

# Advocacy Report

December 2015 – January 2016

## ASTRA ACTIVITY

- **Media reform** – Despite much speculation, no policy announcements were made by the Government prior to the end of 2015. Media reports suggest the Minister has been consulting cross-bench Senators to seek their agreement to reforms prior to making any announcements.

It seems that divisions have opened up between National Party MPs and regional broadcasters on the issue of local content requirements, which are being talked about as a trade-off for the Nationals supporting liberalisation of media ownership restrictions.

The Seven Network continues to stand apart, expressing its view that the licence fee reductions should be the industry's reform priority.

Coverage [here](#), and [here](#).

- **NSW Government restrictions on wagering advertising** - On 7 November 2015 the Deputy Premier Troy Grant announced new restrictions on gambling advertising in NSW. The announcement was a surprise to industry, with no prior consultation on the changes.

The new rules apply to broadcasts in NSW and apply to two kinds of advertising:

1. Advertisements which include inducements to gamble (eg, money back guarantees, free credit on sign-up, etc)
2. Advertisements for gambling services which relate to sporting matches/events while those matches/events are in progress.

Although the rules apply in NSW, they have a national effect for subscription TV as it is not possible for channels to provide different advertisements for NSW alone.

The restrictions on advertisements which include inducements to gamble commenced on 4 January 2016. The restrictions on advertisements for gambling services which relate to matches whilst those matches are in progress will commence on 1 March 2016.

Over the course of November and December 2015, ASTRA met with the Deputy Premier and his advisers and with the NSW Office of Liquor, Gaming and Racing regarding the proposed regulations. The Government was not receptive to ASTRA's representations regarding the adequacy of existing regulations (in the ASTRA Codes) nor regarding the serious defects in the drafting of the NSW regulations. ASTRA was joined in these concerns by the free-to-air television broadcasters and commercial radio broadcasters.

ASTRA has briefed members separately on implementation of the new restrictions. Please contact ASTRA if you require any further details.

- **ACMA consultation on live captioning quality** – On 18 December 2015, ASTRA made a submission to the Australian Communications and Media Authority’s (ACMA) consultation on the Captioning Quality Standard. The ACMA’s paper and ASTRA’s submission focussed on the quality of live captioning.

The key question posed by the ACMA was what kind of measure should be used to assess captioning quality – qualitative or quantitative?

ASTRA’s submission argued for a qualitative measure, which would be a continuation of the ACMA’s current approach based on the concept of ‘meaningful access.’ ASTRA argued that the range of factors which contribute to whether captions are meaningful are too varied and complex to be captured in a simplified metric. An accurate assessment of meaningful access is best achieved through an approach which allows the regulator to take into account all the circumstances of the captions as it feels are relevant.

ASTRA expressed considerable concern regarding the international experience with quantitative measures (eg, metrics for accuracy and latency). International experience has shown a metric-based approach would drive trade-offs which are not of benefit to the caption user, would result in substantial compliance risk for broadcasters and would impose very high compliance and monitoring costs for the regulator and broadcasters.

The ACMA is required to review, and vary as appropriate, the Captioning Quality Standard by 19 March 2016.

The ASTRA submission is available [here](#).

- **Copyright** - A further hearing in the Dallas Buyers’ Club litigation (refer to previous Advocacy Reports for details) has resulted in setbacks for the rights holders. The court rejected a proposal from the plaintiffs which sought access to a reduced number of infringing customers’ details in return for payment of a reduced bond. The court also ruled the case would be dismissed with costs on 11 February 2016 if no further proposals were brought forward by the rights holders. Coverage is available [here](#).

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

On 7 December 2015, ASTRA made a submission to the Productivity Commission’s Issues Paper on Intellectual Property Arrangements. ASTRA’s submission argued the importance of balanced IP arrangements. It argued that that IP arrangements which enable content producers and distributors to extract fair monetary returns for their investment in developing or acquiring content will mean Australian media businesses can take full advantage of opportunities to succeed – to create, to innovate and to be more productive.

ASTRA argued that the Productivity Commission should recognise the significant investments behind the creation and acquisition of Australian and international content, and that appropriate remuneration for the use of that content is essential for Australian producers and content distributors to continue making such investments.

ASTRA also argued that retransmission of free-to-air broadcasts is a complex communications policy issue that cannot be addressed within the narrow scope of copyright reform, and ASTRA cautioned against this Review making recommendations on the issue. ASTRA’s submission is available [here](#).

- **The ACMA's Five-year Spectrum Outlook**

On 17 December 2015, ASTRA made a submission to the latest iteration of the ACMA's Five-year Spectrum Outlook. The Outlook is a forward planning document the ACMA publishes to set out its views on the spectrum environment/market, future demand and future work projects.

ASTRA's submission was broadly supportive of the latest edition of the Outlook. It is useful to industry to have visibility of the regulator's view on the environmental, regulatory and policy factors which will influence the performance of its spectrum management functions.

In particular, ASTRA welcomed the ACMA's commitment to the Government's deregulatory agenda, including involvement in implementation of the Government's response to the recent Spectrum Review.

The full submission is available [here](#).

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

## **NEWS**

### **ACMA Investigation** – *Tosh.0 (The Comedy Channel)*

On 21 December 2015, the ACMA finalised an investigation which found no breach of the classification provisions of the ASTRA Codes in relation to an episode of *Tosh.0*, broadcast on The Comedy Channel. The ACMA received a complaint alleging that the program contained pornographic content. This was in relation to a scene which satirically implied sexual intercourse between a person and a donkey.

The ACMA found that the segment was heavily pixelated and no actual nudity or sexual activity was depicted. ACMA found that this inexplicit treatment of a strong theme was justified in the context of a specific segment that serves to parody a well-known television show, *Cheaters*, within an established comedy series for an older audience.

Further information is available [here](#).

### **ACMA Investigation** – *World's Craziest Foods (7MATE)*

On 24 December 2015, the ACMA finalised an investigation which found no breach of the classification provisions of the Commercial Television Industry Codes of Practice in relation to an episode of *World's Craziest Foods* broadcast on 7MATE. The ACMA received a complaint alleging a segment in the program contained material that suggested a sexual act involving an animal that was inappropriate.

The ACMA found that to the extent that the segment may have conveyed an inference of implied 'bestiality', this was ambiguous and carefully handled. Due to the brevity and low quality of the images, lack of detail and light-hearted treatment of the content, the classifiable elements in this segment were found not to exceed a mild impact.

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 three reports since the last Advocacy Report.

The ASB dismissed a complaint that an advertisement featuring a ute driving through a shallow creek reinforces dangerous driving behavior by making such driving appear socially acceptable. The Board noted the ute was driving through a shallow creek as opposed to actual floodwaters, which is where public safety are typically targeted.

The ASB dismissed a complaint that an advertisement for the video game *Fallout*, which includes footage from the game of a man with a gun, glorifies violence. The Board noted that the footage featured in the ad was consistent with the post-apocalyptic theme of the video game. The Board concluded the theme in the advertisement was not realistic and the scenario was in a fantasy setting.

The ASB dismissed a complaint that an advertisement for Bonds underwear, which included close ups of young teenage girls wearing the products, was inappropriate. The Board found it was reasonable for the advertiser to depict its products being modelled in its advertising. The Board found the close-ups highlighted the product, rather than the models' bodies, and were not sexualised or inappropriate.

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

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

### **Department of Communications consultation on captioning reform**

The Department of Communications has released a Discussion Paper outlining several options for reform to the legislative framework for television captioning.

Key points from the Department's captioning consultation are:

- Reporting – a proposal to drop reporting for free-to-air broadcasters and to enable subscription TV channel providers to report (instead of the licensee, Foxtel).
- Emergency broadcasts – the paper raises the idea of removing the record keeping requirement, while keeping the substantive requirement to caption emergency warnings.
- Free-to-air multi-channels – options include imposing the same obligations on these channels as apply on primary channels.
- Subscription TV – the paper highlights a number of the existing counter-intuitive realities of the subscription TV scheme, such as the fact that the same channel may be captioned on one platform, but not another, and that different parties have to report on compliance in relation to the same channel. Options include:
  - The ACMA determining a prospective channel plan and settling a single captioning level for a channel – which would apply for that channel on all subscription TV platforms.
  - Channel providers being able to aggregate targets across a group of channels – already permitted for sports channels.
  - Automatic exemptions based on low channel audience or revenue.

Submissions are due 29 January 2016. ASTRA is working with members on an industry response to the proposals.

The Discussion Paper and further information are available [here](#).

### **Department of Communications consultation on reform of Copyright provisions**

On 24 December 2015, the Department of Communications released draft legislation to amend the *Copyright Act 1968*. The Bill seeks to:

- streamline and simplify the existing copyright exceptions and limitations for the use of copyright material by the disability sector (through a new fair dealing exception where the dealing is for the purpose of enabling access to the material for people with a disability).
- simplify the preservation exceptions for copyright material in libraries, archives and prescribed 'key cultural institutions'.
- consolidate and modernise the statutory licences that allow educational institutions to use and pay licence fees for works and broadcasts.
- allow copyright materials to be incorporated into educational assessments conducted online.
- expand the scope of the "safe harbour" scheme to include online service providers.
- introduce new standard copyright terms for published and unpublished works and for Crown copyright in original works.

The extension of the safe harbour scheme is likely to be the most controversial proposal. With interests differing across the ASTRA membership, individual members are considering making their own submissions.

Submissions are due 12 February 2016.

Further information and the relevant documents are available [here](#).

### **Other consultations**

Consultations or inquiries are also on foot regarding:

- Sexualisation of children and young people – NSW Parliament – further information [here](#).
- Inquiry into broadcasting, online content and live production to rural and regional Australia – Federal Parliament – further information [here](#).
- Options to strengthen the misuse of market power law – Federal Treasury – further information [here](#).