

Advocacy Report

May 2018

ASTRA ACTIVITY

- **Gambling advertising** – A new Code of Practice Appendix to implement new gambling advertising restrictions has been approved by the ACMA. The new Code came into effect on 30 March 2018. For more information on the new Code provisions see the [March 2018 Advocacy Report](#).

The ACMA has released draft rules to apply gambling advertising restrictions to live sport provided online. The draft rules and accompanying consultation paper are available [here](#). The ACMA stated its intention is for the draft online rules to be as consistent as practicable with broadcasting rules, allowing for differences between the two operating environments. ASTRA made a submission to the ACMA in response to the draft rules which emphasised the need for consistency as far as practicable under the law, noting that ASTRA members provide online services which are retransmissions of broadcast services. Any requirement to modify the online service, due to different regulation, would compromise the crucial live nature of the services, and is unlikely to make business sense. The ASTRA submission highlighted a number of important areas where the draft online rules are inconsistent with the recently approved broadcast Codes.

It is unclear whether the ACMA will release a second draft of the rules or move straight to implementation without further consultation. ASTRA has met with the ACMA to reinforce the points made in its submission.

- The NSW Government has passed laws to tighten restrictions on advertisements featuring betting inducements. NSW Liquor and Gaming have indicated the new restrictions will commence 2 July. ASTRA members and MCN have been briefed on the changes. Members are advised to liaise with the ad sales agencies should they have any concerns.
- **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](#)), including a joint submission made by ASTRA members Foxtel and Fox Sports. Other noteworthy submissions came from Free TV Australia and News Corporation Australia. The submissions set out the competition impact of the digital platforms' business practices and the short, medium and long term implications for local media organisations. The submissions are noteworthy for documenting the impact of the platforms in the advertising supply chain and the impact of their unauthorised use of copyright content.

We understand the ACCC may conduct further face-to-face consultations. The preliminary report is to be submitted to the Treasurer by 3 December 2018, with a final report due by 3 June 2019.

Coverage of the inquiry is available [here](#) and [here](#).

- **ABC/SBS competitive neutrality inquiry** – The Government has released terms of reference and announced the panel for its competitive neutrality inquiry into the ABC and SBS. For further background on the inquiry see the March 2018 Advocacy Report. ASTRA has met with the panel and provided observations on the business practices of the national broadcasters. A discussion paper has been released with submissions due 22 June 2018. Coverage is available here and here.
- **Foreign Influence Transparency Scheme Bill 2017** - The Foreign Influence Transparency Scheme Bill 2017 was introduced into Parliament on 7 December 2017. Further information on the Bill and its application to ASTRA and members is in the March 2018 Advocacy Report.

The Bill was referred to the Parliamentary Joint Committee on Intelligence and Security, which was due to report on 23 March 2018. ASTRA supported a submission from the Joint Media Organisations which outlined concerns with the Bill. Foxtel made a supplementary submission, highlighting the defects in the broadcaster exemption as currently drafted. All submissions can be found here.

ASTRA and Foxtel have made several appearances in hearings on the Bill, and have raised the industry's concerns directly with Ministerial staff. Media organisations have jointly submitted suggested legislative amendments to address concerns. We understand that the PJCIS has pushed back the reporting date on the Bill to an undetermined time.

- **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. Contrary to our expectations, the review's outcome was not announced in the Budget. There was a pre-Budget announcement regarding an extension of the location offset, worth about \$140m. We understand the Minister has the final report of the review.
- 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 15 August 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 recommendation is for a reallocation period of only 2 years for in-band satellite services, with no options for sharing. A proposed East Coast Earth Station Protection Zone is also to be established. ASTRA's previous submissions on these issues are available here and here. Further information is available here. The ACMA is now consulting on the draft rules of the auction and the technical framework that will underpin the new licenses. Submissions are due 15 June 2018. More information is available here.

The ACMA has also released its next draft Five Year Spectrum Outlook for feedback. The document sets out a forward look at spectrum pressures, market drivers, demand, supply, spectrum planning and forward allocation planning. Submissions are due 15 June 2018. More information is available here.

We are still yet to see a further exposure draft of spectrum reform legislation, which the Government has indicated it wants to introduce in June.

- **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.

ASTRA welcomes the release of the report as a way to encourage discussion and consideration of the issues. As noted in the report, Foxtel believes that an app or online delivery solution is likely to be best suited to its subscriber base and would be the quickest and most cost effective way to introduce a service.

The issues are now with the Minister for consideration. Coverage is available [here](#).

- **Copyright** – Foxtel and Fox Sports have made a joint submission to the Government’s review of site blocking legislation. The submission expressed the view that the laws are working well and that the process for obtaining blocking orders has become progressively more efficient. The submission also noted that the laws are not ideally suited to respond to illegal live streams (of sporting events). Submissions are now available [here](#).
- The Government has released a consultation paper inviting comment on several issues raised in the Productivity Commission’s final report – fair use/fair dealing, contracting out and orphan works. We are considering a submission based on previous work on these issues. Submissions are due 4 July 2018. The consultation paper is available [here](#).
- Applications by film studios and broadcaster TVB to block Kodi box apps has concluded. A number of domains associated with the HD Subs app were blocked, which is a valuable precedent.
- Legislation to extend safe harbour protections to libraries and educational institutions was introduced in the Senate on 6 December 2017, and passed by the Senate on 10 May 2018. The Bill is yet to pass through the House of Representatives. Rights holders maintain their opposition to the extension of safe harbour protections any further. The Bill was referred to the Senate Environment and Communications Legislation Committee and the Committee tabled its report on 18 March 2018. The Committee recommended the Bill be passed and noted the highly polarized views and lack of consensus on further safe harbour reform. The Committee therefore supported the Government’s incremental approach to reform. The report is available [here](#). The Bill is available [here](#).
- **Budget** – there was little in the Budget for the media industry, with the most notable feature being the lack of announcement on the Australian content review (see above). There were announcements regarding the national broadcasters, with an indexation freeze announced on ABC funding, and a small allocation to the SBS to offset losses arising from the failure to pass laws that would have added flexibility to their advertising rules. Both national broadcasters will also be subject to an efficiency review. Coverage is available [here](#) and [here](#).
- The funding freeze for the ABC, together with recent complaints lodged by the Government regarding ABC editorial content and the competitive neutrality review have

lead to a media narrative developing that the ABC is 'under attack'. Coverage is available [here](#) and [here](#).

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

NEWS

ACMA Investigations

On 24 May 2018, the ACMA found that the ABC had not breached its Codes of Practice in relation to an episode of *The ABC Evening News*. The ACMA found no breach of standards relating to impartiality. Report available [here](#).

On 11 May 2018, the ACMA found that SBS had not breached its Codes of Practice in relation to an episode of *SBS World News*. The ACMA found no breach of accuracy, impartiality and balance requirements. Report available [here](#).

On 1 May 2018, the ACMA found that WIN Television Tas had not breached the *Broadcasting Services Act 1992* in relation to advertisements for election candidates during *WIN News*. Report available [here](#).

On 5 April 2018, the ACMA found that the ABC had breached its Codes of Practice in relation to an episode of *ABC News*. The ACMA found that the ABC breached standards of due impartiality in relation to a news report on former Prime Minister Tony Abbott. 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 May:

- Complaints regarding a commercial for KFC were dismissed. The ASB considered the complaints under the discrimination and vilification provisions of the AANA Code.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

As noted above, the Government is consulting on modernisation of Australia's copyright laws. Submissions are due 4 July 2018.

The Department of Communications is inviting submissions on the ABC and SBS competitively neutrality review. Submissions are due 22 June 2018.

The ACMA is consulting on draft instruments in relation to the sale of 3.6 GHz spectrum licences, and on its Five Year Spectrum Outlook. Submissions are due 15 June 2018.