

Advocacy Report

August 2016

ASTRA ACTIVITY

- **Election result** - The Coalition has been returned with a one seat majority in the House of Representatives. To pass legislation in the Senate, the Government will require 9 votes from Labor, Greens or cross-bench.
- **Media reform** – The Government has reintroduced legislation to repeal the 75% audience reach rule and ‘2 out of 3’ cross-media ownership rule. The Bill is unchanged from that introduced before the election and retains additional requirements for local content for newly merged entities. The Bill has been referred to a Senate Committee for review, despite the completion of a review on the Bill as introduced before the election.

Free-to-air broadcasters have also resumed calls for further reductions in licence fees, whilst the Government is yet to outline any offsetting reforms (such as spectrum reform) which might be considered as part of a broader reform package. The challenge for subscription TV will be to broaden the debate to ensure more holistic and deregulatory reforms are considered.

Further coverage is available [here](#) and [here](#).

- **Gambling advertising** – The positive election results for the Nick Xenophon Team (NXT) (3 Senate seats) puts it in a powerful position. There is the prospect of NXT trading its support for Government legislation for further crack downs on gambling advertising. No clear picture of potential further regulation has yet emerged and we await advice from Government and Senator Xenophon. However, Senator Xenophon’s previous Bill (which lapsed when the election was called) may be some guide. That Bill would have banned gambling advertising on television during sports programs and ‘G’ rated programs.
- **Captioning** – ASTRA continues to explore stakeholder support for its legislative reform proposals on captioning, conducting a further roundtable with disability groups in late August.

ASTRA will continue to nurture support from disability advocacy groups and will work to finalise remaining aspects of the proposal, with the objective being that the proposals get picked up by the government for legislation following the election.

In the meantime, ASTRA has made a submission to the ACMA discussion paper for its review of captioning, which was required by law. The ASTRA submission recommended improvements to ACMA compliance processes, some greater flexibility for sports channels and addressed the challenges of 100% captioning targets. The ASTRA submission to the ACMA is available [here](#).

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

- **Copyright** – Parties in the site-blocking litigation launched by Foxtel and Village Roadshow were in court for a hearing in late June 2016. Foxtel is seeking orders to block The Pirate Bay, Torrentz, TorrentHound and IsolHunt. Village Roadshow is seeking to block streaming site Solar Movie. No judgement has yet been handed down. For further information on the proceedings, refer to the [June Advocacy Report](#).

Detailed coverage of the disputes is available [here](#).

The draft report of the Productivity Commission's inquiry into Australia's intellectual property arrangements was released on 10 May. Submissions were invited by 3 June. The report is available [here](#). Refer to the [May Advocacy Report](#) for a summary of the draft report's key findings. The ASTRA submission is available [here](#). The ASTRA submission focussed on the recommendations around geo-blocking. A final report is expected in the next month.

ASTRA members made individual submissions on other issues, such as 'fair use', copyright term, safe harbour and enforcement. All submissions to the Draft Report are available [here](#).

The Government may soon reintroduce a Bill that would extend 'safe harbour' provisions. Due to a divergence of views within ASTRA, members have been conducting their own advocacy on this issue.

- **Codes of Practice** – ASTRA has commenced work on the review of its Codes of Practice. This will involve the Subscription TV Broadcast, Subscription TV Narrowcast and the Subscription Radio Narrowcast codes of practice. Working Groups have been formed to fine tune reform proposals and will report back to the ASTRA Legal and Policy Committee. ASTRA will consult with all members on final reform proposals before commencing negotiations with the ACMA. Depending on the contentiousness of ASTRA's proposed changes, the process could be complete in the first half of 2017.
- **Updates to the ACMA's Privacy Guidelines** – The ACMA consulted on proposed updates to its Privacy Guidelines for broadcasters. The ASTRA submission expressed concern about the extent of proposed privacy guidelines overseen by the ACMA. Among the proposals was a requirement that broadcasters determine if material is 'legitimately' in the public domain, and that privacy could be breached by statements of opinion. The ASTRA submission is available [here](#).
- **Proposed changes to the AANA Code of Ethics** - ASTRA has joined Free TV and Commercial Radio in opposing a proposed clause in advertising codes developed by the Australian Association of National Advertisers. The clause would require advertising and marketing to be "clearly distinguishable" to the audience. Whilst the AANA has assured ASTRA the new clause would do no more than codify current practice, the concern is the potential impact on innovation in advertising. We await a Practice Note, which we have been assured will address our concerns.
- **Contestability of Screen Australia funding**- Following the STV industry's advocacy, Screen Australia has agreed to make its \$10m pa documentary fund fully contestable (was previously 85% reserved for SBS/ ABC. Updated guidelines have now been published and are available [here](#).

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

NEWS

ACMA Investigations

On 5 August 2016, the ACMA finalised an investigation into an episode of *Rake* (ABC). The complaint was that a depiction of anal sex breached ABC Code of Practice requirements relating to harm and offence, warning, classification and harm minimisation.

The ACMA found that whilst the scene had the potential to cause offence, the impact was mitigated by the lack of detail and subtle framing of the scene. The ACMA also found that there was editorial context justifying the sequence. In the context of the story line of the episode and the overall themes of the *Rake* series consisting of adult storylines – interpersonal relationships, political life, criminality and corruption – targeting a mature audience, the depiction of the sex scene was found to be editorially justified. The ACMA also found the program had been correctly classified. The 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 one report in August.

The ASB dismissed a complaint of misleading or deceptive advertising in relation to an ad for Blue Ribbon Classic Vanilla. The complaint was that whilst the advertisement emphasises the product as being made from 100% Australian dairy, the product consists primarily of reconstituted dairy ingredients and has no fresh dairy. The ASB found that the ad did not contain any claim that ‘fresh’ dairy was used and that the depiction of dairy products in the advertisement was not a misrepresentation of the product or its manufacture.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

The ASTRA Technical and Planning Committee is currently preparing a response to an ACMA consultation on taxation arrangements for satellite services. Submissions are due by 23 September 2016.