

Advocacy Report

February 2016

ASTRA ACTIVITY

- **Media reform** – On 23 February 2016 it was reported that Cabinet has approved repeal of the 75% reach rule and the ‘2 out of 3’ cross-media ownership rule. Anti-siphoning reform will not be a part of the Government’s reform package.

Timing for the reforms is unclear, with some reports indicating it is not a priority for passage prior to the next election. The ALP is yet to state a formal position, but Shadow Communications Minister Jason Clare has indicated in principle support for reach rule reform, but has expressed concerns about removing the ‘2 out of 3’ rule. This and the uncertainty regarding the election date mean that it is difficult to predict if both reforms will pass Parliament in the coming months.

The reforms would mean that regional and commercial television broadcasters could merge. They would also mean that a single person or company could hold a television licence, a radio licence and own a newspaper in the same market.

Coverage [here](#) and [here](#).

- **Department of Communications consultation on captioning regulation** – In late 2015, The Department of Communications released a Discussion Paper outlining several options for reform to the legislative framework for television captioning. For details on the Department’s options, refer to the December-January Advocacy Report.

In response, ASTRA and its members developed a set of reform proposals which would build on those put forward by the Department but go further in streamlining the complex scheme and improving transparency for caption users.

ASTRA submitted that there is considerable scope to streamline the current scheme, and increase transparency and consistency for industry and consumers, without any impact on overall levels of captioning, and whilst retaining the key mechanism of yearly increases in captioning levels.

ASTRA’s proposal includes the following key reforms:

- Maintain a single captioning target for a channel whatever subscription TV platform they broadcast on.
- Streamline the administrative processes for reporting and seeking exemptions.
- Simplify the system of captioning targets which apply to Movies and General Entertainment, so that there is a single target for Movie channels and a single target for GE channels (currently, each group of channels faces 3 different targets). The new targets would be an average of the existing targets.

- Remove the complicated exemption for some channels (which is based on the number of channels in the same genre meeting captioning targets) and introduce three new statutory exemptions:
 1. Audience share exemption: where viewership for a channel is below a defined percentage
 2. International pass-through exemption: where the feed provided into Australia is not captioned for any other international market.
 3. Racing channel exemption: for horse, harness and greyhound racing.
- The Australian Communications and Media Authority to publish a prospective and subscription TV captioning plan ahead of each financial year.
- Free-to air multi-channels to face the same genre targets and increases as subscription TV.

ASTRA has proactively consulted with deafness advocacy groups regarding the proposals and will be following up with meetings in Canberra to promote these reforms.

ASTRA has consulted with individual channel groups regarding the impact of the proposals on captioning requirements for individual channels.

The ASTRA submission is available [here](#).

- **NSW Government restrictions on wagering advertising** - On 4 January 2016, new rules restricting advertisements containing inducements to gamble commenced in NSW (refer to December-January Advocacy Report for details). MCN has worked with channels to ensure existing inventory complies with the new restrictions. If you have any queries regarding the new restrictions, contact ASTRA or MCN.

New NSW rules to restrict ads for gambling services which relate to sporting events, while those events are in progress, will commence on 1 March 2016. The NSW Office of Liquor, Gaming and Racing (OLGR) has been working with advertisers and agencies regarding the new restrictions. The OLGR is also expected to issue a Guidance Note on the new restrictions in the coming weeks.

- **Interactive Gambling Amendment (Sports Betting Reform) Bill 2015** – Senator Xenophon has introduced a private member's Bill which would drastically restrict advertising related to gambling on television. The Bill would ban sports betting advertising (defined very broadly to capture a wide range of services which do not actually facilitate the placing, making, receiving or acceptance of bets, but which do, in a broad sense, relate to those things) during sports coverage or during 'G' rated programming.

ASTRA has made a submission to the Senate inquiry into the Bill. ASTRA's submission argues the existing, wide range of restrictions on gambling advertising are sufficient to address community expectations. The submission also notes that the drafting of the Bill gives it an incredibly broad scope and would restrict advertising of services well beyond the stated objectives of the Bill.

ASTRA's submission is available [here](#).

The Senate inquiry may hold hearings on the Bill and is required to report by 12 May 2016.

- **Copyright** – Further action in the Dallas Buyers’ Club litigation (refer to previous Advocacy Reports for details) has been abandoned, with the plaintiff electing not to pursue the case further. Coverage is available [here](#).

With regards to the draft Code of Practice for a Copyright Notice Scheme, media reports suggest the Code may be abandoned due to an inability to reach agreement on cost-sharing. However no formal announcement has been made. Coverage is available [here](#).

On 24 December 2015, the Department of Communications released draft legislation to amend the *Copyright Act 1968*. The Bill seeks to:

- streamline and simplify the existing copyright exceptions and limitations for the use of copyright material by the disability sector (through a new fair dealing exception where the dealing is for the purpose of enabling access to the material for people with a disability).
- simplify the preservation exceptions for copyright material in libraries, archives and prescribed ‘key cultural institutions’.
- consolidate and modernise the statutory licences that allow educational institutions to use and pay licence fees for works and broadcasts.
- allow copyright materials to be incorporated into educational assessments conducted online.
- expand the scope of the “safe harbour” scheme to include online service providers.
- introduce new standard copyright terms for published and unpublished works and for Crown copyright in original works.

ASTRA made a short submission with some suggested drafting changes to the educational statutory licences. ASTRA members made individual submissions on the safe harbour provisions.

ASTRA’s submission is available [here](#).

- **Australian content** - During his speech to the 2015 Screen Forever Conference, the Minister indicated his interest in industry views on the adequacy of existing government support mechanisms for Australian content production.

In response, ASTRA wrote to the Minister detailing a range of areas where current arrangements are stifling innovation and investment.

The letter noted that:

- Direct funding is too narrowly focused on particular types of programming and particular broadcasters.
- Minimum spend requirements relating to both direct funding and the Producer Offset are too high and are stifling program innovation.

- Broadcasters are being restricted in monetising the after-broadcast sale of their programs because of the level and scope of mandated licence fees that must be paid to producers when accessing direct funding.

All of ASTRA's publicly available submissions are on the [ASTRA website](#).

NEWS

ACMA Investigation – There have been no ACMA investigation reports issued since the last Advocacy Report.

Advertising Standards Bureau findings – ASTRA receives updates from the Advertising Standards Bureau (ASB) when it issues final case reports where complaints about an advertisement have been considered. The ASB issued three reports since the last Advocacy Report.

The ASB dismissed a complaint regarding an advertisement for a training academy in which people in a range of employment scenarios are depicted considering a career change. The complaint was that the depiction of a mother with child, who was considering a career change, implied that mothering was not valued. The Board considered that the advertisement did not suggest that being a full-time mother is not of value and did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of their gender. The Board determined that the advertisement did not breach Section 2.1 of the Code.

The ASB dismissed an advertisement for a ute in which a driver is seen racing some mountain bike riders to the bottom of a hill. The complaint was that this depicted and encouraged unsafe driving. The Board noted that the scenes which alternate between the car and the bikes, as well as the accompanying fast paced music, give an overall impression of a race but considered that the driver appears to be in control of the vehicle at all times and there is no suggestion that his driving is unsafe or irresponsible.

The ASB dismissed an advertisement for a Jeep which depicted young men in a range of lifestyle situations. The complaint was that the depiction of the men jumping over what appears to be a railway barrier fence promoted risk-taking and unsafe behaviour. The Board noted that the fence climbing scene is very brief. The Board noted that a basketball net is visible in the background and considered that the complainant's interpretation of the fence being alongside a railway track is unlikely to be shared by the broad community and that the scene depicts the men climbing into a sports ground. The Board found this did not promote unsafe behaviour.

Copies of ASB Case Reports are available to ASTRA members on request.

DISCUSSION PAPERS/REQUESTS FOR COMMENT

There are no current requests for comment which ASTRA is monitoring. However, we note that the Minister is scheduled to give a keynote address at the ACMA Radcomms 2016 conference on Thursday 10 March. We don't know the content of the speech, but it is possible it will address spectrum pricing, licence fees and the outcomes of the Digital Television Review. More information on the conference is available [here](#).