complaint has been made is informed promptly and with sufficient particularity of the complaint, and given an opportunity to meet with the complainant and the Authority in an attempt to resolve the complaint.

### 9 (B) “Correction of Inaccuracy”

**Objective:** Add the words as underlined below after the word “affiliated” as it appears in the present Objective to read–

**To ensure that members of the public are able to correct inaccuracies or misleading information broadcast in relation to them or organizations to which they are affiliated “provided that the Authority is satisfied that there is merit in the complaint.”**

10. **Information and Warnings**

**Objective: To ensure that viewers and listeners are given information and warnings about programming that contains any material that is capable of causing offence.**

*TPBA Position: - Revise Objective as follows-*

**To ensure that viewers and listeners are given information and discretionary warnings about programming that warrants such.**

**Rationale:**

The Objective in its present form calls for warnings to be given for programming that contains material capable of causing offence. However, it may be appropriate to give warnings for programming that may also be particularly graphic or sensitive. Thus the suggested redraft of the Objective imposes the exercise of discretion of the concessionaire in appropriate circumstances.

11. **Advertising and Sponsorship**

**Objective: To ensure that programming content and advertising are kept distinct so that members of the public are not confused; to ensure that advertising pressures do not compromise the integrity of information provided by the broadcaster; to prevent misleading information being given to the public; and to ensure that advertising does not cause unnecessary harm or offence.**

*TPBA Position: - Delete “and to ensure that advertising does not cause unnecessary harm or offence.”*

**Rationale:**

The phrase to be deleted is superfluous and thus unnecessary.

## 12. **Religion**

**Objective:** To ensure that programmes do not involve any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination; and that there is no exploitation of any susceptibilities of the audience for such programmes.

*TPBA Position: - Delete Rule and Objective*

### **Rationale:**

The Constitution in s4 (h) provides for freedom of conscience and religious belief and observance.

No concessionaire would be able to operate outside of existing laws including the Constitution. There should be nothing preventing a concessionaire from broadcasting material which may impact on a particular belief as long as the broadcast of such material is not contrary to any law.

## **CONCLUSION**

The TTPBA is confident that the recommendations made in this submission will be considered by the Authority and that an opportunity will be given for the TTPBA to provide further and better particulars on any matters raised in this submission to the Authority should it be deemed necessary. The proposed Code will have far reaching effects and all attempts should be made for amicable resolution of the provisions that appear to fly in the face of enshrined rights and guaranteed freedoms. It is hoped that this document will encourage all stakeholders to re-visit the proposed Code with a view of deleting the provisions as indicated and adopting the suggested hybrid approach for co-regulation of the industry.

## APPENDIX I

### TTPBA COMMENTS ON NATIONAL BROADCASTING CODE FOR THE REPUBLIC OF TRINIDAD AND TOBAGO – A CONSULTATIVE DOCUMENT BY THE TELECOMMUNICATIONS AUTHORITY OF TRINIDAD AND TOBAGO DATED JULY 11 2008

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#### Statement to TATT:

**Due to the very short time afforded the TTPBA to read the revised draft and formulate comments, we would like the Authority to note that this is not our final position on the Code. These are the views of the Executive only as we have not had time to share them with and receive comment from our general membership.**

#### COMMENTS

##### A. Purpose (Page 4)

*“... designed to enable the Telecommunications Authority... to balance the conflicting rights and interests of stakeholders while promoting acceptable standards...”*

This conflict also exists for the press but there is no press code.

**Radio, television and print are merely delivery vehicles and not the product.**

*“Society as a whole has an interest in the protection of national security, the prevention of crime and the maintenance of ethical and cultural standards.”*

**So what? What does this mean?**

##### B. Principles (Page 4)

*“...and the need to protect persons from harm or unnecessary offence.”*

Being offensive is not a crime. (See position paper on Offence and Hate)

### **C. Objectives (Page 4)**

*“To ensure that standards are applied to provide adequate protection for listeners and viewers against harmful or offensive material;”*

Same comment as above. The Code leaves much to interpretation.

### Objectives (Page 5)

*“to help citizens receive a sufficient range of information, views and opinions, as well as facts, so that they can make well-informed political decisions;”*

This should state, “if a broadcaster airs political programmes”.

*“To ensure that broadcasters avoid unjust or unfair treatment of individuals or organisations;”*

Question: If a broadcaster criticises the COP or asks “How did we allow a man like Panday to become Prime Minister?” would that be considered unjust or unfair? What is unfair? Who deems it so?

Note: the press can do the above.

*“To ensure that news content and advertising are kept distinct.. and to ensure that advertising does not cause unnecessary harm or offence;”*

Is giving offence a crime?

*“To ensure that programmes do not involve any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination and that there is no improper exploitation of any susceptibilities of the audience for such a programme.”*

“Abusive” – am I allowed to say that scientists believe that Creation as recorded in Genesis is total rot? (The person should be protected; not the belief.)

## D. SCOPE (Page 6)

***“The code speaks to... fairness in dealing with controversies, personal attacks, politics and religion.”***

Every effort must be made to put to rest the lingering notion that comment or opinion has to be fair or reasonable. We must give protection to ALL opinions no matter how outrageous, as long as they are based on fact.

We suggest that the Canada’s test of fairness be included in the codes. The test is as follows:

- If anyone in society can come to the same conclusion with the same facts, fair comment must be granted.
- The statement has to be based on fact
- The statement must be a comment and/or opinion
- Is it in the public interest?

Fairness would be required if we still had only 2 radio stations; not when we have 35.

## 2. Harm and Offence (Page 18)

***“2.1 Broadcasters shall ensure that their programming contains no gratuitously abusive or unduly discriminatory material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, or physical or mental disability.”***

It is not against the law to give offence.

There cannot be free speech when there is always the fear of giving offence. As has already been pointed out, there is a difference between discrimination and offence. Discrimination is against democracy; but if you accept offence as a crime you affect freedom of speech and begin to undermine democracy.

## 5. News and Public Affairs (Page 21)

***“5.2 News broadcasts should not be used to make editorial comments or for the purpose of promoting or downplaying either side of any matters of political or industrial controversy.”***

Can TATT then look at/listen to a news broadcast and determine that it was, in the way in which it was done, editorial comment?

***“5.4 Background to news, news analysis, and opinion, save in the case of political or special-interest opinion, must be based, as appropriate, on the most reliable scientific data, sound social concepts, and expert opinion.”***

This can undermine a broadcaster's right to protect its sources.

***“5.6 Significant errors in news should normally be acknowledged and quickly corrected on-air. If immediate correction is not possible, corrections shall be appropriately scheduled to reach the same audience which originally received this misinformation.”***

If the error occurred in the lead story on the 7:00 p.m. news on television, then the broadcaster must carry the correction in its lead story in order to reach the same audience? But the broadcaster may have another lead story that evening.

***“5.7 Provided that the producer and host(s) of talk shows and call-in programmes make clear to the audience, by appropriate means, that they are partial to a particular viewpoint, ideology, or have a particular political allegiance, such talk shows and call-in programmes shall be exempted from the requirement to be impartial and balanced.”***

If, for instance, the broadcaster invites say, Selwyn Ryan, to host a programme, as is sometimes done, he must state his political allegiance? The guest host might not want to do so.

The clause also implies that there is a need to be impartial and balanced. This is impossible to legislate and the closest one can come to a guarantee is

to make sure that there is a plurality of media voices, which will provide the public with several viewpoints.

## 6. Elections (Page 22)

***“6.1 For stations which have news content, or which carry news or current affairs, broadcasters shall ensure that the political parties and persons contesting local or general elections are offered a reasonable opportunity to have their views and opinions aired. What is “reasonable” in terms of time given and number of persons, shall be determined by editorial judgement.”***

Should include “for stations which carry political programmes or news”.

Is this free of charge to the political parties? It should be made clear that it is not or is left to the broadcaster to decide.

***“6.2 When hosting political discussions or debates involving partisan speakers, the broadcaster shall make clear throughout the programme the political nature of the programme and the specific partisan affiliations of the speakers.”***

Why do the speakers have to declare their partisan affiliations? A speaker may take a particular angle for purposes of the discussion/debate, why should he/she have to make a declaration?

## 8. Privacy – Practices (Page 25)

***“ii. When people are caught up in events in any place including a public place, which are covered by the news, broadcasters shall respect their right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later programmes that revisit those events.”***

How would this affect news coverage say of Carnival, or an event at the beach. Would that be warranted?

***“vii When filming or recording in institutions, organisations or other agencies, permission shall be obtained from the relevant authority or management, unless it is warranted to film or record without permission...”***

If a man is being beaten inside a police station, would it be warranted?

## 11. Advertising and sponsorship Page 28

***“11.3 Broadcasters shall ensure that there is no influence by advertisers or sponsors, or the perception of such influence, on the reporting of news or current affairs, which must be accurate, balanced, and objective.”***

Does this mean on a Health News segment, sponsored by say Glaxo Smithkline, cannot report that Glaxo has made a break through and now offers a drug that cures AIDS, even when there is scientific evidence to prove it?

***“11.5 Any advertisement which purports to offer educational courses must include a statement stating whether the courses have been duly accredited or not and whether the institution has been recognised or registered by the relevant authorities.”***

If I am offering a course on how to dress professionally does that course have to be accredited and do I have to be recognised or registered?

***“11.6 There shall be no advertising of alcohol and tobacco before the watershed or during children’s programmes.”***

We object to this clause.

***“11.8 Broadcasters shall take all reasonable steps to avoid broadcasting any advertising material or programme that makes use of any subliminal technique or device.”***

Would the broadcaster always know whether a subliminal technique has been used in an advertisement or programme?

## 12. Religion (Page 28)

***“12.3 Broadcasters shall ensure that religious programmes are not used to attach another race or religion. However, if a religious programme includes reasonable criticism of another race or religion, an opportunity must be given for a right of reply in the same time slot allotted for that programme.”***

Race is inadvertently included in this clause on Religion although Race and Religion have been separated elsewhere.

Also, there is concern about having to give an opportunity for right of reply every time a criticism of another religion is offered.

***“12.6 Religious programmes must not improperly exploit any susceptibilities of the audience.”***

Don't all religious programmes do this?

***“12.7 Religious programmes that contain claims that a living person or group has special powers or abilities, must treat such claims with due objectivity and must not broadcast such claims when significant numbers of children may be expected to be watching (in the case of television), or when children are likely to be listening (in the case of radio).”***

Does this mean that programmes showing Benny Hinn healing someone cannot be broadcast before the watershed? Or a radio talk show about someone being healed?

## D1. Compliance and Enforcement (Page 29-30)

***“1.3 ... The failure by a concessionaire to comply with the provisions of the Code may therefore be a material breach of the terms and conditions of a concession which:***

***i. is an offence pursuant to section... punishable on summary conviction by a fine of \$250,000 and imprisonment for up to five years”***

We find this very harsh.

***ii. is grounds for the termination or suspension of the concession by the Minister, acting on the recommendation of the Authority”***

The concern here is that there is no clear process for adjudicating breaches of the code. Would there be an arbitration panel and if so, whom would it comprise? It cannot be the Minister and TATT deciding if there are grounds for termination.

## 2. Complaints about Broadcasting Content (Page 31)

***“2.2 A person making a complaint is not required to provide their name or address...”***

Why should the Authority entertain anonymous complaints?

***“2.3 Where the complaint is in relation to the failure by the broadcaster to give a Right of Reply in an appropriate circumstance as set out in Clause 9, the Executive Director shall, without prejudice to the Authority’s consideration of the complaint and determination of any breach of the code, where he considers that a Right of Reply should properly have been given by the broadcaster, direct that the broadcaster give the complainant a Right of Reply at such time and in such manner as he may reasonably determine.”***

Having gone through the process as outlined in Clause 9, if a broadcaster determines that he need not give a right of reply and have given the

complainant reasons why in written form, the complainant then goes to the Authority, the Executive Director will then determine if a Right of Reply should be given?

***“3.1 The Authority may implement a system of monitoring content broadcast in order to determine compliance by broadcasters, independently of the receipt and handling of complaints.”***

Why should the Authority have the right to monitor broadcasters’ content outside of complaints received?

## 5. Sanctions for Breach of the Code (Page 31-33)

- There are no provisions in the document that allow for appeals to be made by the broadcaster.
- There is no provision for an arbitration panel and details of who will comprise such a panel. Is this included in the Telecommunications Act?
- Definition of terms
- Judgments – who will adjudicate? Is it a committee or just a person? Is it TATT or an independent panel?
- Can the Authority suspend a broadcaster’s licence while the matter is before the Courts?
- Will the Guidelines form part of the legal document? We think it should as they guide how the rules should be interpreted.

### Additional Comment on Race and Religion:

One must be able to prove that the offence was intentional and calculated to promote hatred on the basis of race or religion. This will get us past the problem of people finding offence in everything. Example, if someone were

to continually denigrate a particular person on a daily basis, then it may be possible to prove intent.

If one does not have to prove intent to promote hatred on the basis of race or religion then a broadcaster may be in Court every Monday morning, with the resulting effect that he would rather not deal with the topic at all, thereby limiting freedom of speech.

We therefore suggest that a safeguard of this nature be included under the clauses that deal with race and religion.

In our comments on the last draft code, the safeguard we recommended:

*"The TTPBA is of the view that religion is too important in the lives of too many people to be left unexamined. And like any other body of ideas there is no reason why ideas should not be criticised. We agree that programming, the intent of which is to stir up hatred, and that is threatening, must not be allowed, and the code should be carefully worded to make this distinction very clear."*

[www.ttparliament.org](http://www.ttparliament.org)

## LAWS OF TRINIDAD AND TOBAGO

### *The Constitution*

*L.R.O. 1/1980*

## THE RECOGNITION AND PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

### PART I

*Rights enshrined*

Recognition and

Declaration of rights and freedoms

**4.** It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely—

(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law;

(c) the right of the individual to respect for his private and family life;

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;

(e) the right to join political parties and to express political views;

- (f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;
- (g) freedom of movement;
- (h) freedom of conscience and religious belief and observance;
- (i) freedom of thought and expression;
- (j) freedom of association and assembly; and
- (k) freedom of the press.

Protection of  
rights and  
freedoms

**5.** (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.

(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not-

(a) authorise or effect the arbitrary detention, imprisonment or exile of any person;

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(b) impose or authorise the imposition of cruel and unusual treatment or punishment;

(c) deprive a person who has been arrested or detained-

(i) of the right to be informed promptly and with sufficient

particularity of the reason for his arrest or detention;

(ii) if the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;

(iii) of the right to be brought promptly before an appropriate judicial authority;

(iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;

(d) authorise a court, tribunal, commission, board Or other authority to compel a person to give evidence unless he is afforded protection against self incrimination and, where necessary to ensure such protection, the right to legal representation;

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations:

(f) deprive a person charged with a criminal offence of the right-

(i) to be presumed innocent until proved guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;

(ii) to a fair and public hearing by an independent and impartial tribunal; or

(iii) to reasonable bail without just cause;

(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a

party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak English; or  
(*h*) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

## APPENDIX III

### BROADCAST CODE COMMENTS JULY 2008

#### OFFENCE AND HATE

The question often asked of broadcasters is: “*Do you think you have the right to air programming that gives offence or foments hate in your audience?*” The public, if asked the question, will probably answer with a resounding “*No!*” That is not surprising because in a multi-racial, multi-religious society like Trinidad & Tobago, we have learnt that we must be conscious of each other’s sensibilities. The public’s answer, however, might be a qualified “no” instead of an outright “no” if it was explained to them what a serious erosion of their constitutional right of freedom of speech would result from their decision.

The right to freedom of speech is not absolute and the right is always subject to limitations, but these limitations should be the exception, and free expression, the rule. We already accept limitations on our freedom of speech, and these include, but are not limited to,

- Slander and libel
- Perjury
- Inciting violence
- Treason, etc.

Note, however, that these limitations are all clearly spelled out in law.

We have added the word ‘hate’ to offence in our headline because we are of the opinion that it is hate speech we must guard against and not offence. Let us now examine both offence and hate.

## **OFFENCE**

Freedom of speech is guaranteed by the Constitution but the code proposes to put a new limit on that constitutional right by making the giving of offence unlawful. That's it! Everyone in the audience can claim offence for anything. If this becomes law anything can qualify for protection if it gives offence. And the broadcaster must do what in order to know what can cause offence?

Here are some examples of what viewers or listeners might find offensive, requiring action from TATT.

- Christmas trees on television
- Commercials for pork
- Criticism of Dr. Eric Williams
- Bikini and bead costumes at Carnival
- Denial of creation according to Genesis
- Topless African dancers

Religion is often given of an example of what must be avoided if we are going to avoid giving offence. But religion is a belief like any other belief and it would be irrational to be able to subject all other beliefs to examination and criticism but be forced to leave religion unexamined when religion plays such an important role in people's lives. With so many diverse religions, all with conflicting doctrines, none of which can be proven, is it not unreasonable to have something that cannot be proven establishing or causing limitation to be put on freedom of speech? And that is what we are being asked to accept. And why? Because a sufficient number of irrational bullies want that.

Social order and harmony demand that we do not create offence. So you are being asked to give up centuries of intellectual progress for social harmony? Where, you should ask, would we be today if we allowed social order to determine what is discussed and sometimes denigrated? It is heretics that take the society forward and all change creates disorder and gives offence. History is replete with stories of men who dared to challenge the status quo and whose 'discoveries' have been of enormous benefit to mankind, some paying the price of death in pursuit of knowledge. What we are being asked to do is suppress the work of men who challenge the status quo because it might give offence. Not to give offence is not to pursue change.

Giving offence is not only acceptable but also necessary in a healthy democratic society because sometimes it is necessary to give offence to protect what really matters. And it is in multi racial, multi ethnic Trinidad and Tobago that giving offence has meaning for it is in such a plural society that conflicting viewpoints with vigorous public debate is required in order for progressive movements for change to flourish and for each individual to be given the information to uncover the truth without having TATT impose censorship via the broadcast code.

The citizens of Trinidad and Tobago are very tolerant people and we have no history of racial or religious strife but, in our opinion, the imposition of offence as illegal will lead to intolerance and destroy what is a unique success in racial and religious harmony. And we feel obliged to add that this was accomplished with the Press enjoying all the protection of the Constitution with respect to freedom of the Press, which does not prevent the

giving of offence. We have come this far without making offence illegal, are we going to allow bigots and those who fear a 'market place of ideas' to set our agenda?

To live in a society with respect for freedom of speech you must accept that people have the right to tell you what you don't want to hear. The giving of offence is often bad manners and in poor taste, but that does not make it illegal.

### **HATE SPEECH**

This is what we need to protect against. But because we are putting a limitation on free speech we have to demand that the bar of evidence be put high in recognition of the importance we place on free speech. The public cannot be asked to accept (as TATT have suggested in the draft Broadcast Code) that like the crime of offence, any member of the public can simply say a broadcaster is fomenting hate and that is enough for a conviction.

Example, a broadcaster might in the case of a programme on religion, allow a view that papal infallibility is a recent construct and offends thinking people, and that there is no evidence that Mohammed ever had a discourse with God. This might be interpreted as speech that will result in fomenting hate no matter how reasoned and intellectual the programme might be. The fact that both religions might be charged with fomenting hate does not make it so and to give meaning to our constitutional guarantee of freedom of religion we must, as one commentator has noted, also have freedom from religion. In

order to guard against everyone crying hate, we suggest the following safeguard:

- A broadcaster cannot be found guilty under the code unless it can be proven that the programming was intended to foment hatred
- Only threatening words are to be banned, not those which are abusive or insulting
- The code will not restrict discussion, criticism, dislike, ridicule or antipathy.

The TTPBA is of the view that the citizens of Trinidad & Tobago will accept that to live in a free society you must recognise that at times you will be offended and insulted by others. But to try and legislate against offence and insult will result in a restriction of free speech that is ‘triggered’ simply by someone saying I am offended. Nothing else! Just, “I am offended”! We suggest that we can achieve what is necessary by removing offence as a wrong and including hate speech in the code with the necessary safeguard suggested above.

If the final broadcast code makes the giving of offence illegal, that will result in a complete emasculation of the broadcasters and the result will be programming that is bland as baby food with no solids and no flavour.