

# POLICY UPDATE

## NOVEMBER 2014

### ASTRA ACTIVITY

#### ▪ **De-regulatory reform**

##### ***Captioning and Australian content***

ASTRA has expressed its support for amendments to STV closed captioning rules, and a useful red tape reduction relating to Australian content rules, that have been proposed by the Government.

The amendments contained in the *Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014* (the Bill) would, if passed by Parliament, improve the administration of the captioning scheme in particular. For example, they would:

- allow operators of an associated group of sports channels to, within limits, 'average' captioning levels across channels (a proportion of a channel's captioning target could met on another channel within the group);
- provide new channels with an automatic exemption from captioning rules for 12 months (subject to qualifications);
- allow channels more time to apply for changes to captioning requirements;
- change the definition of 'repeat' to remove an anomaly that had unintended consequences;
- allow for exemptions in certain circumstances where captioning failures are due to engineering and technical issues;
- require the regulator to consider the nature of live captioning when making rules about captioning quality; and
- simplify record-keeping rules.

ASTRA has been invited to make a submission to a Parliamentary Inquiry into the Bill. The Senate Environment and Communications Legislation Committee will complete its inquiry into the Bill and report by 9 February 2015.

The Bill and explanatory information is available at:

[http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5368](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5368).

- **Rights and Responsibilities consultation** – on 31 October 2014, ASTRA finalised its submission to the Rights and Responsibilities consultation conducted by the Australian Human Rights Commission. ASTRA noted opportunities to simplify broadcasting codes of practice where these duplicate existing laws, including those that provide anti-discrimination protections.

The ASTRA submission is available at:

[http://www.astra.org.au/images/pages/AHRC\\_Rights\\_and\\_Responsibilities\\_paper\\_-\\_ASTRA\\_submission\\_-\\_October\\_2014.FINAL.pdf](http://www.astra.org.au/images/pages/AHRC_Rights_and_Responsibilities_paper_-_ASTRA_submission_-_October_2014.FINAL.pdf).

- **Competition Policy Review** – on 24 November 2014, ASTRA lodged a submission with the Competition Policy Review Panel, responding to its Draft Report. ASTRA made submissions on draft findings and recommendations relating to: media ownership and control; anti-siphoning; content competition; intellectual property; geoblocking (and circumvention of territorial licensing arrangements by use of virtual private networks); and, briefly, general competition law matters (including market definition, third line forcing, resale price maintenance and misuse of market power provisions).

ASTRA's key arguments were that:

- media ownership and control and anti-siphoning rules are outdated and unduly restrict competition;
- there is no evidence that intellectual property rules require wholesale review by the Productivity Commission, nor is there a need for new rules relating to competition in the acquisition of content rights; and
- the Panel should not condone the use of virtual private networks to circumvent geoblocking—ASTRA noted that allowing producers to grant program rights by territory, language, platform and amount of usage allows them to maximise their return on investment.

The ASTRA submission is available at:

[http://www.astra.org.au/images/pages/ASTRA\\_submission\\_-\\_Competition\\_Policy\\_Review\\_-\\_Draft\\_Report\\_-\\_24\\_Novembe....pdf](http://www.astra.org.au/images/pages/ASTRA_submission_-_Competition_Policy_Review_-_Draft_Report_-_24_Novembe....pdf).

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

## NEWS

**Screen Australia Drama Report** – on 13 November 2014, Screen Australia released its *2013/14 Drama Report*, which it describes as its annual health check of the Australian drama production industry and which documents Screen Australia's direct funding and administration of the Producer Offset.

A key finding was that there had been an 11 per cent increase in total drama expenditure in Australia compared with the preceding year. Australian TV drama accounted for 41 per cent of expenditure, Australian feature films 35 per cent and foreign activity (primarily feature production) 24 per cent.

The report noted that STV had enjoyed a strong year with *Deadline Gallipoli*, two seasons of *Wentworth* and the Australia/UK co-production, *Banished*. It noted that South Australian activity increased to record its highest share ever (9 per cent), including as a result of production of *Deadline Gallipoli* in that state.

The report is available at: [www.screenaustralia.gov.au/DramaReport](http://www.screenaustralia.gov.au/DramaReport).

**Documentary funding** – on 14 November 2014, Screen Australia released its revised Documentary Funding Guidelines. ASTRA had lodged two submissions about these guidelines during the review and revision process.

ASTRA was disappointed to note that in finalising the guidelines Screen Australia reversed its earlier decision to remove notional broadcaster funding splits. As a result of the reversal the ABC and SBS will continue to receive a disproportionate share (85 per cent) of the allocation for the Broadcast Program (\$9–\$10 million dollars annually).

The final guidelines are available at: [http://www.screenaustralia.gov.au/getmedia/44f18a22-59b3-4740-b831-0b03863564dd/Glines\\_Documentary.pdf](http://www.screenaustralia.gov.au/getmedia/44f18a22-59b3-4740-b831-0b03863564dd/Glines_Documentary.pdf).

**Privacy** – on 17 November 2014, the Privacy Commissioner launched the Office of the Australian Information Commissioner's (OAIC) Privacy regulatory action policy. This document explains how the OAIC will use its privacy regulatory powers and communicate information publicly. In launching the document the Privacy Commissioner said that the policy does not mark a shift in the OAIC's approach to regulation; instead, he said that the document provided transparency about the OAIC's existing approach.

More information is available at <http://www.oaic.gov.au/news-and-events/news/privacy-news/launch-of-privacy-regulatory-action-policy>.

**ACMA research paper – emerging trends in media and communications** – during November the ACMA released a research paper, *Six emerging trends in media & communications*.

The report described six trends under the following headlines:

- **Communications goes over-the-top (OTT)**—providing commentary on the use of OTT services like VoIP.
- **Consumers build their own communications links**—findings about consumers self-managing their communications network and service access by using different OTT services for different purposes.
- **Wearable devices—personalised data arrives**—commenting on devices which allow real-time continuous information on a range of personal indicators.
- **'Flexible' TV—online expands viewer options**—noting that access is being gained to content from free-to-air television, subscription television, catch-up television and online video services.
- **Multi-screening is mainstream**—confirming that the television screen remains key to the Australian household entertainment experience, but viewers are increasingly using second (and third) screens when they watch TV.
- **TV is still the main news source, even as platforms shift**—noting that broadcast television remains the main source of news, including for Australians accessing news online.

The paper is available at <http://www.acma.gov.au/theACMA/Library/researchacma/Research-reports/six-emerging-trends-in-media-and-communications>.

**ACMA Investigation – Seven Network news breach** – on 31 October 2014, the ACMA announced that it had found that Channel Seven Perth breached the Commercial Television Industry Code of Practice in relation to a news item reporting on the death of a motorcyclist after an accident in Perth.

Close-up footage of parts of the motorcycle and personal items were found, in combination, to be distinctive to immediate family members. Seven was found not to have taken all reasonable steps to avoid indirectly identifying the victim before his immediate family had been notified by authorities. This breached a clause of the free-to-air code which explicitly aims to protect victims' family members in these circumstances.

More information is available at: <http://www.acma.gov.au/Industry/Broadcast/Television/TV-content-regulation/seven-news-breaches-code-by-indirectly-identifying-accident-victim-1>.

**Advertising Standards Bureau findings** – ASTRA receives updates from the Advertising Standards Bureau when it issues final case reports where complaints about an advertisement have been considered. Recent reports refer to complaints alleging:

- stereotyping of men and women;
- depiction of unsafe behaviour in advertisements;
- food products being marketed to children;
- xenophobia; and

- sexualised posing in advertisements.

These reports are available to ASTRA members on request.

## DISCUSSION PAPERS/REQUESTS FOR COMMENT

- **Spectrum Review** – on 11 November 2014, the Department of Communications issued the second consultation paper of its Spectrum Review outline a range of proposals, including:
  - a new licensing framework would replace current apparatus, class and spectrum licences—the framework would be flexible and based on various ‘parameters’ (such as frequency, geography, location and licence term);
  - a maximum licence term (proposed to be 15 years) would be specified in legislation;
  - prices should be ‘market-determined’ or ‘market-informed’ (although the Minister would retain a discretion to determine when market-based prices should not be charged);
  - there would be more discretion for the regulator, the ACMA, to determine allocation mechanisms and processes; and
  - there would be greater scope for private band management—that is, delegation of the ACMA’s spectrum management functions to third parties (as ASTRA previously suggested in relation to outside broadcast spectrum).

ASTRA will lodge a response to the proposals by 2 December 2014. The Department’s paper is available at:

[http://www.communications.gov.au/consultation\\_and\\_submissions/spectrum\\_review](http://www.communications.gov.au/consultation_and_submissions/spectrum_review).

- **ACMA Five Year Spectrum Outlook** – the ACMA has released its annual Spectrum Outlook paper, which sets out its five year spectrum management work plan. ASTRA’s submission will build on the arguments contained in its Spectrum Review submission.

Submissions are due by 19 December 2014. The ACMA’s paper is available at:

<http://www.acma.gov.au/Industry/Spectrum/Spectrum-projects/5-Year-Spectrum-Outlook/fiveyear-spectrum-outlook-1>.