

Advocacy Report

May 2016

ASTRA ACTIVITY

- **Media reform** – On 2 March 2016, the Government introduced the Broadcasting Legislation Amendment (Media Reform) Bill 2016 into the Senate, to implement reforms to media ownership laws. The Bill was immediately referred to the Senate Environment and Communications Committee for inquiry and report by 12 May 2015. ASTRA made a submission to the inquiry which drew attention to the need for broader, principles-based reform. ASTRA representatives appeared before a hearing of the Committee on 31 March. ASTRA's submission is available [here](#). A second hearing was held on 29 April 2016.

As with all Bills, the Media Reform Bill lapsed upon the Governor General dissolving Parliament for the purposes of an election. As the Government is now in 'caretaker' mode, no further action on the Bill or other reform issues can take place. However, if the Government is returned at the election, to be held on 2 July, they can quickly and easily restore the Bill, enabling debate and, potentially, passage of the legislation.

The Government remains committed to the Bill and to keeping its two key planks together – the removal of the '75% reach rule' and the removal of the '2 out of 3' ownership restriction. Repeal of the 'reach rule' retains cross-party support. However, the ALP is yet to declare its position on the '2 out of 3' rule. The make-up of the Senate after the election will be crucial.

The Senate Communications Committee released its [report on the Bill](#) ahead of the formal deadline. The report recommended the Bill be passed in its entirety. The ALP's dissenting report does not include a stated position on the Bill, focussing instead on criticising the Government for rushing the Committee process and not giving ALP Senators sufficient time to form an informed view. The Greens' dissenting report implied they would not support the Bill, as it was not clear how it would encourage media diversity.

Coverage is available [here](#).

- **Federal Budget 2016**

The Federal Budget was handed down on 3 May. The key announcement was an unconditional 25% cut to free-to-air (FTA) television and radio licence fees. The effect of this is that FTA TV broadcasters will now pay 3.375% of gross revenues in licence fees, instead of 4.5%. Note however that the cut will be for 2016 only. The one-off nature of the cut leaves the door open to further cuts being made conditional on FTA participation in other reforms in the future.

The approximate cost of the 1-year cut is \$37m across the industry. This follows intense lobbying by the FTAs, who had been seeking a permanent reduction down to 1%, phased in over 3 years.

The ABC Budget will also face a slight reduction but base funding will be continued (\$3.1b over 3 years). A \$20m pa funding grant given to the ABC by the Rudd Government for 'enhanced newsgathering' will be scaled back to approximately \$14m pa. This has resulted in an announcement that the ABC's 'Fact Check' service will close. SBS's base funding will also continue (\$814.2m over 3 years), but the SBS will receive an additional \$6.9m in 2016-17 to top up the revenue that was expected from the failed legislation to increase SBS prime-time advertising.

The Australian Tax Office will receive extra funding and new powers to crack down on multinational tax avoidance. The new 'diverted profits tax', commonly referred to as the 'google tax', is aimed at multinationals who create artificial tax structures to avoid paying Australian company taxes. The tax will apply to income years commencing on or after 1 July 2017. This measure is estimated to have a gain to revenue of \$200m over the forward estimates period.

- **Captioning** – ASTRA continues to explore stakeholder support for its legislative reform proposals on captioning, including by reaching out to other subscription TV providers (Fetch, Optus).

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.

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

- **Spectrum** – On 9 March 2016 the Minister released a consultation paper outlining proposals for reform of spectrum management rules. Whilst the majority of the reforms are aligned with those ASTRA has previously supported, there were some concerning proposals regarding FTA spectrum. Refer to the [April Advocacy Report](#) for full details.

ASTRA made a submission on the proposals. The submission noted our continued support for the introduction of a unified spectrum management scheme that deals with broadcasting spectrum like all other spectrum. However, we argued that there is a way to go in realising the ambition of a unified scheme if FTA broadcasters are given a special deal on matters such as spectrum tenure and pricing. The ASTRA submission also argued against FTA broadcasters being able to share, trade or sublet any spectrum which, due to the adoption of more efficient technology, became excess to requirements.

The consultation paper is available [here](#).

- **Copyright** – No further developments have been reported regarding the court action launched by Foxtel and Village Roadshow to block pirating websites in Australia, with parties continuing to negotiate to agree as much as possible before hearings in June.

Coverage is available [here](#).

It has been reported that the draft Code of Practice for a Copyright Notice Scheme has been 'dropped'. However, the better characterisation would be that work on the scheme has paused whilst the focus shifts to other avenues (such as the site blocking litigation).

The draft report of the Productivity Commission's inquiry into Australia's intellectual property arrangements was released on 10 May. Submissions are invited by 3 June. The report is available [here](#).

The key draft findings of note are:

- Australia's copyright system has progressively expanded and protects works longer than necessary to encourage creative endeavour, with consumers bearing the cost
 - A new system of user rights, including the introduction of a broad, principles-based fair use exception, is needed to help address this imbalance.
 - Better use of digital data and more accessible content (ie, dodging geo-blocking) are the key to reducing online copyright infringement, rather than increasing enforcement efforts or penalties.
- Commercial transactions involving IP rights should be subject to competition law. The current exemption under the Competition and Consumer Act is based on outdated views and should be repealed.

ASTRA is consulting with members on a submission which focuses 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.

- **Wagering advertising** – The Australian Association of National Advertisers (AANA) has published a new Code of Ethics for wagering advertising. As the ASTRA Codes require compliance with all AANA Codes, this new Code is binding on ASTRA members. The new AANA Code pertains only to advertising content, and does not place any restrictions on scheduling or volume of advertising. The Code seeks to prohibit advertising which could harm vulnerable groups, such as children or problem gamblers. ASTRA's assessment is that the new Code does not go further than existing ASTRA Code provisions on responsible advertising.

The new AANA Code is available [here](#).

- **Australian content** – In local content developments overseas, the European Commission has proposed new rules that would apply to video on demand and video sharing services.

On-demand providers will be obliged to ensure they have at least 20% share of European content in their catalogues. Some providers say they are already meeting this requirement.

Of more significance is the ruling that member states can now require on-demand services available in their country to contribute financially to Europeans works (direct investments or levies payable to a fund). Financial contributions will only be able to be imposed on the revenues generated in the imposing country. The proposed rules also include a mandatory exemption for companies with a low turnover and low audiences as well as small and micro enterprises.

The revised directive still needs to go before the European Parliament and the Council of Ministers. If it is adopted, local regulators would have to enforce it.

Coverage is available [here](#).

Local producers' lobby group SPA [has called for](#) similar obligations in Australia.

- **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. A working group is preparing proposals for consideration by the wider ASTRA membership. 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 early 2017.

ASTRA conducted four training sessions addressing the subscription television Codes of Practice, with approximately 100 attendees from across the ASTRA membership.

- **Review of the ACMA** – the draft report of the Review of the ACMA has been released. It recommends a range of improvements to ACMA powers and processes, without proposing drastic changes to structure or purpose. However, one of the key findings is that the regulator's performance is directly tied to the effectiveness and relevance of the regulatory framework it administers. The draft report finds that the communications regulatory framework is hopelessly out of date, and thus recommends a far-reaching reform project.

ASTRA is consulting with members on a submission which supports the majority of the draft findings, and which comments on which parts of a wider reform project should take priority.

The draft report is available [here](#).

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

NEWS

ACMA Investigation – *Today* (Gem)

On 29 April 2016, the ACMA dismissed a complaint alleging that a report featuring graphic images of a vehicle hitting a pedestrian in Britain was 'gratuitous' and inappropriate for broadcast, particularly at a time when children may be watching.

The ACMA found that the material did not breach the sections of the Free TV Code which require licensees to exercise care in selecting material for broadcast during news or current affairs, having regard to the likely audience for the program.

The ACMA found that the brevity of the report, the news context of the broadcast, its early broadcast time and the use of a warning indicated care in selecting the material. The ACMA found that the likely audience was an adult audience and that there was sufficient public interest for broadcasting the material.

The ACMA also considered parts of the Free TV Code which relate to material that could be seriously distressing or offensive to a substantial number of viewers. The ACMA found that the material was approximately 30 seconds in duration and lacked visual clarity, colour and sound. Beyond the presenter stating that the victim was seriously injured, it did not contain any vision of the nature or extent of the man's injuries. It was therefore found not to have reached the high bar set by the Code for 'seriously' distressing a 'substantial' number of viewers.

Further information is available [here](#).

ACMA Investigation – *I'm a Celebrity...Get Me Out of Here!* (Southern Cross Ten)

On 15 April 2016, the ACMA found in favour of the broadcaster in complaints relating to captioning services.

The complaint was that, on repeated occasions during broadcasts between 31 January 2016 and 8 February 2016, the captioning services had a lag time of 20 seconds or more behind the audio soundtrack.

The ACMA found that the licensee did provide the required captioning services, and that the quality of the captions met the required standards.

Further information is available [here](#).

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 six reports since the last Advocacy Report.

The ASB dismissed a complaint alleging an ad for a hotels comparison website inappropriately implied that a bear was watching pornography on a computer. The complaint made reference to the fact the ad was broadcast on a Sunday evening between “two family shows about cooking.” The Board found that most people would consider the advertisement to be humorous, rather than offensive. The Board also found that young children would not be attracted to the advertisement and would be unlikely to understand the potential inference that the bear was watching something illegal or immoral. The ad was therefore found to have treated the issue of sex, sexuality and nudity with sensitivity to the relevant audience, as required by the Code of Ethics.

The ASB also dismissed a complaint alleging that an advertisement for Foxtel which depicts a man on a bus watching the program ‘Girls’ is promoting “wrong and immoral” behaviour, because the footage shown from ‘Girls’ is a sex scene. The Board found that it is clear the man is watching a TV program, and that there is no suggestion he is watching pornography. The ad was also only aired during programs rated ‘M’ and above. Further, the depictions of the content on the man’s tablet are very brief, not explicit and very mild. Overall the Board considered that the level of sexual suggestion in the advertisement was not explicit and the content of the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience of an ‘M’ program aimed at a mature audience.

The ASB dismissed a complaint for a feminine hygiene product, which alleged the ad constituted ‘fat shaming’, which can initiate eating disorders and serious issues with self esteem. It was also alleged it was denigrating to all women. The Board considered whether the advertisement complied with Section 2.1 of the Code of Ethics, which requires that ‘advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender’. Whilst the ad did depict a larger woman as personifying a woman during her period, the Board found the focus is on sanitary pads, and not body weight and that the reference is to bloating. A minority of the Board considered that the ad promoted negative views about body size. However, a majority of the Board considered the focus was elsewhere.

The Board dismissed an ad for tea in which a man pats a woman on the backside as a ‘little thank you’. The complaint alleged this was sexual harassment, as we do not know anything about the relationship between the man and the woman. The Board noted that a pinch on the bottom in the workplace is sexual harassment and acknowledged that this is a serious social issue. However the Board considered that this advertisement is not condoning inappropriate behaviour in the workplace. The Board considered that the couple depicted are not strangers and are presented in a very obvious domestic

situation. The Board considered the familiar interaction between the couple, the gesture of the pinching, and the woman's response. Based on all of these factors, the Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender.

The Board dismissed a complaint regarding an ad for the Land Rover Discovery. The complaint alleged that the ad depicted unsafe driving because the driver was shown without a seatbelt, and the vehicle's indicator was not flashing during an overtaking scene. The Board found that despite not being able to clearly see the seatbelt of the driver, the fact the car was being driven safely and the fact that all other passengers were wearing belts means there is nothing to suggest the driver would not have chosen to wear a seat belt. The Board also found that although it is not clear if the indicator is flashing, the fact that the driver is shown engaging the indicator means the ad is not suggestive of unsafe driving.

The Board also dismissed an ad for perfume, which it was alleged used a drug use motif and glamourised drug use (because the woman is shown searching for her 'opium' branded perfume). The Board did not consider that the female projected an image of a drug addict, or that the man who has her perfume presented as a drug dealer. The Board considered that the overall message of the advertisement is to encourage people to buy the perfume and not to promote the use of illegal drugs.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

As noted earlier in this Report, consultations periods are currently open for the Review of the ACMA and the Productivity Commission's draft report on Intellectual Property.

As the Government is now in caretaker mode, we do not expect any further consultations from the federal government.