

19 June 2015

Dr Paul Paterson
Chief Economist
Bureau of Communications Research

By email: bcr@communications.gov.au

Dear Dr Paterson

The Bureau of Communications Research (BCR) has sought the views of the subscription media sector on major future trends and issues to inform the development of its annual planning and forward research agenda.

The Australian Subscription Television and Radio Association (ASTRA) is the peak industry body for subscription media in Australia. ASTRA's membership includes the major subscription television (STV) operators, as well as over 20 independently owned and operated entities that provide programming to these platforms, including Australian-based representatives of international media companies, small domestic channel groups and community-based organisations.

Now in its 20th year, STV is one of Australia's most popular industries, enriching the lives of millions, creating 6600 jobs, investing more than \$600 million annually in production and adding \$40 million to the economy every week. In 2015, one third of Australians subscribe, along with millions more who watch subscription content in public venues. Every week more than 1000 hours of first-run locally produced content is broadcast, as well as the best international content.

This success has been achieved without public subsidy, largely without public spectrum and despite regulatory handbrakes. It has been achieved through extensive investment and innovation, with the consumer always at the centre.

The STV industry has been at the forefront of innovation and investment in entertainment services in Australia, leading the way in evolving the consumer proposition both in terms of technology and service structuring. The industry's innovation has been one of the factors which has set it apart from its competitors and is a key part of the industry's strategy for growth. For these reasons, it is vital that communications regulation does not act as a disincentive to innovation and change, and we therefore welcome the efforts of the BCR to assess industry trends and potential regulatory issues.

This submission seeks to highlight some of the policy principles ASTRA thinks should be kept in mind by the BCR when developing its work program, as well as particular issues and trends of interest to the STV sector.

The impact of change and regulatory frameworks

The BCR's background paper notes that the burgeoning of new products and services made possible by information and communications technologies has driven consumer expectation and demand. We welcome these developments as increased consumer choice, competition and innovation leads to consumer benefit.

However, it is important that there is a coherent regulatory framework that doesn't hold one sector or player back at the expense of others. The rise of the digital economy and the empowerment of consumers to import digital services or purchase from non-traditional local sources has shown how regulatory schemes can be challenged. Outside of the media and communications sector clear examples of this include the rise of online accommodation services like Airbnb and ride-sharing services like Uber. There is obvious consumer demand for these services but regulation has struggled to keep up with the pace of innovation.

It is inconceivable that old restrictive regulatory structures would be applied to new entrants because this has the real potential to stifle the very innovations that consumers demand.

In this context we submit that the BCR should focus its work programs on identifying the regulatory settings needed to drive rather than stifle innovation – both for existing players and new entrants.

The BCR should seek to identify settings which provide appropriate consumer safeguards set at the minimum level to achieve clearly articulated public policy aims, but which give services the freedom, and indeed incentives, to innovate. The BCR should look at how reformed regulatory settings might help to better achieve the aims of media and communications policy, but also broader economic policy objectives like productivity growth.

Policy principles to inform the BCR's work.

ASTRA would like to suggest a range of policy principles which could be used to frame the BCR's consideration of technological change and the impact on regulatory structures and regulated entities.

The first principle is that new services and competition should be enabled and not blocked by regulatory settings. As new, unregulated services emerge, there is a growing need for Government to reconsider outdated regulation that hampers the kind of investment and innovation that existing operators need to make in order to respond to the increased competition.

As noted above, the answer to any tension between regulatory settings and technological developments should not be to extend those regulatory settings to new services and operators. The best way to enable competition and innovation is to reconsider the level of regulatory burden which applies to incumbent operators who are seeking to compete in the new environment. This will protect diversity and lead to the best outcomes for consumers.

Governments also need to ensure that as competition increases, and some business models decline, it does not get caught in a trap of propping-up failing business models through regulatory concessions and handouts. Rather, the focus should always be on enabling competition and public policy should prioritise consumer interest, rather than rewarding rent-seeking behaviour.

Secondly, ASTRA submits that a key principle for the BCR should be that sector-specific regulation should be reviewed. New, unregulated players call into question the efficacy of some sector-specific regulation. A clear example is the anti-siphoning scheme, which only applies to STV broadcasting licensees, and not to services provided over IP (which are growing in availability and popularity). Not only is this an amplification of the anti-competitive effect of the rules, it also undermines the efficacy of the scheme in meeting its public policy outcomes.

In these circumstances the better response is to reduce existing regulation to promote competition, rather than to burden new services with anti-competitive regulation. The BCR should aim to identify an adaptable, flexible framework which, to the largest extent possible, provides for regulatory consistency and technology neutrality.

Thirdly, ASTRA submits that the BCR should structure its work around a constant review of the need for prescriptive regulatory rules as consumer choice and control increases. In an environment of increasing competition and diversity, there is clear scope to reconsider the level of regulatory overlay in the industry.

Lastly, it is inevitable that technology will provide new means of content piracy. ASTRA supports industry-based approaches to tackling piracy, but Government may have a role to play in facilitating industry-based solutions. To that end, Government should remain informed of the technical and commercial factors that contribute to content piracy. As ASTRA has consistently argued, protection of copyright is essential to the ongoing viability of content creation and distribution businesses. It ensures firms get a fair return on their investment and are able to fund the production of stories that reflect Australia's culture and which Australian audiences love.

Issues and trends in the broader sectoral context

The BCR has identified digital infrastructure as a strategic focus in the coming years. ASTRA agrees that this will be an area of ongoing policy importance. This appears to fall within the BCR's existing Communications Issues Matrix where it refers to market design for efficient, equitable access and resilience in communications infrastructure and services.

The BCR's Communications Issue Matrix also identifies a number of other issues which we agree should be explored:

- Access to content that meets community standards – as noted above, consumer safeguard requirements should continue to be assessed in light of increasing consumer choice and control.
- Access to Australian content – examination of this issue should include the best way to incentivise production of Australian content (see below).
- Balanced intellectual property rules – examination of this issue should keep in mind that high-end long-form audio visual content, especially that which is made in Australia and seeks to reflect Australian culture, is very expensive to

produce. Appropriately protecting intellectual property, including in relation to acquired content, supports the production of Australian content.

Research agenda

The BCR's research and analysis program should closely follow key issues and trends identified at an early stage so that policy development or reform in these areas can be fact-based. For example, the BCR could research the best ways to incentivise production of Australian content – a valuable opportunity exists to reconsider the efficacy of quota/expenditure-based regulatory approaches. This research could consider the extent to which production levels would be impacted by a change in approach, and should explore whether there are any overseas jurisdictions which have transitioned from quotas to a fully incentive-based approach to stimulating local production. The research would also take into account the relationship between the burden of existing obligations and benefits conferred by distorting media regulations such as anti-siphoning and a legislated ban on new competition in the free-to-air sector.

However, more pressingly, ASTRA submits there is an opportunity to undertake very broad-ranging research work which will position the Government to proactively address regulatory blockers of innovation and growth. The BCR may wish to take a future-focused case study approach which:

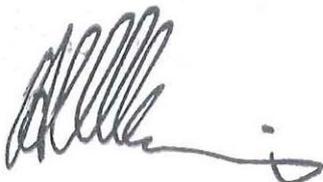
- seeks to predict possible sector developments and scenarios;
- assesses how these would be blocked by existing regulatory settings; and
- identifies how these settings might be adjusted to enable rather than block innovation.

Case studies could focus on the evolution of existing services (such as those that deliver audio-visual entertainment content) but also look at developments in areas such as the Internet of Things and artificial intelligence.

As noted above, ASTRA appreciates the opportunity to contribute to the BCR's work to ensure preparedness for future regulatory challenges. We would be willing to engage further on any aspect of our submission or the BCR's future work plan.

If you have any queries relating to the above, please contact Holly Brimble, Policy and Regulatory Manager (holly.brimble@astra.org.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Maiden', with a stylized flourish at the end.

Andrew Maiden
CEO