

# Advocacy Report

JULY 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 television, cross-media ownership restrictions and anti-siphoning, will not proceed without broad industry consensus. However, regional free-to-air television broadcasters (WIN, Prime and Southern Cross) appear to 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. Media reports suggest National Party MPs have raised concerns about the closures within Government.

On a separate front, free-to-air broadcasters have reportedly met with the Minister to argue for a reduction in, or abolition of, 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.

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.

ASTRA has also argued that any reductions in licence fees should be linked to the relinquishment of valuable public spectrum which could be freed up by a transition to more efficient broadcasting technologies. ASTRA has commissioned research which concludes the opportunity cost of this spectrum is \$1 billion.

Relevant press reports are available [here](#) and [here](#). ASTRA's submission addressing spectrum efficiency is available [here](#).

- **GST and digital advertising** - ASTRA has written to the Government jointly with Free TV to request the Government close the loophole that allows offshore companies, such as Google, to avoid collecting GST on advertising sold to Australian businesses, even where that advertising is served within Australia. ASTRA argued that public policy principles of fairness and competition support addressing this anomaly and levelling the playing field for all operators whose services are consumed in Australia. Local operators should not be put at a disadvantage in terms of the not insignificant costs of collecting and administering GST on advertising sales.

Press coverage is available [here](#).

- **Equitable access to Screen Australia documentary funding** – ASTRA has been active in Canberra highlighting the inequity in the current arrangements for Government funding of television documentaries.

Screen Australia's \$10 million broadcast documentary program employs a notional allocation which disproportionately favours the national broadcasters:

- 45% reserved for the ABC

- 40% reserved for SBS
- 15% for all other broadcasters (commercial free-to-air and subscription TV)

The primary focus of Screen Australia's funding programs should be supporting and promoting the development of high quality documentaries that audiences want. The important long-term objective should be that high quality, innovative Australian documentaries continue to be made by a diverse range of industry participants.

It is ASTRA's view that organisations that already receive substantial Government support should not receive preferential treatment in what should be an open contest for content funding based on the merits of the proposed program. ASTRA will continue to press this issue.

- **Equitable access to the Producer Offset** – ASTRA has been actively pursuing reforms to the tax offset available for documentary and drama productions. At present, an offset equal to 20% of qualifying Australian production expenditure is available, whereas a film production attracts an offset of 40%. The funding disparity in favour of film over television under the Producer Offset scheme is becoming ever more difficult to justify given the increasing prominence of television (and other platforms) as vehicles for distribution of quality audio-visual content. Increasing the offset rate to 40%, to align with film, would encourage greater investment and production on the platforms where content is more likely to be seen by Australian audiences.

ASTRA has received encouraging feedback on this issue from the Minister and the Opposition and will continue to build the case for reform.

- **Copyright** - In July, the Government released research into the prevalence of online copyright piracy in Australia and the UK. The research showed that of Australians who had consumed digital media in the month prior, 43% had downloaded at least one pirated piece of media. The figure for the UK is 21%.

The survey also collected information on factors that would most encourage people to stop, with 39% citing a reduction in the cost of legal content and 36% pointing to legal content being available at the same time it is reduced elsewhere. 43% of internet users indicated they were not confident in knowing what is and what is not legal online.

The full results are available [here](#) and press coverage (including comments from ASTRA) is available [here](#).

With regards to the Federal Court litigation involving the rights holders for *Dallas Buyers' Club* and iiNet, there have been no significant publicly reported developments since the June Advocacy Report.

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.

- **Post-implementation reviews** - As part of a bureaucratic process that applies to some kinds of legislative amendments, the Department of Communications is conducting a review into two sets of broadcasting legislation amendments passed in 2013 which were part of the ALP Government's response to the Convergence Review.

The specific amendments to being reviewed are:

- Changes to the Australian content quotas on free-to-air broadcasters, which gave them considerable flexibility to meet their quotas by broadcasting Australian content on multichannels (previously, they could only count primary channel content towards the quotas). The legislation also introduced very minimal Australian content requirements for multichannels.
- Legislative ban on fourth commercial TV licence – previously, the Minister had a power to initiate reviews into a fourth licence and, on the basis of those reviews, direct the ACMA to allocate a fourth licence. This was all scrapped and an explicit ban on a fourth licence was introduced.

ASTRA made a short submission to the review restating its longstanding view that the moratorium on new licences is inconsistent with the principle of promoting competition and removing existing competitive barriers. ASTRA noted that the 2013 amendments to rule out any additional FTA licences perpetuated a form of protectionism that is rarely seen in the modern Australian economy, where liberalisation and competition have brought significant economic and consumer benefits.

With respect to Australian content quotas, ASTRA noted that for so long as commercial FTA broadcasters enjoy privileged access to spectrum and protection from competition, it is appropriate that they also carry public policy obligations. ASTRA also noted that if the policy rationale for the double-counting of Australian drama on multi-channels was to incentivize digital take-up, with the completion of digital switchover, this rationale was no longer current.

- **ANAO performance audit of the Government's deregulation agenda** – ASTRA was contacted by the Australian National Audit Office who are conducting a performance audit of the Government's deregulation program. They sought feedback from industry stakeholders on their experience of the Government's deregulation agenda.

ASTRA responded noting that whilst the consultation processes regarding deregulatory proposals was adequate and well received by ASTRA, only limited progress has been achieved so far in delivering deregulatory reform in the broadcasting sector. ASTRA welcomed the reforms to captioning legislation passed in the *Broadcasting and Other Legislation Amendment (Deregulation) Act 2015*, but argued that there is still significant progress that could be made to simplify the regime and that we remain hopeful of further progress in the future.

- **ACMA draft research program** – the ACMA has conducted a consultation on its proposed three-year research program. ASTRA provided a short response to the consultation noting that research on key trends, regulatory stressors and the enablers and blockers of growth and innovation will ensure the ACMA is adequately informed to fulfil its functions and obligations.

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

## NEWS

### **ACMA Investigation – Today FM – penalties announced**

On 17 July 2015, the ACMA announced it had reached agreement with Today FM Pty Ltd regarding the penalties to imposed following the earlier ACMA investigation into the 2Day FM royal baby prank call.

The release of the findings was significant, as there had been extensive speculation that the ACMA would hand down the draconian penalty of licence suspension, forcing 2Day FM off air for a period of time.

Instead, the measures agreed were:

- 2DayFM will broadcast a three-hour special program, produced to promote media ethics and raise public awareness of the signs and risks of bullying, depression and anxiety. All advertising within the program will be suspended or proceeds donated to charity.
- The ACMA has accepted an enforceable undertaking from 2DayFM that will require all presenters, production and management personnel to actively engage with their ethical and legal obligations through a targeted training program.
- The ACMA will impose an additional licence condition on 2DayFM that will apply for three years, which will not be contested by 2DayFM. The condition elevates clause 6.1 of the Commercial Radio Codes of Practice and Guidelines 2011 (the Code) and specifies that the station will not broadcast the words of an identifiable person unless that person has (a) been informed in advance that the words may be broadcast or (b) if recorded without the person's knowledge, they have consented to the broadcast of the words.

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 in July.

A complaint regarding a commercial for dog food in which men run onto the road to rescue a stranded dog was dismissed. The complaint was that the advertisement depicted dangerous behavior in showing the men in a physical altercation and then running onto the busy road. The finding was that the altercation fell short of depicting actual violence (just aggression). The Board also found that the depiction of the men running onto the street was not contrary to prevailing community standards on health and safety as the sounds of car horns and tyres screeching were removed from an earlier version, reducing the danger implied by the depiction.

Complaints against an advertisement for Lite-n-easy food products were also dismissed. The complaints were that the advertisements implied that a woman featured in the advertisements was a better mother since having lost weight. The Board concluded that the ad links happiness and health with better parenting, rather than with weight loss alone.

A complaint regarding an advertisement for shampoo products was upheld for using inappropriate language. The ad featured the phrase “F ‘n’ L” in reference to a product called “Full and Luscious”. The Board considered the phrase “F ‘n’ L” resembles “effin’ hell” and concluded that most members of the community would find this phrase to be a clear reference to ‘fucking hell’ and thus language which should not be used around children. The Board noted the complainants’ concerns that children could hear this advertisement and repeat the phrase and considered that the phrase ‘effing hell’ is not a phrase which most people would find appropriate for a child to use. The advertiser has undertaken to withdraw the advertisement from PG timeslots.

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 released an Issues Paper for the review of the Australian Communications and Media Authority. For further information on the review please see the June Advocacy Update.

The Issues Paper looks at:

- The Australian communications market, including trends relating to connectedness, ubiquity, globalisation, innovation and the impact on social practices and institutions
- What a future-focused communications regulation should look like, with reference to international trends
- How differences in structure and governance affect how regulators perform their functions
- Assessing the regulatory performance of the ACMA
- Maximising the efficiency of the ACMA, including resourcing and whether any of its functions would be better performed by another organisation
- The communications regulatory framework and how changes in it might affect the ACMA.

Submissions are due 10 August 2015 and ASTRA will be consulting with its members in preparing a submission.

The Issues Paper is available [here](#).