

# Advocacy Report

## JUNE 2015

### ASTRA ACTIVITY

- **Media reform** – Recent press reports indicate the Government has shelved plans to introduce major reforms to media regulations such as the 75% reach limitation for free-to-air television, cross-media ownership restrictions and anti-siphoning. This is said to be due to a lack of consensus within the industry. However, it is likely that several free-to-air networks will continue to agitate, particularly as regards the 75% reach limitation, which they argue limits their ability to gain the economies of scale necessary to sustain their business model.

Throughout this year ASTRA has been actively pursuing balance in any media reforms through submissions and direct representations to Parliamentarians, advocating for the inclusion of anti-siphoning in any reform package. ASTRA and member organisations met with the Prime Minister who gave an assurance that any media reforms would be balanced and fair and would include meaningful reform of the anti-siphoning scheme.

Relevant press reports are available [here](#) and [here](#).

- **Copyright** - The April and June Advocacy Reports provided detail on recent developments in combatting copyright piracy, including a draft Code of Practice for a Copyright Notice Scheme, Federal Court litigation against ISP iiNet and proposed site-blocking legislation.

Since the last Advocacy Report, the Parliament has passed legislation to allow rights holders to seek a court-enforceable injunction requiring ISPs to block access to websites whose primary purpose is to facilitate online copyright piracy. This followed a Parliamentary inquiry into the Bill, which resulted in support for the Bill from the Government and Opposition. ASTRA member Foxtel had sought some minor amendments to the Bill, however these were not accepted by the Committee or the Parliament.

ASTRA has publicly welcomed the legislation's passage, noting UK research showing that similar measures in that jurisdiction have significantly reduced traffic to blocked websites.

ASTRA's media release is available [here](#). The Senate Committee's final report into the legislation is available [here](#).

With regards to the Federal Court litigation involving the rights holders for *Dallas Buyers' Club* and iiNet, recent developments consist of the court considering the letter proposed to be sent to customers identified as infringing copyright. A copy of the letter has been leaked to the press, and its key component is an invitation for customers to contact the rights holders to negotiate a settlement or face court action. The quantum of payment the rights holders would accept in order to waive court action is not specified in the letter. Next steps are for the court to consider the letter and to this end we note the judge's previous statements that he would not approve letters which engage in 'speculative invoicing' (demanding a payment to avoid court action).

With regards to the draft Code of Practice for a Copyright Notice Scheme, the Australian Communications and Media Authority (ACMA) continues its consideration of the code and negotiations continue between rights holders and ISPs regarding issues such as costs and indemnities.

- **Canberra advocacy** - Following ASTRA's 2015 Parliamentary Function, ASTRA Board members met with a number of Government and Opposition MPs and Senators to outline the industry's position on a number of key regulatory issues. ASTRA advocated on issues such as media reform, anti-siphoning, online piracy, spectrum, free-to-air licence fees and production funding.

Encouraging feedback was received on the prospects of securing an increase in the Producer Offset for television productions, which currently sits at 20%, compared to film where the Producer Offset is set at 40%. ASTRA is considering how best to collate an evidence base which supports the economic arguments for an increase in the Offset for television productions to 40%.

- **Bureau of Communications Research environment scan** – the Bureau of Communications Research (BCR), which is part of the Department of Communications, recently sought industry's views on emerging technological and market trends and issues. This is intended to provide input to the department's annual planning activities and forward work agenda.

ASTRA made a submission to the BCR emphasising the need for Government to focus its work programs on identifying the regulatory settings which encourage, rather than stifle, innovation. The ASTRA submission also identified a number of key trends and developments which will, or already are, placing pressure on regulatory frameworks.

However, more pressingly, ASTRA submitted there is an opportunity to undertake very broad-ranging research work which will position the Government to proactively address regulatory blockers of innovation and growth. ASTRA recommended the BCR may wish to take a future-focused case study approach which:

- seeks to predict possible sector developments and scenarios;
- assesses how these would be blocked by existing regulatory settings; and
- identifies how these settings might be adjusted to enable rather than block innovation.

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

- **Australian Communications and Media Authority class licence variation** - The ACMA recently sought comment on a proposal to remake the Radiocommunications (Communication with Space Object) Class Licence 1998 and to make the Radiocommunications (Radionavigation-Satellite Service) Class Licence 2015.

Of relevance to ASTRA's members is the proposal to remove the mobile-satellite service frequency ranges 1980–2010 MHz and 2170–2200 MHz from the space object class licence, and proposed changes with respect to the operation of mobile ship stations.

ASTRA's submission supports the removal of the frequency ranges 1980-2010MHz and 2170-2200MHz from the space object class licence, because of the ongoing use of these bands for TOB. Removal of MSS bands from the class licences would give incumbent licensees, such as Fox Sports, certainty regarding the prospects for licence renewal.

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

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

## NEWS

### **ACMA Investigation** – *Nine Newsbreak*

On 9 June 2015, the ACMA found that NBN had breached a condition of its licence by failing to provide captions for a portion of a news update broadcast during coverage of a cricket test match.

As the program was a breaking news bulletin broadcast during designated viewing hours (which were the hours between 6 am and midnight each day), the licensee was required to provide a captioning service for the program under subsection 130ZR(1) of the *Broadcasting Services Act 1992* (BSA).

NBN acknowledged that there were approximately 51 seconds of the news bulletin broadcast that were not captioned. NBN undertook to take steps to prevent a similar breach occurring in the future, including developing an automated program to help prevent further incidents of missing captions, and additional training for captioners.

The ACMA considered that these actions were adequate to remedy non-compliance.

The full ACMA 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 eight reports in June.

The ASB dismissed a complaint regarding an advertisement for Nestle Condensed Milk. The complainant alleged the advertisement objectified a young man who featured in the ad without a shirt on, and that this was sexist because an advertisement objectifying a woman in this way would not be aired. The ASB found that the advertisement did not breach the requirements that advertisements should not include material which discriminates or vilifies a person on the basis of gender because the tone of the advertisement is light hearted and flirtatious. The ASB found that the depiction of a man enjoying admiration does not amount to material which vilifies him on the grounds of gender.

The ASB dismissed a complaint regarding an advertisement for the Advanced Medical Institute which featured claims regarding the Institute's treatments for premature ejaculation. The complaint was that misleading claims were being made about the product. The ASB found that the issue of misleading advertising should be referred to the Australian Competition and Consumer Commission. The ASB also found that although some people may consider the discussion of erectile dysfunction to inappropriate, the ad did not amount to material which is discriminatory to people with a disability. The ASB also found no breach of the requirement to treat sex, sexuality and nudity with sensitivity to the relevant audience.

The ASB also dismissed a complaint regarding an advertisement for cheese slices, which features a boy with an eyepatch described as a 'cyclops'. The Board considered there was no negative treatment of people with a physical disability in the advertisement, and no breach of prevailing community standards relating to emotional or psychological bullying.

The ASB also dismissed a complaint relating to the movie *Poltergeist*, which features scenes from the horror movie being advertised. The ASB considered whether the advertisement breached the requirements that violence only be portrayed if justified in the context of the

product or service being advertised. The Board found that supernatural imagery used in the ad is relevant to the movie being advertised and the imagery is quite stylised and unrealistic.

The ASB also dismissed a complaint regarding the phone app 'Game of War'. The complaint alleged the advertisements used a woman with large breasts to market the computer game and in so doing, engaged in sexual exploitation. The ASB found that whilst some people would prefer women are not used in advertisements in a manner which utilises their gender to promote a product, in this instance the woman is representing the main character of the game and her inclusion in the advertisement does not discriminate against or vilify a person on account of gender. The ASB also found that the advertisement did not employ sex appeal in a manner which is exploitative and degrading.

The ASB also dismissed a complaint for an advertisement for the SVOD service Stan. The ASB found that the play on words featuring the word 'pussy' was not demeaning or vilifying of women. The Board also found the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and did not use inappropriate language.

The ASB also dismissed a complaint regarding an advertisement for the charity The Butterfly Foundation. The ASB found that the depiction of people raising their middle finger to camera involved no aggression or menace and that the overall tone of the advertisement was light-hearted.

The ASB also dismissed a complaint for an advertisement for an information technology which depicts the lead singer of a band throwing his guitar and using a mic stand to smash a window. The ASB found that the requirement that advertisements do not portray violence unless it is justifiable in the context of the product advertised had not been breached as the violence was depicted in the context of a stereotype associated with rock musicians. The actions were deemed to be over the top and not depicted as condoning violence.

ASB reports are available to ASTRA members on request.

## **DISCUSSION PAPERS/REQUESTS FOR COMMENT**

### **Review of the Australian Communications and Media Authority**

The Government has announced the terms of reference and appointed an expert panel for a wide-ranging review of the ACMA.

The review will be undertaken by the Department of Communications and will consider the best form of delivering functions required to achieve the Government's priorities in relation to the media and communications sector and the broader economy. It will consider the current communications sector, the evolving shape of the digital media and communications environment, the current statutory and non-statutory roles of the ACMA, performance of its current functions and resource allocation.

The review will consider whether any of the objectives and functions of, or services provided by, the ACMA can cease, be provided by other agencies or the industry itself. It will also consider whether there are objectives and functions of, or services provided by, other agencies that may be more efficiently and effectively delivered by the ACMA. In doing so, it will also look at the structure and operations of other relevant Australian and international regulators.

The expert panel includes representatives from overseas regulators (Ofcom (UK), the FCC (US)), consumer groups, former regulators, the ACCC, free-to-air television, telcos and Screen Australia.

ASTRA has been advised that a review paper will be released in July, followed by meetings with industry and then public submissions. The Department will report to the Government by the end of 2015.

The terms of reference for the review are available [here](#).

### **Draft legislation to apply GST to 'imported intangibles'**

The Government has released legislation to close the loophole which allows foreign operators such as Netflix to avoid charging GST on services imported into and consumed in Australia. This gives effect to a 2015 Budget decision.

Submissions are sought by 7 July 2015.