

Advocacy Report

July 2018

ASTRA ACTIVITY

- **Gambling advertising** – The ACMA has released a second draft of rules to apply gambling advertising restrictions to live sport provided online. The second draft of the rules and accompanying consultation paper are available [here](#). The first draft and consultation paper are available [here](#). The ACMA has made changes to remove the class exemption for small service providers, and to limit the over-18s exemption to licensed wagering operators. The ACMA has also declined to take up many of ASTRA's suggested changes, which were focussed on ensuring consistency between broadcast and online environment.

ASTRA made a submission to the second consultation welcoming some of the changes, in particular the extended implementation timeframe and amendments to recognise the difficulties in determining the physical location of end-users.

However, there remain some substantial issues with the draft rules, including an ongoing lack of alignment with broadcasting codes, the application of the 'scheduled start' concept, the lack of an 'exempt program' concept, practicality of the record keeping rules, and several other concerns.

We do not expect the ACMA to consult on a third draft of the rules before making their final determination.

- **ACCC inquiry into digital platforms** – the ACCC is conducting an inquiry into the impact of digital platforms (such as Google, YouTube and facebook) on Australian media. Further background information on the inquiry can be found in the [March 2018 Advocacy Report](#). Submissions to the inquiry are now available ([here](#)).

The ACCC is conducting a forum for media stakeholders on 16 August 2018. ASTRA members Foxtel and Fox Sports will attend to further advocate on issues raised in their joint submission.

The ACCC Chair Rod Sims recently gave a speech in which he outlined an evolution in the ACCC's approach to the inquiry, which was initially narrowly focussed on the impact of the platforms on quality journalism. A copy of the speech is available [here](#). In the speech, Mr Sims said the ACCC is now taking a broad approach, and will need to consider the disruptive effect that digital platforms have on our society. The ACCC will be looking at the digital platforms through both a competition and a consumer lens, will consider their collection of consumer data and whether the platforms have substantially changes media and advertising markets in Australia.

The preliminary report is to be submitted to the Treasurer by 3 December 2018, with a final report due by 3 June 2019.

- **ABC/SBS competitive neutrality inquiry** – Submissions to the inquiry have been released. A submission by Free TV Australia focussed on the SBS, and included an

analysis of whether a sample of SBS programming was aligned with its Charter. Free TV expressed strong concerns that SBS was operating as a commercial competitor for mainstream audiences and was not acting in accordance with its Charter.

Commercial Radio Australia made a submission that focused on the absence of regulatory neutrality, the absence of a requirement to earn a commercial return on assets and aggressive marketing from the ABC.

There were also submissions from Fairfax, News Corporation Australia and, of course, the ABC and SBS. All submissions are available [here](#).

- **Foreign Influence Transparency Scheme Bill 2017** - The Foreign Influence Transparency Scheme Bill 2017 was passed on 28 June 2018.

As noted in previous Advocacy Reports the Bill as originally drafted would have captured Foxtel, ASTRA and many ASTRA members. There was a real concern that it would be onerous or impossible to comply with the Bill's requirements.

ASTRA undertook extensive advocacy on the issues and following discussions, the Government agreed to amend the Bill to address our concerns. The Bill as passed no longer captured foreign business relationships (only foreign Government relationships) and included an adequate exemption for media businesses.

The final Bill as passed is available [here](#).

- **Australian content** – As part of its media reform package, the Government promised to undertake a review of Australian content quotas and funding support. For background to the review, see the [October 2017 Advocacy Report](#).

We are still awaiting a Government announcement regarding the outcomes of the review. However, an announcement may be delayed due to the controversial push from the FTAs to abolish children's television quotas.

- On 18 October 2017, the Australian Greens established a Senate inquiry into the value of Australian screen content to audiences. Further details including the terms of reference, are available [here](#). The inquiry was due to report on 9 May 2018, however this has been pushed back to 17 October 2018.
- **Spectrum** – As noted in the March Advocacy Report, the ACMA has recommended to the Minister that the 3.6 GHz band be cleared completely and reallocated to 5G mobile broadband services. The Minister has endorsed the ACMA's recommendations, and the ACMA is moving ahead quickly to reallocate the spectrum. This spectrum is adjacent to spectrum used by ASTRA members to receive programming feeds from overseas.
- **Audio-description** – On 6 April 2017 the Minister announced the formation of an Audio Description Working Group to examine options for increasing the availability of audio description services in Australia, following the ABC's recent trial on iview. See the [March 2018 Advocacy Report](#) for further background on ASTRA's participation.

On 22 May 2018 the Government released the report of the Working Group, available [here](#). The report does not recommend any particular option or quota, but rather summarises the pros and cons for the various delivery models.

We are yet to see any indication from the Minister or the Government of a response to the report. This is causing concern amongst disability advocates. Coverage is available [here](#).

- **Copyright** – The Government has passed laws to extend safe harbour protections to collecting institutions. The reforms benefit libraries but stop short of gifting protections to platforms such as Google. This was a setback for the big digital companies who missed out on the protections and an encouraging sign for copyright holders. The legislation is available [here](#).
- The Minister is also currently considering a review of the site-blocking laws in section 115A of the Copyright Act. Foxtel has made extensive use of the laws to successfully block access to approximately 36 pirate sites and 360 pirate domains. Foxtel has made a submission to the review strongly supporting section 115A, and asking for two key amendments:
 1. Remove the requirement that the infringing online location must be outside Australia; and
 2. Broaden the application of site blocking from ‘carriage service providers’ (ISPs like Telstra, Optus) to ‘service providers’ (search engines like Google, Bing).

More information is available [here](#).

- The Government is also considering possible reforms to those parts of copyright law which permit third parties to use protected content without the rights-holder’s permission (‘fair use’ and ‘fair dealing’). Foxtel made a submission which reiterated its opposition to changes to fair use and contracting out of exceptions. Reforms to further liberalise these laws in favour of third parties could have a substantial commercial impact for rights holders. Google and others are lobbying hard for liberalisation. More information is available [here](#).
- **Classification** – ASTRA has been advised by the Department of Communications that the Government will soon consult on possible reforms to Australia’s classification framework. We understand that the proposals are to be based on the findings of the 2013 ALRC review. Early indications are the proposals are intended to reduce the regulatory burden on industry, whilst safeguarding the need to ensure consumers are able to make informed choices.

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

NEWS

ACMA Investigations

On 8 June 2018, the ACMA found that the ABC had not breached its Codes of Practice in relation to a program promotion and a news report about the Sydney Gay and Lesbian Mardi Gras parade. The complaint was that the material was inappropriate for children to view. The ACMA found no breach of standards relating to harm and offence and minimising risks to children. Report available [here](#).

On 19 June, the ACMA found that Channel Seven Perth had not breached the Commercial Television Industry Code of Practice in relation to a report in an episode of *Today Tonight*. The ACMA found no breach of accuracy and fairness requirements. Report available [here](#).

On 6 July 2018, the ACMA found that Nine Queensland had not breached the Commercial Television Industry Code of Practice in relation to a program promotion for *Love Island Australia*. The ACMA found no breach of the classification requirements of the Code. Report available [here](#).

On 18 July 2018, the ACMA found that Channel Seven Melbourne had not breached the Commercial Television Industry Code of Practice in relation to an episode of *Seven News*. The ACMA found no breach of the representation of viewpoints and impartiality requirements in the Code. Report 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 relation to subscription TV in June and July:

- Complaints regarding a commercial for Land Rover were dismissed. The ASB considered the complaints under the unsafe and illegal driving provisions of the AANA Code.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

Nil.