

Advocacy Report

AUGUST 2015

ASTRA ACTIVITY

- **Media reform** – Media reports indicate the Government is maintaining its view that major reforms to media regulations, such as the 75% reach limitation for free-to-air (FTA) television, cross-media ownership restrictions and anti-siphoning, will not proceed without broad industry consensus. However, regional FTA television broadcasters (WIN, Prime and Southern Cross) have been lobbying strongly to have the reach rule removed in isolation of any other reform, and have linked the lack of regulatory reform with local newsroom closures.

The regional FTA broadcasters have been active in Canberra and National Party MPs have raised concerns about the closures within Government. The regional FTAs have launched a public campaign to get the reach rule repealed, including an online presence and TVC and have reportedly recruited former Deputy Prime Minister and leader of the National Party Tim Fisher to be the face of the campaign. The Seven Network, which is opposed to repeal of the reach rule, has launched its own TVC to counter the claims made by regional FTAs.

Work is continuing separately on a review of the FTA broadcasters licence fees (which are currently at 4.5% of revenue, following a 50% reduction from 9%). Press reports suggest the Minister is sympathetic to a reduction, but has flagged the need for offsetting measures to counteract the budget impact. We understand that the outcome will be determined prior to the 2016 budget and will take into account work being done by the Department of Communications on spectrum pricing.

ASTRA continues to actively pursue balance in any media reforms (through submissions and direct representations to Parliamentarians), advocating for the inclusion of anti-siphoning in any reform package. ASTRA has also argued that any reductions in licence fees should be linked to the relinquishment of valuable public spectrum.

Recent press coverage is available [here](#).

- **Review of the Australian Communications and Media Authority** – ASTRA has made a submission to the Government's review of the Australian Communications and Media Authority (ACMA). ASTRA argued that a number of improvements to the objectives, structure, powers and operation of the ACMA are warranted in the interests of reducing the regulatory burden on industry and ensuring the regulator is well equipped to respond to market and consumer changes.

ASTRA argued that the objective of the regulator should be to maximise consumer benefit by ensuring regulatory conditions which encourage innovation, investment and competition. ASTRA also argued that the regulator should have written into its establishing legislation a preference for non-regulatory or co-regulatory approaches and should be required to apply the least level of regulation required to achieve stated public policy aims.

In order to increase the efficiency of ACMA processes and decision-making, ASTRA argued for an increased use of delegation. ASTRA also strongly supported splitting the Chair and CEO roles to improve the governance of the ACMA.

ASTRA will shortly participate in stakeholder feedback sessions. It is expected the review will announce its findings before the end of the year.

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

- **Copyright** - With regards to the Federal Court litigation involving the rights holders for *Dallas Buyers' Club* and iiNet, the court has rejected the draft letters put forward by the rights holders, which were to be sent to alleged infringers (for further details, see June and July Advocacy Updates). The judge is reported as having strong concerns with the amount of money sought by the rights holders in the letters.

While the actual figures are still confidential, the court ruling shows that the company was seeking four heads of damages:

- A claim for the cost of purchasing the film;
- A claim for damages relating to how often the film had been uploaded by a user. Given the nature of Bittorrent this could be extensive and the amount was described by Justice Perram as "substantial";
- A claim for punitive damages relating to how many other copyrighted works had been downloaded and;
- A claim for damage related to the cost to DBC for obtaining the alleged infringers details.

While Justice Perram classed the first and last claims as reasonable, he expressed severe reservations about the other two, calling them "untenable" and "outside the proper ambit of the power."

Justice Perram said he would allow the letters to be sent if the rights holders gave written confirmation that it would only seek damages related to the cost of purchasing the film and recouping the cost of the discovery. The rights holders will also have to pay a \$600,000 bond before the court will allow the release of details of alleged pirates.

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.

- **Spectrum Review** – on 25 August 2015 the Government announced its response to the Spectrum Review.

In ASTRA's submissions to the review, ASTRA advocated for reforms which would put all spectrum users on an equal footing and which would encourage efficient use of spectrum through market-based pricing and increased spectrum trading. These reforms will now be implemented.

The Government has specifically stated it will implement the three main recommendations of the review:

1. Replace the current framework with new legislation that removes prescriptive process and streamlines licensing, for a simpler and more flexible framework.
2. Better integrate the management of public sector and broadcasting spectrum to improve the consistency and integrity of the framework
3. Review spectrum pricing to ensure consistent and transparent arrangements to support the efficient use of spectrum and secondary markets

The announcement today does not mention other Review recommendations ASTRA has supported, such as private band management and clarified roles for the Minister and ACMA, but given the announcement states unqualified support for the Review findings, it would seem safe to infer these reforms will also take place.

The Review Report left the door open to some preferential treatment for FTA broadcasters' spectrum holdings, with reference to providing 'certainty'. The announcement today does not shed any further light on this issue, however we understand from discussions with the Department and Minister's Office that this means that there will be spectrum available for the FTAs for so long as they hold broadcasting licences.

The other key element is the review of spectrum pricing. We understand this will consider the fee to be paid by FTA broadcasters for their access to spectrum, which will be based on economic considerations. Work is continuing separately on the fee to be paid for the privilege of holding the FTA licences.

Subject to seeing draft legislation when it becomes available, it is likely that ASTRA would support the Government's announcement, and in particular, the Government's commitment to an ambitious timetable – legislation is scheduled to be introduced into Parliament in Autumn 2016, with progressive implementation of the new licensing regime from mid-2017. Pricing work is to report to the Government mid-2016, with new pricing arrangements implemented in mid-2017 with the rest of the new licensing system.

Further information on the Government response is available [here](#). The Spectrum Review Final Report is available [here](#). ASTRA's submission to the Review is available [here](#).

- **ASTRA Captioning Roundtable** – The ASTRA captioning roundtable held its second meeting on 11 August 2015. It was attended by representatives from the major deafness advocacy groups, Deaf Australia and Deafness Forum, together with representatives from Media Access Australia, Ai Media, Foxtel and ASTRA.

The group discussed moves by Foxtel to publish a user-friendly forward plan of channel captioning targets, accessibility of captioning information to caption users and captioning of on-demand and streaming services.

Discussion was constructive and a further roundtable is planned for the end of 2015.

- **ACMA Spectrum Tune-up** – on 29 July 2015, ASTRA attended the ACMA's Spectrum Tune-up event. The event featured a presentation from Martin Cave, Visiting Professor, Imperial College Business School, and Inquiry Chair, UK Competition & Markets Authority. Professor Cave gave an informative presentation on the use of economic concepts to derive a value for external benefits and broader social value in spectrum allocations.

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

NEWS

ACMA Investigation – *Today Tonight (Seven Network)*

On 30 July 2015, the ACMA finalised an investigation into a *Today Tonight* story on childcare in South Australia. The complainant alleged the segment contained inaccurate material, invaded the privacy of those featured and included inaccuracies which gave rise to misleading defamatory imputations, including imputations about impropriety.

The ACMA found no breach of accuracy requirements and also found no breach of privacy restrictions. The ACMA found that whilst the person featured in the story was identifiable, there was no footage broadcast of him in circumstances where he may have had a reasonable expectation of

privacy. The ACMA found that other personal information broadcast about the individual was otherwise available in the public domain.

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 two reports in late July and one in August.

A complaint regarding an advertisement for Red Bull was dismissed. The advertisement featured a man and a woman stranded on an island. The man deliberately conceals a can of red bull, saying ‘no red bull, no wings’, with the implication being he wants to delay escape and stay on the island in order to have sex with the woman. Complaints alleged this was distasteful and creepy. The Board found that there was no behavior or suggestion that indicates the man intends to make unwanted sexual advances toward the woman and there was therefore no suggestion of rape or violence.

A complaint regarding an ad for a child car seat restraint system was dismissed. The advertisement features a purportedly dead child in the aftermath of a motor vehicle accident. Complaints alleged that the depiction of the child as dead was upsetting, offensive, confronting and made inappropriate use of a dead child in order to sell a product. A minority of the Board found that the level of graphic imagery is likely to cause alarm and distress to a level disproportionate to the context of the product being advertised. However a majority of the Board considered the imagery was not inappropriately graphic, given the vehicle is not shown crumpled and there is no blood or other injured victims. Overall, the finding was that the advertisement presented violence in a manner which is justifiable in the context of the product advertised.

A complaint regarding an advertisement for Playboy body spray was upheld. The advertisement features a young man applying the product. He then takes a shirtless selfie and sends it to a girl. The advertisement then plays out two different scenarios – firstly, the girl responds in kind with a selfie, secondly the girl comes to the young man’s house wearing a coat and then opens it to reveal her underwear. Complaints were that this ad promoted sexting and the inappropriate use of social media by young people, and that it promotes unwarranted sexual harassment of women. Whilst the Board found there was no inappropriate depiction of nudity or sexual activity, the ad did breach prevailing community standards on health and safety relating to cyber safety and phone safety. The advertisement was discontinued.

ASB reports are available to ASTRA members on request.

DISCUSSION PAPERS/REQUESTS FOR COMMENT

Productivity Commission Review of Intellectual Property

The Government has asked the Productivity Commission to undertake a 12 month public inquiry into Australia's intellectual property system. In undertaking this inquiry, the Commission has been asked to consider whether current arrangements provide an appropriate balance between access to ideas and products, and encouraging innovation, investment and the production of creative works.

In recommending changes to the current system to improve the overall wellbeing of Australian society the Commission is to have regard to:

- incentives for innovation and investment, including freedom to build on existing innovation
- Australia's international trade obligations
- the relative contribution of intellectual property to the Australian economy
- the economy-wide and distributional consequences of recommendations, including their impacts on trade and competition

- ensuring the intellectual property system will be efficient and robust through time, in light of economic changes
- how proposed changes fit with, or may require changes to, other existing regulation or forms of assistance
- the relevant findings and recommendations of recently completed reviews.

No details have been released regarding the timing for the publication of an Issues Paper. Further information is available [here](#).

ALRC Interim Report – Traditional Rights and Freedoms – Encroachments by Commonwealth Laws

The ALRC has released the Interim Report of its inquiry into Commonwealth Laws which encroach on traditional rights and freedoms. The report is wide-ranging, and considers such freedoms as freedom of speech, freedom of religion, freedom of association, property rights and the right to a fair trial.

The chapter relating to freedom of speech is of most relevance to ASTRA's members, in particular those who create or broadcast news and current affairs programming. The Chapter scrutinises Government secrecy provisions, including counter-terrorism offences which have the potential to impact on journalists and news organisations.

The report also recognises that a range of IP, media and telecoms laws restrict the content of publications, broadcasts and other media products. There is some canvassing of views that copyright laws limit free speech.

The full report is available [here](#). Submissions are requested by 21 September 2015..

Inquiry into remedies for the serious invasion of privacy in New South Wales

The NSW Parliament is conducting an inquiry into remedies for serious invasions of privacy. Whilst the title of the inquiry suggests a broad scope, the inquiry was instigated by concerns relating to 'revenge porn', and is thus of only passing interest to ASTRA's members. However, given the potential for privacy laws to unnecessarily impede news reporting activities, ASTRA is monitoring the inquiry and will advocate for a media exemption to any new laws, where appropriate.