

Advocacy Report

September 2018

ASTRA ACTIVITY

- **Gambling advertising** – The ACMA has made the final rules to apply gambling advertising restrictions to live sport provided online. The final rules and explanatory statement are available [here](#). There were no significant changes to the rules from the second consultation version, which means that ASTRA's concerns regarding the inconsistencies between broadcast and online rules were not addressed. This introduces considerable complexity for ASTRA members who operate broadcast and online sport channels, particularly where the online service is a simulcast of the broadcast service. ASTRA's concerns regarding the exemptions process were also not addressed. Other concerns related to the application of the 'scheduled start' concept, the lack of an 'exempt program' concept, practicality of the record keeping rules, and several other concerns.

The rules commenced on 28 September 2018.

- **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 conducted a forum for media stakeholders on 16 August 2018.

ASTRA members Foxtel and Fox Sports attended to further advocate on issues raised in their joint submission. The forum was well attended, with TV, radio, news and advertising companies and groups well represented. The MEAA was also very vocal. The focus of the morning sessions was on news and journalism. During the afternoon session on regulatory issues, Foxtel and Fox Sports raised key points regarding the unauthorised hosting of their content on the platforms. The Commissioners present were engaged and there was some good press reporting the next day ([here](#)).

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

- We continue to monitor related inquiries in the UK (which focus on journalism, fake news and harmful content – coverage [here](#), and [here](#)) and the US (which focuses on competition issues – coverage [here](#)).
- In the UK, Ofcom has released a think piece about how broadcasting content standards could be applied to online content to protect consumers. The report contains no recommendations but is an interesting contribution to the broader debate around online content. The key message is that while people expect some protection against online harms, applying broadcast standards would be an incomplete and in some cases, impractical response. The paper is available [here](#). It also notes that the UK Government will release a White Paper on online safety in the coming months.

- **ASTRA Code of Practice** – work is underway to prepare the draft new ASTRA Code of Practice for public consultation. ASTRA is working with members and the ACMA to finalise a public consultation version of the Code. The public consultation period will run for 6 weeks and the ACMA will consider the adequacy of the public consultation process when considering whether to register the final Code. ASTRA members will be notified when the public consultation period commences. ASTRA will also liaise with interested parties in Government.
- **ABC/SBS competitive neutrality inquiry** – The Government has announced an inquiry into whether the ABC and SBS are compromising principles of competitive neutrality. A discussion paper was released in April 2018 and submissions have been published (see [here](#)). We understand a report has been provided to the Minister, but the Government has given no indications on if/when the report will be made public.
- Relatedly, the past month has seen significant disruption at the senior leadership levels of the ABC. On 23 September 2018, the Board sacked Managing Director Michelle Guthrie, who was only half way through her term of appointment. Commentary focussed on a range of issues rumoured to be behind the decision, including a lack of journalistic experience/interest, frequent overseas travel, financial management issues, management style, a lack of political engagement and a reported disagreement with Chair Justin Milne regarding a massive digitisation project.

Not long after, the press reported allegations that the Chair had improperly sought to sack certain journalists who he perceived had upset the Government with their reporting. The allegations were detailed and inflammatory, and included reports that Michelle Guthrie had resisted the Chair's attempts to influence staffing decisions. The Chair resigned on 26 September.

An acting Managing Director has been appointed – David Anderson, a life-long ABC employee. Dr Kristin Ferguson has been appointed as acting Chair.

The Minister has announced a Departmental inquiry into the processes related to the sacking of Michelle Guthrie, and the Greens the ALP have indicated their interest in a Senate inquiry into this and related issues.

Extensive coverage is available online.

- As previously announced, the Managing Director of SBS, Michael Ebeid, formally stepped down on 8 October 2018. Ebeid is taking up a senior executive role at Telstra. SBS is yet to name his replacement. Coverage [here](#).
- **Spectrum** – The Department has indicated that due to drafting delays, spectrum reform legislation is now likely to be introduced in the Autumn 2019 Parliamentary sittings. The Government is committed to a further round of consultation on a full Exposure Draft of the package prior to introduction, and expect to release this before the end of 2018. This will provide an opportunity for industry and users to consider what will be a substantial package.
- **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. 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 that the discussion paper for a review of Australia’s classification framework is currently with the Minister for approval for release. We have not been given a timeframe for a release of the paper.

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

NEWS

ACMA Investigations

On 8 August 2018, the ACMA found that Channel Seven had breached the accuracy and vilification provisions of the Commercial Television Industry Code of Practice in relation to a *Sunrise* segment on adoption of indigenous children. Report available [here](#).

On 10 August, the ACMA found that the ABC had not breached the accuracy and impartiality provisions of the ABC Code of Practice in relation to a report on *ABC News* regarding the reintroduction of a school reading program. Report available [here](#).

On 28 August 2018, the ACMA found that Network Ten had breached captioning rules in the *Broadcasting Services Act 1992*. The ACMA found that no captions had been provided during an episode of *MasterChef Australia*. The breach was disregarded as provisions relating to unforeseen technical difficulties applied. Report available [here](#).

On 31 August 2018, the ACMA found that 9Gem had not breached the advertising time limits provisions of the Commercial Television Industry Code of Practice. Report available [here](#).

On 11 September 2018, the ACMA found that the ABC had not breached the accuracy, impartiality and corrections provisions of the ABC Code of Practice in relation to an episode of *Four Corners*. The complaints related to reporting on climate change. 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 four reports in relation to subscription TV in August and September:

- Complaints regarding a commercial for gum were dismissed. The ASB considered the complaints in relation to the sex/sexuality/nudity provisions of the Code of Ethics.
- Complaints regarding a commercial for a bank were dismissed. The ASB considered whether inappropriate language standards were breached.
- Complaints regarding an advertisement for Foxtel's 4K channel were dismissed. The ASB considered whether inappropriate language standards were breached.
- Complaints regarding an advertisement for clothing were dismissed. The ASB considered whether the vilification provisions of the Code of Ethics were breached.

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

DISCUSSION PAPERS/REQUESTS FOR COMMENT

Nil.