

Open Letter to the Minister for Media and Communications

Subject: Broadcasting Standards Authority — Unlawful Expansion of Jurisdiction to Internet Broadcasting

To: Hon Paul Goldsmith, Minister for Media and Communications

CC: Rt Hon Christopher Luxon (Prime Minister) Hon Judith Collins (Attorney-General)

Date: 22 October 2025

1. Introduction

We write to express serious concern over the Broadcasting Standards Authority's Provisional Interlocutory Decision (ID2025-063) in *WK v The Platform Media NZ Ltd*. This decision asserts that the BSA now has jurisdiction over Internet-distributed audio and video content, a power that was never granted by Parliament. If allowed to stand, it would permit the Authority to regulate and censor online content across New Zealand without legislative mandate or public consultation.

Disclaimer

The Broadcasting Standards Authority document referenced in this letter — the Provisional Interlocutory Decision (ID2025-063) — was first made public by Kiwiblog after being circulated to media outlets marked “Not for Publication.” Its inclusion here is solely for the purposes of public accountability and informed democratic debate, as it concerns the Authority's own claim of jurisdiction over Internet broadcasting — a matter of clear public interest.

2. The Decision and Its Effect

In Decision No. ID2025-063, the Authority declared that The Platform had “broadcast the programme by virtue of having transmitted it ... by ‘other means of telecommunication’ – a broad expression capable of capturing conveyance through the Internet ... for reception by the public ... including a computer or mobile device.” [para 6(b)]

It further stated: “While this type of broadcasting may not have been contemplated when these provisions were drafted, under section 11 of the Legislation Act 2019, legislation applies to circumstances as they arise. Taking a purposive approach ... it is appropriately seen as capturing such modern forms of broadcasting.” [para 7]

Through this reasoning, the BSA has redefined the term “broadcasting” to include Internet transmissions, thereby granting itself powers that Parliament never conferred.

3. Contradiction of Legislative Intent

The Broadcasting Act 1989 defines broadcasting as: “any transmission of programmes ... by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus.” When enacted, “other means of telecommunication” referred to cable and satellite systems, not the open Internet. Successive governments — including during the 2018 Media Regulation Review — have explicitly declined to extend the Act to Internet communications. By invoking “purposive interpretation,” the BSA has substituted its own view of modern relevance for the clear limits of statute, thereby legislating by interpretation.

4. Absence of Lawful Standards

The Authority concedes: “We have not yet developed a code of broadcasting standards specifically addressing the online broadcasting context.” [para 9] Despite this, it proposes to proceed under section 4 of the Act (“good taste and decency”) — standards written for licensed terrestrial broadcasters. Enforcement without a valid, published code violates natural-justice principles of certainty and predictability. Internet creators cannot comply with rules that do not exist.

5. Minister’s Own Comments Confirm the Overreach

Recent remarks by Hon Paul Goldsmith, reported by Stuff (NZ) on 21 October 2025, confirm that online outlets such as The Platform and Reality Check Radio are not currently covered by the Broadcasting Act 1989. The Minister acknowledged that the Act “was passed a very long time ago ... the world has changed significantly,” and that while some broadcasters operate under the BSA, Internet-based services do not. This admission underscores the core issue: Parliament has not amended the Act. By asserting jurisdiction in advance of legislative reform, the BSA has acted ultra vires — beyond its lawful powers.

6. Implications for Free Expression

This reinterpretation directly undermines Section 14 of the New Zealand Bill of Rights Act 1990, which guarantees freedom of expression “including the freedom to seek, receive, and impart information and opinions of any kind in any form.” If left unchallenged, the Authority’s approach could subject to censorship or fines: Online radio and podcast networks; Live-streaming DJs and performers; YouTubers, educators, and independent journalists; Any citizen distributing commentary or art online. Regulatory authority must not be assumed by reinterpretation; it must be granted by Parliament after transparent public debate.

7. Required Government Action

We respectfully urge the Government to:

1. Require the BSA to publish the full text and legal basis of Decision No. ID2025-063.
2. Suspend all BSA activity relating to Internet-only content pending independent review.
3. Commission a review of the Authority's mandate and consider whether its functions should be transferred to the industry-led Media Council.
4. Affirm publicly that any extension of broadcasting regulation to Internet media must occur through legislation, not through administrative interpretation.

8. Conclusion

Broadcasting law must be made by Parliament, not by regulator. The BSA's secret "Not for Publication" ruling represents a profound breach of democratic accountability. If New Zealand is to maintain its reputation as a free and open society, Government must re-assert that no regulator may claim powers that have not been granted by statute.

No unelected body should decide what New Zealanders may say, hear, or broadcast online.

Respectfully submitted,

Section 9(2)(a) OIA

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