

Advocacy Report

June 2016

ASTRA ACTIVITY

- **Media reform** – With Malcolm Turnbull likely to form a minority Government, relying on the support of independent MPs, the likelihood of contentious media reform progressing has reduced. Without the support of cross-benchers in the House and Senate, the Government would then need the support of the ALP, which has not yet articulated its position in full.

We can, however, expect regional broadcasters to recommence their campaign for relaxation of the 75% reach rule and for Free TV to continue its calls for reductions in licence fees. The commercial imperatives behind these reforms are too great for the free-to-air broadcasters to be put off by a difficult Senate. The challenge for subscription TV will be to broaden the debate to ensure more holistic and deregulatory reforms are considered.

- **Captioning** – ASTRA continues to explore stakeholder support for its legislative reform proposals on captioning.

ASTRA will continue to nurture support from disability advocacy groups and will work to finalise remaining aspects of the proposal, with the objective being that the proposals get picked up by the government for legislation following the election.

In the meantime, the ACMA has released a discussion paper for its review of captioning, which is required by law. The ACMA has emphasised that it does not want stakeholders to have to duplicate the submissions made to the Department's earlier review, and that the ACMA will take those submissions into account. ASTRA is likely to use this opportunity to provide further detail on its reform proposals and may comment on some aspects of the existing exemptions process. A draft submission will be circulated to members in early July. Submissions are due 22 July 2016.

For details of ASTRA's proposals, see the [February Advocacy Report](#). The ASTRA submission is available [here](#).

- **Copyright** – Parties in the site-blocking litigation launched by Foxtel and Village Roadshow were in court for a hearing in late June 2016. Foxtel is seeking orders to block The Pirate Bay, Torrentz, TorrentHound and IsolHunt. Village Roadshow is seeking to block streaming site Solar Movie.

The ISPs involved are Telstra, Optus, TPG and M2, and they are not opposing the applications. However, the plaintiffs and ISPs disagree over who should pay the costs of implementing site blocking orders, who should pay the costs of the legal actions, and how to deal with the problem of mirror and proxy sites that replicate the websites targeted in the applications for injunction. Foxtel and Village are seeking what has been dubbed a "rolling injunction", whereby the ISPs subject to an injunction will be forced to add additional replica pirate sites to their block lists.

Detailed coverage of the disputes is available [here](#).

The draft report of the Productivity Commission's inquiry into Australia's intellectual property arrangements was released on 10 May. Submissions were invited by 3 June. The report is available [here](#). Refer to the [May Advocacy Report](#) for a summary of the draft report's key findings. ASTRA made a submission which focussed on the recommendation that the Government amend the law to make clear that use of technology to evade geo-blocking of content is not illegal. ASTRA's submission noted the importance of geographic licensing to the viability of local businesses, and consequently, local production. The submission noted industry initiatives undertaken to meet consumer demand for more timely access to content at lower prices. The submission is available [here](#).

ASTRA members made individual submissions on other issues, such as 'fair use', copyright term, safe harbour and enforcement. All submissions to the Draft Report are available [here](#).

- **Codes of Practice** – ASTRA has commenced work on the review of its Codes of Practice. This will involve the Subscription TV Broadcast, Subscription TV Narrowcast and the Subscription Radio Narrowcast codes of practice. ASTRA will shortly issue invitations to its members to join working groups to develop and fine tune reform proposals. Following that, approaches will be made to the ACMA to start negotiations on Code content. Depending on the contentiousness of ASTRA's proposed changes, the process could be complete in the first half of 2017.
- **Review of the ACMA** – the draft report of the Review of the ACMA has been released. The draft report is available [here](#). For a summary of the draft findings, refer to the [May Advocacy Report](#).

ASTRA made a submission on the Draft Report welcoming the proposed improvements to the structure and operation of the ACMA. The submission then focussed on the draft recommendation that there is a pressing need for comprehensive reform of media regulation. Noting concerns this may be a longer term proposition, ASTRA's submission then commented on a set of reforms which must be progressed as a priority, given upheavals in the competitive media landscape and the anti-competitive effect of archaic regulation.

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

- **Updates to the ACMA's Privacy Guidelines** – The ACMA is consulting on proposed updates to its Privacy Guidelines for broadcasters. The guidelines are intended to assist broadcasters in complying with the privacy provisions in Codes of Practice. The proposed updates are intended only to clarify the guidelines and include information arising from recent investigation findings. ASTRA is consulting with other broadcasting industry groups in preparing a response. Responses are due 8 July.

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

NEWS

ACMA Investigations

There were no ACMA television investigations finalised in June.

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 upheld a complaint regarding an ad for Ultratune, in which two women in a car become trapped on a level railway crossing. The complaints were that the ad was sexist in its depiction of women as “stupid bimbos”. There was also a complaint that the ad was traumatic for train drivers who had been at the controls when a train had hit pedestrians. The Board accepted that the intent of the ad was to show an unrealistic situation. However, the Board considered the women are depicted as unintelligent in the way they sit passively, with blank faces in the car. This makes the women appear unintelligent and presents them in a stereotypical helpless female situation. The Board’s view was that this amounted to vilification of women.

The Board dismissed an advertisement for TAB betting venues. The complaint was that the ad glamorised gambling. The Board noted that the advertisement depicts a mock interview being undertaken before a game. The Board considered that the man being interviewed is an ordinary person, not a recognised, glamorous or popular figure and that the impression is a parody of sportsmen or experts being interviewed before a game, which is clearly not the case in this advertisement. The Board noted that gambling is a product which is allowed to be advertised and considered that the advertisement does not encourage excessive gambling or otherwise promote behaviour which would be considered to be against prevailing community standards surrounding gambling.

The Board also dismissed an ad for a Kia Sportage vehicle, which showed a man using the automatic reverse parking system. The complaint was that the ad insinuated paedophilia in the depiction of a man carrying a young girl (who were watching the vehicle park). The Board noted that the issues of child safety and being aware of strangers are serious community concerns but considered that showing a child, who is with her father, waving at a driver is not of itself contrary to safe behaviour. The Board noted the complainant’s concern that the girl appears to be frightened but considered that this is an interpretation unlikely to be shared by the broader community. The Board noted that the girl remains with her father throughout the advertisement and considered that there was no suggestion that this girl was in any danger.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

As noted earlier in this Report, the ACMA is presently consulting on the legislative framework for television captioning and on updates to its Privacy Guidelines.