

21 March 2016

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

Broadcasting Legislation Amendment (Media Reform Bill) 2016

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to comment on the Broadcasting Legislation Amendment (Media Reform Bill) 2016 (the Bill).

About ASTRA

ASTRA is the peak industry body for subscription media in Australia. ASTRA's membership includes the major subscription TV operators, as well as more than 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.

ASTRA's members deliver a diverse range of quality news, information, sport and entertainment programs to a broad cross-section of Australians. Our members are the leading innovators in Australian television, using new technology and business models to lower production costs and provide consumers with content wherever, whenever and however they choose.

One in three Australian households subscribe, along with millions more who watch subscription content in public venues.

In 2014/15 ASTRA members invested more than \$796 million filming local content in more than 300 communities Australia wide. That investment funds the broadcast each week of more than 1000 hours of first-run local content, as well as premier international content. Every year ASTRA members add \$2.083 billion to the economy and provides jobs for 8370 Australians.

ASTRA is concerned to ensure that regulation affecting the industry does not inhibit this investment, innovation, productivity and job creation.

The Bill

ASTRA supports deregulation of the media industry, and agrees that changes in technology and consumer behaviour are quickly rendering existing media regulation redundant.

However, ASTRA does not support selective, operator-specific deregulation, which will entrench the competitive advantages enjoyed by free-to-air (FTA) television networks, thus skewing investment towards the oldest business models and least innovative technology in broadcasting. This will dampen innovation, diminish diversity and deny to Australia the jobs and growth that can be unleashed if reform is applied to the entire industry in an operator-neutral way.

The same upheavals in the competitive landscape and the same financial pressures cited by the Government as driving the reforms in this Bill apply equally to the subscription TV industry. The same upheavals in the competitive landscape and the same financial pressures cited by the Government as driving the reforms in this Bill apply equally to the subscription TV industry. Subscription TV faces the same pressure on advertising revenue and fragmentation of audiences as FTA broadcasters, and has to compete with the same largely unregulated overseas competitors, but faces the added challenge of price pressure from other subscription providers.

Whilst we are not opposed in principle to the reforms contained in the Bill, ASTRA believes the Government should pursue a whole-of-industry deregulatory agenda which enables all, rather than some, Australian broadcasters to continue growing, investing and creating jobs in the face of challenges represented by largely unregulated offshore entrants.

For so long as significant regulatory advantages continue to accrue to FTA broadcasters alone, it is impossible to argue that a truly deregulatory approach is being taken. True media reform requires comprehensive and balanced deregulation that equips all, rather than some, local broadcasters to compete on equal terms with unregulated offshore media companies.

Competition for sports broadcasting rights

One of the most significant Government interventions in the media industry is the anti-siphoning scheme which impairs the operation of the market for 1900 sporting fixtures each year. Amongst these are events such as a FIFA World Cup soccer match between North Korea and the Ivory Coast, played overseas in overnight time zones, and watched by as few as 11,000 viewers.

The imposes a condition on the subscription TV licence that prohibits subscription television broadcasters from acquiring broadcast rights to listed events unless a FTA broadcaster has first acquired them.

The scheme now operates well beyond its original public policy intentions to the detriment of sports bodies, competitors of FTA broadcasters and, ultimately, to the general public, who are denied the full potential for innovation and choice that would flow from improved competition for sports broadcast rights.

The scheme has been completely overtaken by technological developments. For example, because the scheme only applies to subscription TV licensees, it would not prevent an 'over-the-top' streaming service like Netflix from acquiring exclusive rights to nationally significant sports and charging viewers for access. This is no longer a hypothetical argument, demonstrated by Optus' active participation in the acquisition of sports rights and its stated intention to target further sports rights.¹ This demonstrates how the scheme has become redundant and irrelevant.

ASTRA submits that a truly reformist agenda would at least begin to address the anti-competitive impact of this outdated and protectionist scheme. The anti-siphoning rules, after all, date from precisely the same era as the rules being repealed in the Bill – making them as much of a relic of the analogue era as the 'reach' and '2 out of 3' restrictions.

Principles for holistic deregulatory reform of the media industry

ASTRA believes that consumers will be better served by an open and competitive marketplace that encourages investment, innovation and job creation. This means reducing to a minimum the amount of operator- and sector-specific regulation.

Not only is this desirable as a matter of principle; it is reinforced by the fact of convergence which allows a plethora of unregulated new entrants and services to enter the sector to challenge old business models and incumbent media organisations.

In the last 12 to 18 months, the Australian media landscape has grown to include new subscription services offering consumers even more choice and flexibility. The subscription television industry welcomes competition, but submits that in order to maintain diversity and maximise consumer choice, competition must take place on equal terms. New entertainment services delivered online are not subject to the complex and burdensome media-specific regulation that applies to incumbents and are thus in a position of comparative advantage in terms of regulatory compliance costs and business practices.

It is inconceivable that the existing convoluted rules could be effectively applied to these new participants. The only way to enable fair competition amongst all participants, therefore, is to dismantle much of the current regulatory regime.

ASTRA submits that greater competition, underpinned by balanced regulation, is more likely to maximise consumer outcomes by promoting investment, fostering innovation and creating jobs. It will also generate greater economic activity and therefore increase taxation revenues available to the Commonwealth.

Conversely, regulation that distorts competition or applies asymmetrically will hinder investment, innovation and job creation, and harm Commonwealth revenues.

Advances in broadcasting may be enabled by technology, but the benefits they promise to consumers will be delivered only to the extent they are supported by freer markets and fairer competition.

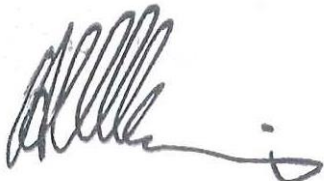
¹ <http://www.smh.com.au/business/optus-eyes-bigger-sports-prizes-after-winning-epl-rights-20151102-gkox75.html>

In ASTRA's view, the policy debate regarding media reform should be guided by the following principles:

- *Advancement of the interests of consumers*—changes to the regulatory framework should only be made, and existing regulations only maintained, if they advance the interests of consumers.
- *Promotion of competition*—free and open competition is widely recognised as a positive driver of economic growth and efficiency. Where existing regulation produces anti-competitive outcomes, it should be removed. Any future regulation should be assessed against this principle to ensure that it promotes competition and a level playing field.
- *An adaptable, flexible framework*—the regulatory framework should be adaptable to the rapidly evolving and innovative technologies that drive change in the media and communications industry.
- *Regulatory forbearance*—regulatory intervention should be a last, rather than a first resort. Self-regulatory and co-regulatory measures should be preferred.
- *Regulatory consistency and technology neutrality*—in an ideal state regulatory consistency and technology-neutral regulation is preferred. However, as a practical matter, there will need to be a phased approach to achieving this outcome as the current regulatory landscape confers benefits and affords protections to some sectors over others – regulatory burdens on protected sectors should only be lifted when those protections are unwound.

Thank you again for the opportunity to comment on the Bill. If you have any questions or would like further information, please do not hesitate to contact me.

Yours sincerely

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

Andrew Maiden
CEO