

Advocacy Report

December 2016/January 2017

ASTRA ACTIVITY

- **Media reform** – There is little progress to report since the end of last year, with Parliament in recess. It is likely the Government has devoted time to courting the Senate cross-bench following the ALP's commitment to oppose repeal of the '2 out of 3' rule. Media report indicates that opposition from Pauline Hanson's One Nation party may scupper the proposed changes. Senator Xenophon is also said to be considering opposition to the bill, citing concerns about concentration of ownership, but also raising a proposal for a 'super tax' for digital giants like Facebook and Google. Xenophon claims those platforms are cannibalising content creators such as News Corp, Fairfax and commercial free-to-air broadcasters. Coverage is available [here](#). The media ownership bill was not on the agenda for the first week of Parliamentary sittings for 2017.

ASTRA continues to advocate for modest anti-siphoning reform, with some reports over summer indicating that free-to-air broadcasters may consider supporting a level of reform as part of a broader package of changes, including reductions in licence fees. Coverage is available [here](#).

On free-to-air licence fees, no further reduction was announced in the Government's mid-year budget update on 19 December 2016.

The Government's plans for FTA licence fees remain unclear, with several possibilities, including further cuts in the May Budget. The Government has publicly indicated it will consider FTA licence fees as part of its review of spectrum use and spectrum pricing, however the timeframe for completion of these projects is unclear. ASTRA continues to advocate for the importance of market based pricing of spectrum and offsetting reform.

- **Gambling advertising** – We continue to await the report of the Senate Inquiry into Senator Xenophon's gambling advertising Bill (see previous Advocacy Updates for details of the Bill), which has been pushed back again to 28 February. We do not expect the Bill to have the Government's support, however there is the ongoing risk that Xenophon may demand reform in this area in exchange for his three senate votes on other Government legislation

The Government has introduced legislation to ban 'click to call' gambling services and a Senate inquiry has completed its review of the Bill. The Bill seeks to change the definition of 'telephone' betting services (which are permitted during play) to make it clear that services which combine on-line and telephone betting features are not permitted. The Senate Committee recommended the Bill be passed without amendment. Full report is available [here](#).

ASTRA will monitor the progress of the Bill closely as there is the possibility that Senator Xenophon may seek to attach more onerous restrictions regarding sports betting advertising more generally.

- **Captioning** – ASTRA continues to explore stakeholder support for its legislative reform proposals on captioning. We understand the Department has briefed the Minister on ASTRA’s proposed changes and we are now focussing our advocacy on securing priority in the queue for legislation to be drafted.

For details of ASTRA’s proposals, see the [February 2016 Advocacy Report](#). The ASTRA submission to the Department is available [here](#).

The Senate Standing Committee on Community Affairs is inquiring into the delivery of outcomes under the National Disability Strategy 2010-2020. Whilst not specifically mentioning captioning, the strategy makes reference to the accessibility of electronic communications services. ASTRA is considering making a submission noting its proposed reforms could make captioning services more transparent to caption users. Submissions are due 17 March 2017. More information is available [here](#).

- **Copyright** – Foxtel and Village Roadshow have been successful in their Federal Court action to have ISPs ordered to block five torrent websites. The five websites are The Pirate Bay, Torrentz, TorrentHound, IsoHunt and SolarMovie.

ISPs including Telstra, Optus, TPG, M2, Dodo and iiNet had 15 days to comply with the court order (issued 16 December). ISPs can use DNS blocking, IP address blocking, URL blocking or any other technical method. Foxtel and Village Roadshow will have to pay \$50 to the ISPs for every domain that is blocked. They also have to pay the ISPs’ legal costs. The Court found that rights holders will need to seek approval from the court to add new websites to the list of sites to be blocked.

Press coverage of the orders has mainly focussed on the technological measures downloaders can use to evade the blocking and continue access torrent websites. Coverage is available [here](#), [here](#) (Foxtel statement) and [here](#).

In late 2016 the Productivity Commission released the final report of its inquiry into Australia’s intellectual property arrangements. The final report confirms the recommendations in the draft report favouring expanded safe harbour provisions, a fair use exemption, shorter copyright term and evasion of geographic licensing.

A Government response was not issued at the same time as the report’s release. Instead, the Government is accepting submissions until 14 February on the final report. The Government has indicated it will look at all submissions made in the process to date, and has asked for submissions to offer new information or to comment on aspects of the final report that were not covered in the draft report. ASTRA is preparing a submission. Due to a diversity of opinions amongst members, ASTRA will not be making a comment on issues such as fair use and safe harbour. More information is available [here](#) (including the [final report](#)).

There have been no further developments on the Government’s Bill to extend ‘safe harbour’ provisions. Due to a divergence of views within ASTRA, members have been conducting their own advocacy on this issue.

There was recently also press coverage of Foxtel’s reaction to a facebook user live-streaming coverage of a high profile boxing match, which was exclusively being shown on the Main Event service. The facebook user even streamed the phone call between himself and Foxtel, during which Foxtel were attempting to have the man stop the streaming. Coverage is available [here](#) and [here](#).

On 7 February, ASTRA hosted the first in a series of industry forums designed to share information and form strategy in response the rise of IPTV piracy.

- **Classification** – On 7 December the Government announced it will conduct a 12 month pilot of a classification tool that will streamline the process of classifying Netflix content. The tool is based on an algorithm that makes use of Netflix’s proprietary content tagging database. The pilot will run for 12 months and will include regular Government spot checks to assess the accuracy of the tool. Further information [here](#).

ASTRA and Foxtel have met with the Classification Branch of the Department of Communications to discuss the tool. Discussions also covered potential ways to streamline classification and remove unnecessary red tape.

- **Spectrum** – In December ASTRA made a submission to an ACMA consultation on future spectrum for 5G mobile broadband services. ASTRA’s submission called on the ACMA to carefully manage the potential for interference to C-Band satellites, which operate in spectrum adjacent to bands identified by the ACMA as being suitable for 5G.

In January 2017, ASTRA made a submission to the ACMA’s Five Year Spectrum Outlook, which sets down the ACMA’s forward work plan for its spectrum management functions.

- **Codes of Practice** – the ASTRA Board has approved a suite of proposed changes to the ASTRA Codes of Practice, which enables ASTRA to commence drafting a proposed Code. The drafting will be undertaken in consultation with members.
- **SBS Advertising** - The Minister is considering reintroducing a bill on SBS advertising which was previously rejected. The Government had proposed to allow SBS to increase ads in primetime from 5 to 10 minutes to attract greater revenue, but without increasing its overall total. Coverage is available [here](#).
- **Australian content** - There has been no announcement regarding the mooted review of Australian content regulation. However a consultation event has been announced by the ACMA for 16 and 17 May 2017, which will address Australian content. Details are available [here](#).
- **ACMA Review** – Still no sign of the Government’s response to the ACMA Review. The position of full-time Chair also still stands empty, with deputy Richard Bean continuing to act in the position. It is thought that the two issues will be dealt with at the same time, however there is no visibility of when that will take place. Coverage is available [here](#).

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

NEWS

ACMA Investigations

On 12 December, the ACMA finalised an investigation into Nine News, finding no breach of the accuracy and fairness provisions of the Commercial TV Industry Code of Practice. There was also no breach of the program promotions provisions of the Code. The complaint related to a news program, including five promotion segments about an upcoming health report, and to the actual health report. The report was about diet as a therapy for arthritis and gout pain. The report 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 seven reports in the December 2016-January 2017 period, three were for variations of the same ad (BCF).

The ASB dismissed a complaint regarding Sanitarium Up and Go. The complaint was that the ad feature bullying and vandalism as the ad showed a man snatching a drink from someone else and hurling it against the door of a fridge. The Board found that the ad did not show any participants seeming to feel threatened or concerned by the man's actions. The Board also found the ad is clearly over the top and an unrealistic scenario.

The ASB dismissed a complaint for a hair removal product. The complaints were that the ad was overly sexual and sexualised women in that some of the shots implied stroking of the genital area with the hair removal products. The Board noted the women in the advertisement were fully covered at all times, and considered the tone of the advertisement was more playful than sexual. The Board noted the advertisement did include some close shots of the bikini area, but the women were wearing underwear and the focus was relevant to the product being discussed. The Board considered that the advertisement was not overly sexual, and was not exploitative or degrading of the women.

The Board dismissed complaints against a series of ads for the Boating, Camping and Fishing chain of stores. The complaint was that the play on the acronym BCF ("BCFing") constituted inappropriate and vulgar use of language. The Board noted that the jingle is sung by the actors in the advertisement and considered that the tone is light rather than aggressive and there is a clear link between the brand name abbreviation and the lyrics of the jingle. The Board noted that some members of the community might not make the connection between BC effing standing for BCFing but considered that the manner in which the words are sung in the jingle lessens the impact of the words.

The ASB dismissed a complaint for a small loans company. The complaint was that the ad featured animal cruelty, as it showed a cat falling from a height. The Board acknowledged that the cat's fall from the ladder could cause concern to some members of the community but considered that overall there is no suggestion that the cat has been harmed and in the Board's view the advertisement does not depict, encourage or condone cruel behaviour towards this, or any other, cat.

The ASB dismissed a complaint for XXXX Gold beer. The complaint was that the ad featured people in a boat without life jackets and also showed the skipper drinking beer and that this constituted a depiction of unsafe behaviour. The Board acknowledged there is a high level of community concern around safety in the water, especially given the recent spate of drownings across Australia, but considered that while the wearing of life jackets on a boat may be considered best practice for adults it is not law in the situation depicted in the advertisement and therefore does not breach prevailing community standards on health and safety. The Board also considered there was no excessive consumption of alcohol and that there was no suggestion the captain of the boat was going to drink beer.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

As noted above, the Government is consulting on the Final Report of the Productivity Commission's inquiry into intellectual property. Submissions are due 14 February.