

Advocacy Report

October 2015

ASTRA ACTIVITY

- **Media reform** – Senator Mitch Fifield has been appointed as the new Minister for Communications and Minister for the Arts. He does not have previous experience in the communications industry/portfolio, having most recently been Assistant Minister for Social Services.

Since his appointment, Minister Fifield has made several public statements regarding media reform. He has stated his view that current laws are outdated and are a relic of the pre-internet era, but has stopped short of committing to any particular policy position. He is understood to have been conducting extensive consultations with industry stakeholders.

Coverage is available [here](#) and [here](#).

However, as noted in the September Advocacy Report, Malcolm Turnbull's elevation to Prime Minister changes the political dynamic surrounding media reform. Given the previous roadblock was an insistence from the former Prime Minister Tony Abbott that full industry consensus be a precondition for reform, it is more likely now that reform will proceed. In interviews to date, Minister Fifield has hinted that industry consensus does not necessarily mean unanimity, which is a change from the Abbott position.

In October, regional television broadcasters continued their campaign for a repeal of the 75% reach rule and the recent announcements by both Seven and Nine that they will live stream their services online has spurred the regionals further. FTA broadcasters have also continued their public statements on licence fee reductions.

Whilst significant pressure for reform is building, there remain a number of factors which may affect the timing of any legislative changes. As noted in the September Advocacy Report, it is unknown where media reform sits on the new Prime Minister's list of priorities, the Senate remains unpredictable and the timing of the next election is also an unknown.

Since the appointment of the new Minister, ASTRA has provided a briefing addressing its regulatory reform priorities and has met with the new Minister's Chief of Staff and Arts Advisor. ASTRA has also met with the Prime Minister's new advisor on media and arts issues.

ASTRA issued a press release welcoming the Minister's appointment and has been active in the press reinforcing that its support for deregulatory reform is conditional on the dismantling of FTA protections.

- **Rate of Producer Offset for Australian television productions** – In conjunction with Screen Producers Australia (SPA), ASTRA commissioned research from PwC to model the economic impact of an increase in the Producer Offset tax rebate for Australian television productions from 20% to 40%, to bring it in line with the rebate available for film.

ASTRA and SPA released the research on 19 October 2015. The research shows that more than \$103 million in economic activity would be created if the tax offset for Australian television production was equalised with the film industry offset. In addition, 360 new television production jobs would be created. The net cost to Government of

creating the conditions necessary to generate these benefits would be a maximum of \$15.5 million in foregone tax revenue, but would generate an additional \$119.4 million in economic activity. For every dollar invested by the Government, the economy would grow by more than \$6.

ASTRA will continue to make the case for an increase. Reaction to date in Canberra has been positive.

The ASTRA/SPA press release is available [here](#).

- **ACMA consultation on live captioning quality** – Following the ACMA’s live captioning event (see September Advocacy Report), the ACMA provided broadcasters with a set of questions pertaining the quality of live captions and the circumstances in which live captions are used for programs which are not performed simultaneously with broadcast (ie, that are not ‘live to air’).

ASTRA provided a submission which outlined the difference between what constitutes high quality live captioning, and what constitutes quality in pre-prepared captions. ASTRA’s submission also addressed the circumstances in which live captioning will be chosen for programs which are not live to air, but which are nevertheless completed so close to the time of broadcast that there is insufficient time to pre-prepare captions.

The submission also addressed the use of live captions for live, continuous news broadcasting and the elements of that model of television production which mean that even part-usage of pre-prepared captions is not possible.

ASTRA expects to meet with the ACMA shortly to discuss the submission.

ACMA’s consultation is the first step in its review of the Captioning Quality Standard, which is due to complete early next year.

- **ACMA consultation on additional spectrum for mobile broadband** – The ACMA released a Discussion Paper outlining its proposed approach to assessing and responding to an increase in demand for spectrum capacity to deliver mobile broadband services.

ASTRA’s submission welcomed the ACMA’s proposed approach to the challenge of meeting demand for mobile broadband capacity:

- Acknowledging the difficulties and past challenges in accurately forecasting quantitative estimates of capacity demand.
 - That existing allocations for mobile broadband are adequate, although ASTRA acknowledges that this applies only in the short term (between now and WRC 2019).
 - Eschewing quantitative targets in favour of a contingency based planning approach.
 - Highlighting the importance of measures other than additional spectrum in addressing increasing capacity demand (including improving technology efficiency and appropriate network deployment).
 - The important role for stakeholder consultation when considering if mobile broadband is becoming the highest value use for a spectrum band.
 - Acknowledgement of the impact of spectrum re-farming on incumbent users.
 - Continued use of the total welfare standard, which incorporates an assessment of social and other non-economic benefits of particular spectrum uses.
- **Copyright** - With regards to the Federal Court litigation involving the rights holders for *Dallas Buyers’ Club*, the only recent news was reported by Torrent Freak, and did not receive mainstream media coverage. That site reported that the rights holders had sought to have the \$600K security set by the court reduced to \$60K, and in return the

rights holders would only seek access to the details of 10% of the subscribers it had initially sought details of. A directions hearing is listed for 2 November.

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.

Whilst final agreement on the Trans Pacific Partnership has been announced, the text of the agreement has not been officially published. As such, our only knowledge of the contents of the IP chapter comes from a leaked version released by WikiLeaks. That leaked version suggests no legislative changes to Australia's copyright laws will be required to ensure compliance with the TPP.

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

NEWS

ACMA Investigation – *Marriage Alliance advertisements (Foxtel)*

On 16 September 2015, the ACMA found no breach of clauses 5.1(c) (relating to complaints handling) and 6.1(b) (relating to offensive advertising) of the Subscription Broadcast Television Codes of Practice in relation to the broadcast by Foxtel of a Marriage Alliance advertisement.

The complaints were that the advertisements (which advocated against marriage equality) were offensive, discriminatory and inaccurate and that they encouraged religious and political hatred.

The ACMA dismissed the complaints, noting that whilst an issue may attract strong views amongst the community, content that conveys different and/or opposing perspectives on the subject will not necessarily be offensive to a level that makes it unsuitable for broadcast.

Further information is available [here](#).

Ten Eyewitness News (Ten Network)

On 10 September 2015, the ACMA found breaches of the accuracy and privacy provisions in the Commercial Television Industry Code of Practice in relation to a news segment reporting on an assault. The complaint related to a news report concerning the bashing of an elderly woman, which focused on a police request to men living in the neighbouring area to voluntarily provide DNA samples. The report included visual images of the complainant accompanied by commentary that he had chosen not to provide a DNA sample. Channel Ten acknowledged that the report incorrectly represented that the complainant had declined to provide a DNA sample to police. The ACMA also found that Channel Ten breached the privacy obligations of the Code. While the complainant was not named, he was identifiable from the broadcast.

Further information is available [here](#).

NRL Premiership rugby league match (Foxtel)

On 10 September 2015, the ACMA found no breach of the betting advertising restrictions in the Subscription Broadcast Television Code of Practice in relation to the broadcast of an NRL match. The complaint related to the appearance of a representative of Sportsbet during the broadcast. The ACMA found that the person in question did not appear as a representative of a gambling organisation within the program, and was rather part of the commentary team. This was due to the fact that the person did not make any verbal references to gambling or Sportsbet, wore the same clothes as other commentators, and was accompanied by visuals and signage belonging to Fox Sports.

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 four reports in September/October.

The ASB dismissed a complaint regarding an advertisement for Handee Ultra paper towels. The advertisement showed a series of scenes where an accidental spill occurs around the home and instead of using an expletive, the characters say “Sheet” as a call for a sheet of paper towel. The complaints alleged that the use of “Sheet” implied “shit” and that this encouraged offensive language. The ASB found the implication of a mild swear word is not inappropriate and would not be considered strong or obscene language by most in the community.

The ASB also dismissed a complaint against an advertisement for a motor vehicle in which swearing by two tradies depicted in the advertisement is masked by sounds of power tools and work sites. Complaints were that this was offensive language. The ASB found that in each instance of ‘swearing’, it is not obvious what the original word would have been and that they have been sufficiently masked so that the suggestion of swear words is not strong, obscene or inappropriate.

The ASB dismissed a complaint relating to an advertisement for a razor blade which features women wearing bikinis who are practicing topiary beside a swimming pool. There is an implication the women are using razors to groom their bikini area. The complaint was that this was sexually suggestive and should not be broadcast during the day. The Board considered that the advertisement doesn’t suggest that all women should trim their pubic hair or that woman who does is better than a woman who does not. The Board also found that the ad does not use sexual appeal in a manner that is exploitative and degrading.

The ASB also dismissed complaints in relation to an advertisement for the MTV Video Music Awards 2015 – a ‘Cross Channel Promotion’. The promotion featured Miley Cyrus and included a scene in which she was depicted wearing a low-cut one-piece bikini with her nipples covered by various cartoon objects. The complaint was that this was offensive and should not have been shown during the day on an unrelated channel where children could be watching. In response, Viacom’s (the advertiser) view was that the promotion did not fall within the definition of ‘advertising’ as promotional sports are excluded from that definition. Viacom also provided a defence of the content of the promotion. The ASB found that the promotion did fall within the scope of the AANA Codes, but found that due to the likely make up of viewers during the programs the promotion was broadcast, it was shown with due regard to the likely audience. The Board found that the advertisement did treat the issue sex, sexuality and nudity with sensitivity to the relevant broad audience.

ASB reports are available to ASTRA members on request.

DISCUSSION PAPERS/REQUESTS FOR COMMENT

Productivity Commission Inquiry into Intellectual Property

The Productivity Commission has released an Issues Paper for its inquiry into Australia’s intellectual property laws. The paper is a very high level consideration of the laws and does not contain specific reform proposals. However as stakeholders are likely to raise specific reforms, subscription television will look to provide a submission which addresses previously considered reforms. Submissions are due 30 November 2015.

Review of Illegal Offshore Wagering

The Government has called for submissions to its review of illegal offshore wagering. Whilst the terms of reference do not make reference to the advertising of legal wagering services, ASTRA is considering whether a submission is warranted.