



**COMMENTS AND
RECOMMENDATIONS ON THE
REVISED DRAFT NATIONAL
BROADCASTING CODE**

March 2009

The Final Draft Broadcasting Code is certainly superior to the initial and second efforts put out for consultation in July 2008 and December 2008, and the Authority has clearly taken on board several of the suggestions and comments made by commentators and stakeholders. We are particularly pleased to see that:-

1. TATT has embraced the suggestion that each licensee must submit to the Authority its internal policies and guidelines which must be in conformity with the Code.
2. TATT has tentatively acknowledged the importance of the right of freedom of expression by including the following sentence in its Introduction:- “The need is for broadcasting to be conducted in a manner which exercises the freedom of expression but also recognises and does not unduly infringe the other rights which exist.”
3. TATT has explicitly noted the role of the courts in interpretation of the Code and in the imposition of sanctions and penalties; previous drafts and comments left the impression that TATT was prepared to act in a quasi-judicial manner in respect of complaints.
4. TATT has accepted that broadcasters cannot be held accountable for proof of the scientific veracity of claims made by advertisers in respect of health cures and the accreditation of educational courses and the guidelines now speak as follows:-

“Broadcasters have a general responsibility to ensure that advertisements do not contain statements that are false or misleading and should *as far as possible* seek verification or substantiation of claims about advertised products or services from advertisers or advertising agencies. With respect to the advertisement of health cures and educational courses/programmes, the broadcaster has particular obligations concerning substantiation of claims and accreditation”

These improvements notwithstanding, we are of the view that the Final Draft which has been submitted to the Minister and will be laid in Parliament in that form or in some form as amended by Cabinet, still falls short of what is acceptable and what can be effectively implemented by the Authority.

In the following pages we summarise the issues on which we continue to differ from the Authority. These issues fall under the following heads:-

- The Code and the Constitution
- Litigation and the Role of the Courts
- Balancing Rights
- Race and Religion
- Elections
- Accuracy

- The Authority’s Assertion of a Developmental Role in respect of Broadcasting
- TATT’s Approach to Regulation
- Self-Regulation, Co-regulation and the Media Complaints Council
- Penalties

Some of our concerns are cautionary, but some are fundamental and as such, we are unable to lend our support to the Final Draft Code. We would like to see the fundamental issues addressed and of course, the cautionary points taken on board.

Our specific recommendations are as follows:-

Fundamental

1. The Code must be passed with a special majority in Parliament as it seeks to limit or restrict fundamental rights and freedoms guaranteed under the Constitution.
2. TATT must operate the rules in such a way that only the most serious and contentious matters reach the courts. If not, the Code itself may act as a prior restraint on those broadcasters who do not have the stamina and resources to fight in court.
3. The Authority is misinterpreting the Telecommunications Act in asserting that it has a developmental role in respect of the broadcasting industry. If the Government wishes to invest the Authority with such a role, it will have to amend the Act accordingly. In any event we object to the Authority performing any such role.
4. While the Authority has acknowledged freedom of expression as contesting with other constitutional rights, we would like the Authority to acknowledge that (a) any restriction or limitation on freedom of expression be justified as necessary and (b) media literacy is an important value which prevents the shifting of the onus from the citizen to the State in making choices about what and when to consume content. We think the Authority should declare that the intention of the Code is to work with the broadcasting industry to espouse, defend and uphold appropriate standards for communication within our national community.
5. TATT should incorporate the Media Complaints Council into its assessment process for the determination of whether a breach has occurred and what sanction or penalty should apply. Together with the new requirement that broadcasters develop and publish their own internal codes, this will move the regulatory framework erected by the Code toward co-regulation.
6. The Telecommunications Act should be amended to provide for penalties applicable specifically for breaches of the Broadcast Code.

Cautionary

7. We would recommend that the sections on Religion and Race and the definitions of ‘race’ and ‘racial group’ be deleted and that the Authority adopt the broad framework approach to dealing with the question of race and ethnicity outlined in Rule 2.1

8. We would recommend that the section on Elections be deleted; the objective stated therein is inappropriate to a Broadcast Code, and the strictures which it seeks to place on broadcasters are inappropriate and onerous. The Authority should seek to ensure that broadcasters develop internal codes or rules governing the reporting of elections.

We have also made some comments on various other matters covered in the Code including Non-linear consumption of broadcast material.

In response to:	TATT Observation/Decision	Comment and/or Recommendation
OCM	<p>On the Code and the Constitution</p> <p>In relation to your proposed “matters of principle” we apologise if by oversight the Authority did not adequately address this issue. The Authority notes that the Constitution of the Trinidad and Tobago already contains the issues enshrined in the proposed “Matters of Principle”, therefore making it unnecessary for the Code to restate them, particularly in the context of Section 3(g) of the Act.</p>	<p>It is not the case that the Constitution addresses these matters of principle. The Constitution provides for freedom of expression and freedom of the press but it does not speak explicitly to how or under what circumstances those rights may be limited or restricted. The Constitution also certainly does not speak to the question of media literacy and modes of regulation.</p> <p>Does this mean that the Authority accepts that:</p> <ol style="list-style-type: none"> (1) any restriction or limitation of freedom of expression must be justified as necessary in a democratic society on grounds of national security, territorial integrity, public safety, for the prevention of crime and disorder, the protection of health or morals or the reputation or rights of others, and that the onus is on the person wanting to restrict to demonstrate that the right to freedom of expression must be restricted; (2) media literacy is a foundation principle on which the Code will be interpreted by the Authority and (3) self-regulation and/or co-regulation are acceptable? <p>If so, then we recommend that explicit statements to those effects be made in the Introduction to the Code</p>
MATT	<p>The Authority disagrees entirely with your suggestion that the Code is inconsistent with the UN Declaration on Human Rights or the Chapultepec Declaration. The Code introduces only legitimate limits on the fundamental freedoms promoted by those conventions and enshrined in the Constitution of the Republic of Trinidad and Tobago.</p>	<p>Whether or not the limits which the Code seeks to impose on the fundamental freedoms in the Constitution are legitimate will ultimately have to be tested in a court of law. However, the very fact that the Code seeks to impose some restrictions and limitations on fundamental rights and freedoms in the Constitution will require Parliament to pass the Code with a special majority.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
	<p>On Litigation and the Role of the Courts</p> <p>The Republic of Trinidad and Tobago is possessed of a strong judiciary and the Authority is confident that the Courts would protect against any such abuse of power.</p> <p>This clause is necessary. The protection of the security of the state is an issue of paramount concern. The Authority repeats its confidence in the Courts to prevent any abuse of power</p>	<p>At several points in its responses, the Authority now embraces, moreso than previously, reference to and adjudication by the Courts. However, one of the objectives of regulation, particularly in respect of the Media because it touches on fundamental rights and freedoms under the Constitution, must be that <i>disputes and challenges do not reach the courts at all.</i></p> <p>We too have confidence in the courts of Trinidad and Tobago to prevent abuse <i>ultimately</i>. But the process of obtained judicial resolution could take very long in our system and while that is happening, the hapless broadcaster will go out of business, or will expend significant time and resources on fighting his case in court. TATT and the Government have access to taxpayers' money to take anyone to court and drag matters out. It took Emile Elias over 10 years to win his case against the central bank at the Privy Council. It took the Maha Sabha years and all the way to the Privy Council to win its case for a broadcasting licence.</p> <p>Taking the matter to court is as effective a way to destroy a broadcaster and curtail freedom of expression as any. This is why we are insistent that the posture of the Authority itself must be one where it seeks at all times to uphold the constitutional right to freedom of expression while applying vigorously, fairly and sensibly the rules of the Code. There is little in what TATT has said or written on this matter that gives the industry confidence that it will not allow governments to attempt to use the Code to destroy particular broadcasters. The lesson of the Integrity Commission must not be lost on the Authority.</p> <p>TATT must operate the rules in such as way that only the most serious and contentious matters get into the court system. If not, the Code itself will act as a prior restraint on those broadcasters who do not have the stamina and resources to fight in court.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
OCM	<p>On the Authority’s Developmental Role in Respect of the Broadcasting Industry</p> <p>The Authority notes your comments on the interpretation of section 3(b) of the Act, but considers your interpretation to be narrow. The Act defines telecommunications as including the “transmission emission or reception of signals, writing, pulses, images, sounds or other intelligence of any kind by wire, wireless, optical or electromagnetic spectrum or by way of any other technology.” It is noted that the broadcasting services to be regulated by the Code are therefore part of the <i>telecommunications system</i> in Trinidad and Tobago. This is in contrast to a telecommunications service, which does not include broadcasting services. The Authority considers that development of a <i>telecommunications system</i> which is likely to safeguard, enrich and strengthen the national, social, cultural and economic well being of the society must encompass not only the technical systems, but also the content carried on the system. Accordingly, it is important for the regulation to ensure that the content broadcast furthers this objective and we do not agree with your assertion that the Authority’s interpretation of the Act is no (sic) justified by the words of the Act</p>	<p>The Authority is confused here. The interpretation of ‘telecommunications system’ to encompass ‘content carried on the system’ strains credulity. Precisely how does the Authority get from “transmission, emission or reception of signals..” to guiding the development of the broadcasting sector?</p> <p>We maintain that the Act gives no power anywhere to the Authority to “.guide the development of a broadcasting sector which is likely to safeguard, enrich and strengthen the national, social, cultural and economic well being of the society.” We also maintain that the Authority is not resourced or equipped to do so.</p> <p>Several other commentators have noted, as has the Authority itself, that (1) it has no jurisdiction or control over the print media and (2) it has no control over the Internet and New Media. So, one wonders, just how sensible would it be, if it did have the power, for the Authority to even attempt to discharge that mandate when important segments of the media are not under its control.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
OCM	<p>On Balancing Rights</p> <p>As regards the comment about balancing of rights, the Authority considers that the fundamental principles quoted by OCM from the OFCOM Code, incorporate the concept of balance, within the concept of justifying limitation of freedom of expression in order to protect other rights.</p> <p>The Authority repeats its comment that the <i>balancing</i> principle is derived from the reference to all of the rights and freedoms enshrined in the Constitution (as opposed to freedom of expression only) and also that it is consistent with the OfCom principle quoted by OCM</p> <p>We repeat our earlier comments on the issue of balancing rights. It is also noted that the final decision as to whether a breach has been committed and the penalty to be imposed pursuant to the Code and the Act, will be made by a Court of Law.</p> <p>The Authority does not agree the position to be untenable. We repeat our assertion that the explicit Constitutional guarantee in this country (as distinct from the UK) of the fundamental rights and freedoms makes it unnecessary to restate them in the Code.</p> <p>The Authority again reiterates the role of the Courts in the enforcement of the Code.</p>	<p>We would certainly want to be reassured by the Authority's comments here, but we wonder why precisely this form of words should not preface the Code as they do the OfCom Code. The Authority is insistent that because freedom of expression is a right in the Constitution of Trinidad and Tobago and Section 3(g) of the Act which provides for the Code, adverts to the relevant sections of the Constitution, nothing more is required.</p> <p>We respectfully, do not agree. First, TATT suggests that OFCom puts these points in its (prefatory remarks) Code because the UK does not have a written constitution. We think they are put there because the principles on which OfCom seeks to regulate the broadcasters must be articulated clearly to all stakeholders. Second, the Constitution of Trinidad and Tobago is parsimonious in the articulation of the rights of persons and says nothing at all about how rights are to be balanced. Yet as the Authority clearly sees, the application of the rules under the Code may sometimes <i>imply</i> a balancing of rights. The question is, what harm will be done if the Preface to the Code articulates clearly the Authority's belief in and support of the right of freedom of expression and at the same time acknowledges that the Rules themselves and their application will require on occasion, that freedom of expression is to be limited in recognition of other constitutional rights. We submit that there is nothing to be lost and much to be gained by so doing.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
OCM	<p>On The Approach to Regulation</p> <p>The Authority does not agree with your (narrow) interpretation of the relevant provisions of the Act, and has obtained the advice of Senior Counsel which support the Authority's interpretation of its responsibilities under the Act in respect of the Code</p>	<p>The point is that TATT <i>should</i>, at this stage in its evolution, take a narrow interpretation of the Telecommunications Act and develop a <i>minimal</i> set of rules and guidelines which can be elaborated and developed with experience in their operation. TATT has no previous experience in regulating matters of CONTENT. It is simply unwise for TATT to seek to take on such a complex area of regulation which continues to bedevil regulators elsewhere without building the requisite understanding of the industry, editorial matters, especially the importance of context, and the entire corpus of applicable law in this area.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
OCM	<p>On Self Regulation, Co-Regulation and the Media Complaints Council</p> <p>The Authority notes your suggestion of self or co-regulation. The Authority has a responsibility to regulate the sector as mandated by the Telecommunications Act, 2001. Sections 3, 23 and 79 refer. The Authority also considers it important to protect the integrity of its decision making processes and therefore would not encourage the inclusion in its decision making process, of any person whose primary purpose is not to serve the objectives of the Act. However, the Authority is not opposed to self-regulatory or co-regulatory measures, provided that these allow the Authority to fulfill its mandate. The Authority would welcome from the industry or any industry body (such as the Media Complaints Council) any proposals for an effective model of self or co-regulation.</p>	<p>In our comments on the First Draft of the Code, we had set out a process which incorporated a role for the MCC as a instrument for effective co-regulation of the Code. We had suggested:-</p> <p><i>“We would recommend further the following process for the handling of complaints which could lead to a statutory sanction:-</i></p> <ol style="list-style-type: none"> 1. <i>Written notification by the Authority to the broadcaster that there has been a breach.</i> 2. <i>Documentation of the details of the (alleged) breach and why the Authority is of the view that statutory sanctions may be applicable. This document is intended to establish the seriousness of the alleged breach</i> 3. <i>Broadcaster is invited to make representations in respect of the case within a period of say 2 weeks of receipt of the detailed case.</i> 4. <i>Review of the representations by a senior officer of the Authority who will indicate to the broadcaster in writing whether the matter will be set aside or will go forward to the board or a sub-committee of the Authority.</i> 5. <i>The broadcaster will be invited to make representations to the board or a sub-committee of the board of the Authority and to be present to state its case orally before the board or sub-committee of the board of the Authority.</i> 6. <i>The board may decide to set aside the case or if it decides that a statutory sanction should be imposed, it will notify the broadcaster who may request that the case be adjudicated by the Media Complaints Council prior to the board making a recommendation to the Minister. The Authority will not be obligated to accept the recommendation of the MCC.</i> 7. <i>The broadcaster has the final option of judicial review in the event that the Minister decides to impose the statutory sanction.</i> <p><i>We believe that a process along these lines will serve best the interests of all stakeholders. It also has the virtue of establishing a role for the MCC in the process.”</i></p> <p>This process is consistent with the (detailed and highly commendable) process set out in subsections 4 and 5 of the Compliance with the Code section of the Final Draft.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
OCM	<p>On the Media Complaints Council</p> <p>The Authority notes that OCM refers to the Media Complaints Council as not being made up of broadcasters or active media personalities, however the Authority is concerned about the independence of the MCC from the broadcasters, having regard to the fact that the MCC was formed by, and is appointed, funded and supported by the Trinidad and Tobago Publishers and Broadcasters Association</p>	<p>On the MCC, our representation was not that it was ‘independent’ but that the Authority in dealing with matters of editorial judgment and context would need from time to time to consult with persons drawn from civil society as well as experienced media practitioners to inform its assessment of issues. We did not and do not recommend the MCC as a substitute for the Authority’s independent assessment and application of the rules of the Code. We do recommend the insertion of the MCC into the process so that the Authority which will be inexperienced in these matters for some years to come can have the benefit of wise counsel, knowing that it will take that counsel advisedly.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
OCM	<p>On Penalties</p> <p>The Authority does not consider the possible fines to be disproportionate having regard to the possible breaches, and also notes that the decision as to the imposition of fines and/or imprisonment is left to the Courts. It is also noted that the penalties are contained in the Act, and <i>that they were in place prior to the concessions and licences being granted to the various broadcasters, and are currently in place for breach of the concession. The penalties are not introduced by the Code.</i></p> <p>The Authority does not agree that there are no situations in which a material breach of the Code could attract the imposition of the maximum sanctions applicable. The decision would be made by the Court having regard to its usual guidelines. For example, the offence of sedition carries the most severe penalties under the common law might be treated with under Rule 3.4 and might possibly carry the most severe penalties applicable under section 65</p> <p>The Authority does not agree that there are no situations in which a material breach of the Code could attract the imposition of the maximum sanctions applicable. The decision would be made by the Court having regard to its usual guidelines. For example, the offence of sedition carries the most severe penalties under the common law might be treated with under Rule 3.4 and might possibly carry the most severe penalties applicable under section 65.</p>	<p>The Authority had indicated that it did not understand the purpose of our comments in this regard. The purpose is reflected precisely in the Authority’s own response as highlighted. The fact is that the implementation of the Broadcast Code is adjunct to the main Telecommunications Act and is coming some time after the main Act. When the penalties were being considered by its framers and by Parliament, <i>they clearly did not have the regulation of the content of broadcasters in mind.</i> This is why the Authority now has to try to retrofit the sanctions and penalties for breaches of the Code into the provisions of the Act which clearly did not contemplate this at the time it was promulgated.</p> <p>In that regard, our comments were intended to warn the Authority that there were likely to be two possible outcomes. One is that the Authority will end up throwing many matters into the court system, entangling the Authority and the licensees in litigation, or alternatively, escalating matters to the Minister and the political directorate, leading to the severe penalties of suspension or revocation of licence. The other is that the Authority will end up over-reaching its own powers of sanction under the Act, which indeed are quite limited.</p> <p>It is interesting that the Authority should cite sedition as an example of a ‘breach’ where the penalty would be severe. But as we have maintained all along, those laws are already on the statute books and the DPP does not need TATT, the Code or any other law to institute proceedings for sedition. We have stressed in our earlier comments that the Authority needs to acknowledge that there are already laws on the statute books which address breaches by any broadcaster or newspaper for that matter. These include Defamation, Public Mischief, Sedition, Incitement, and those pieces of legislation prescribe appropriate penalties and do not require any intervention of the Authority in their prosecution.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
MATT	<p>On Penalties</p> <p>The penalties would be determined by the Courts, not the Authority. The Court would have a broad discretion and a responsibility to ensure that the penalty fit (sic) the offence. In any event, it is not accepted that a loss of a licence and concession could be excessive for wrongdoing in connection with the licence or concession. The penalties outlined are contained in the Act, and each broadcaster upon receiving its concession to operate, <i>signed an acknowledgement and acceptance that these penalties would be applied for a breach of the Code.</i></p>	<p>When concessions were received and to this point in time, there was and is no Broadcasting Code in effect. The Authority is being disingenuous to suggest that licensees ‘signed on’ to the penalties in the Act. The issue of the penalties has been raised by many commentators in the context of the Code precisely because in respect of the majority of broadcasting matters likely to be adjudicated, the penalties in the Act are clearly disproportionate. The Authority has not convinced us that those penalties were not intended to deal only with infringements relating to <i>telecommunications</i>, and not to matters of content.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
OCM	<p>On Accuracy</p> <p>The Authority considers this comment to be misleading. The selection of a story is a matter of newsworthiness. The statements made by a broadcaster having decided that a particular story is newsworthy must be factual and accurate. The editorial judgment is in selection, the reporting was of verified facts, and the Authority reiterates that the accuracy of information is an empirical matter, capable of assessment with reasonable certainty. The Authority is aware that the industry operates via guidelines which are consistent across various countries and media</p> <p>The decision in the particular instance will be made based on the Authority's reasonable interpretation of the issue and the broadcaster has the availability of redress through the courts.</p> <p>The Authority notes the comments regarding editorial comments in the news. The Authority does not agree that the inclusion of opinion in the news should be condoned, unless it is clearly distinguished from the facts presented in the newscast. The Authority's research indicates that this position is consistent with the best standards of modern journalism.</p>	<p>It is clear that our attempts to convince the Authority that its position on accuracy is fraught and could bring the Authority into frequent conflict with the industry have not been successful. We think we do understand the difference between the selection of newsworthy items and the 'accuracy' of news. The Authority though speaks about the 'accuracy of information' while we are addressing the question of the accuracy of 'news'. The need for information to be accurate is really trite. Reporters must get names, places and dates correct and their account of an event or incident must be in that sense, be accurate. If that is what TATT is exercised about, then we have no difficulty whatsoever. Our own internal code speaks to that as well.</p> <p>However, as we stated in our comments on the second draft, 'news' programmes today have changed radically from the days of Walter Cronkite for the simple reason that by the time the 'newshour' comes around, the news is already abroad, distributed by internet, podcasts, radio etc. This is why 'News' has shifted significantly from 'What happened' and 'When did it happen', to 'Why did this happen' and 'What does this development mean for the community which might be affected'. Answering these latter kinds of questions must involve opinion and the viewpoints of analysts. In our comments we gave the example of the Watergate saga where a 'burglary' was not just a 'burglary' and a space flight disaster was really a tale of cover up and incompetence. The Authority seems to know where 'facts' begin and end. Media people do not.</p> <p>It seems that we and the Authority are on very different pages. The Authority is on a page for 'News' of 30 to 40 years ago. We are on a 21st century page catering for 21st century audiences trying to produce a product which will attract and hold audiences and hence advertising support. If strictly enforced, the Authority's conception of 'news', 'facts' and 'accuracy' will put the industry back into the Dark Ages of broadcasting without the Internet, blackberries, news alerts, streaming radio etc.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
	On Elections	<p>We have tried to persuade the Authority that the Code's prescriptions in respect of Elections coverage are likely to create more problems than they will solve and that this is an area where a minimalist approach to regulation at this point in our evolution is called for. We have suggested that the Authority require each broadcaster to develop an internal elections policy code. If the Authority feels compelled to make a rule, we have suggested the position in the OfCom Code as appropriate (suitably amended of course as we do not have the legislation which guides them –Communications Act – on the question of impartiality).</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
	On Race and Religion	<p>We have tried to persuade the Authority that the least said and specified in the areas of Race and Religion the better for it as regulator. We have not succeeded. Having proposed these sections of the Code it will be <i>impossible</i> to take them back out. The simple statement in Rule 2.1 should have sufficed and the Authority deal with complaints under that very broad statement.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
OCM	<p>On The Independence of TATT</p> <p>The Authority is a body corporate established by Statute, and has independent decision making powers. The Authority's decisions must be objective, transparent and non-discriminatory, and its regulatory decisions are made without the involvement of any outside party.</p> <p>The Authority notes that there are areas in which the Government has a responsibility pursuant to the Act, however, these do not prejudice the ability of the Authority to make objective, transparent, non-discriminatory decisions in respect of the Code.</p>	<p>The Authority's response here is suitably restrained and our points have been 'noted'. However, we of course are aware of the Government's responsibilities pursuant to the Act. The difficulties that will arise for TATT will be when the interests of broadcasters come into direct conflict with government interests. For example, the Government owns a TV station itself which competes with the privately owned stations for audience and for advertising. Media companies like ours may have newspapers whose positions or reporting may bring them into conflict with the government of the day, and there may be perceived to be opportunity to 'get at' the media company through its broadcasting units. The Government may also choose to lodge complaints against this or that TV station or radio station (maybe even sometimes by the prime minister turning up on its premises if the spirit moves him accordingly). The question will be how will the board of TATT treat with situations like these? Will it be truly independent and be 'objective, transparent and non-discriminatory' or will it be compromised as the Integrity Commission was in respect of the Rowley matter?</p> <p>The Authority can write down the 'right' words proclaiming its independence, but when the crunch comes, will the board stand by those words or will it submit to the pressure of the politics and the politicians?</p> <p>We are delighted that the Authority is asserting its independence and that it maintains this position in the face of our comment.</p>

In response to:	TATT Observation/Decision	Comment and/or Recommendation
TSTT	<p>Non-Linear Consumption of Broadcast Content</p> <p>The Authority considers that certain provisions of the code should apply to all broadcasting regardless of whether it is linear or non-linear, local or foreign. The Authority’s concern is to ensure that whatever content is broadcast to the public of T&T is consistent with the objectives underlying the Code. The Authority has, however, revised the Code to more effectively take account of this issue in certain specific cases.</p>	<p>It is not clear what either TSTT or the Authority understands by ‘non-linear broadcasting’. The TSTT comment later on correctly notes that <i>consumption</i> of a broadcast may be non-linear. The more important underlying point of the TSTT comment –technological change which is making these regulations increasingly anachronistic -- also relates to OCM’s point on ‘media literacy’ – the ability of consumers to <i>choose</i> when and how and where they wish to access content. The Authority must ask itself what happens when Free to Air TV broadcasts are received by a cable channel via the Internet and consumed non-linearly?</p>

	<p>The Authority considers that section 3(g) of the Act, which places the regulation of broadcasting content within the context of the rights and freedoms set out in Sections 4 and 5 of the Constitution to adequately incorporate the fundamental principles of freedom of expression etc.</p> <p>The Authority notes that the OFCOM Code, while an inspiration for the Code cannot be considered in a vacuum. The OFCOM Code is set within the legal framework that exists in the UK, a central tenet of which is the lack of a written constitution, therefore requiring that such principles, which we in Trinidad and Tobago hold as fundamental to our Republic, must be expressly included. The Constitution of the Trinidad and Tobago already contains those rights, therefore making it unnecessary for the Code to restate them, particularly in the context of Section 3(g) of the Act.</p>	
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