

Advocacy Report

February 2018

ASTRA ACTIVITY

- **Gambling advertising** – ASTRA and members have been working collaboratively with the ACMA on a new Code of Practice Appendix to implement new gambling advertising restrictions. The new Code must come into effect on 30 March 2018 and the ACMA is expected to consider the new Code at its meeting of 8 March 2018. Negotiations have focussed on an exemption for sports channels with very low audience share, the treatment of advertising within breaks in longer events and other drafting details. Commercial free-to-air television and commercial radio have been working on similar Codes to implement the new restrictions on their platforms. Both FTA television and radio have expressed their opposition to the low audience share channel exemption proposed for the ASTRA Codes. Coverage is available [here](#) and [here](#).

Concurrently, the Government has been progressing new laws to apply the restrictions to online platforms. The Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017 (available [here](#)) was introduced into Parliament in 2017, and has been considered by the Senate Environment and Communications Committee. The Committee reported on 12 February 2018 (report [here](#)) and whilst it noted a substantial number of stakeholder concerns with the Bill, its only recommendation was that the Bill be passed. ASTRA made a [submission](#) to that inquiry which highlighted that many aspects of the Bill are inconsistent with or exceed the proposed broadcast Codes.

- **Foreign Influence Transparency Scheme Bill 2017** - The Foreign Influence Transparency Scheme Bill 2017 was introduced into Parliament on 7 December 2017.

The Bill's requirements are onerous, including: registration by persons undertaking certain activities on behalf of a foreign principal (including governments and businesses), registrants to disclose information about the nature of their relationship with the foreign principal and activities undertaken pursuant to that relationship and criminal offences for non-compliance.

We believe these requirements will apply to ASTRA's political advocacy (and any advocacy undertaken by any members with foreign ownership), and also to a broad range of content on the Foxtel platform.

The Bill was referred to the Parliamentary Joint Committee on Intelligence and Security, which is 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. The practical impact could be the withdrawal of channels such as Al Jazeera, BBC Worldwide News, Russia Today and CCTV (which are all state-owned media organisations). There is also the potential for the Bill to apply to certain content on general entertainment channels.

Many other businesses, professional groups and educational institutions have raised strong concerns with the Bill.

ASTRA and Foxtel have made several appearances in hearings on the Bill, and have raised the industry's concerns directly with Ministerial staff. The Government has hinted at potential changes to the Bill, but we are yet to be comfortable that those changes will address our concerns.

- **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 understand the Government has received the review's report and is considering an announcement in the context of the 2018 Budget.

Concurrently, the House of Representatives Communications and the Arts Committee finalised its inquiry into the Australian film and television industry (report here). The key recommendations of the Committee were to replace the current suite of tax offsets (40% for film, 20% for television and the 16.5% location offset) with a single 30% offset (and to remove the 65 episode cap for television productions accessing the offset). The Committee also recommended SVOD companies contribute a portion of revenue to Australian content production, reform of the children's quotas on FTA television and an hours-based quota for the ABC.

On 18 October 2017, the Australian Greens established a Senate inquiry into the value of Australian screen content to audiences. Together with the Government run review, and the House of Representatives inquiry, this is the third review of Australian content. ASTRA made a submission attaching its and Foxtel's previous submissions on this topic. The Committee is due to report by 9 May 2018. Further details including the terms of reference, are available here.

- **Spectrum** – The ACMA has announced it will recommend 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.

ASTRA also made a submission to the ACMA's annual update of its Five Year Spectrum Outlook, which outlines major pieces of new work, an overview of the spectrum environment, progress on last year's key projects and upcoming ACMA activities. The Outlook is available here. ASTRA's submission is available here.

On 20 February 2018, Foxtel representatives attended a roundtable hosted by the Department of Communications to discuss key elements of the new spectrum regulatory framework. A further exposure draft of the legislation is expected very shortly, and we are advised that an exposure draft of broadcasting spectrum provisions will be released at the same time.

- **Captioning** – On 8 February 2017 ASTRA convened a meeting of the Subscription Television Captioning Roundtable. ASTRA briefed the advocacy groups on the recent introduction of captioning on Foxtel's digital services. The group identified further improvements which could be made to assist consumers to find available captioning.

- **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 [April Advocacy Report](#) for further details.

ASTRA and Foxtel participated in 4 working group meetings, and contributed heavily to the production of the group’s report, which is now with the Minister. The working groups were attended by broadcasters, disability advocacy groups, accessibility service providers, academics and representatives of the Department. The report did not contain a recommended method for introducing audio-description to Australian television, and instead gave a detailed analysis of the various options. ASTRA opposes a broadcast delivery solution. Advocacy groups were initially only supportive of a broadcast delivery solution, but have since expressed conditional support delivery of audio-description via a smartphone app or telephone line.

The issues are now with the Minister for consideration.

- **Copyright** – The Government has released an [issues paper](#) for the review of site blocking legislation. The review is further to the Government’s commitment to review the operation of the online infringement amendment 18 months after it commenced on 27 June 2015. The issues paper is brief, and canvases three questions:
 1. How effective and efficient is the mechanism introduced by the Online Infringement Amendment?
 2. Is the application process working well for parties and are injunctions operating well, once granted?
 3. Are any amendments required to improve the operation of the provisions?

Rights holders such as Foxtel are preparing submissions to the review based on their experiences in seeking orders under the provisions over the last 18 months.

ASTRA is considering its position in consultation with members.

- Foxtel obtained orders to block Pirate Bay index sites in December 2017. Applications by film studios and broadcaster TVB to block Kodi box apps is underway.
- Legislation to extend safe harbour protections to libraries and educational institutions was introduced in the Senate on 6 December 2017. Rights holders maintain their opposition to the extension of safe harbour protections any further.
- **Codes of Practice** – the ASTRA Code of Practice has been approved by the ASTRA Board. In consultation with the ACMA, it has been decided to place the Code process on hold until work on the gambling Code amendments has been completed.
- **Data breach laws** – new laws governing mandatory data breach notifications came into effect on 22 February 2018 (under the Privacy Amendment (Notifiable Data Breaches) Act 2017). The laws mean that if an ‘eligible data breach’ concerning data held by a business occurs, the business must promptly notify the Office of the Australian Information Commissioner, and take reasonable steps to notify affected individuals. Failure to comply could result in fines of up to \$1.8m.

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

NEWS

ACMA Investigations

On 5 January 2018, the ACMA found that WIN Television had not breached the classification requirements in the Commercial Television Industry Code of Practice in relation to a PG classified program – Malcolm in the Middle. The full report is available [here](#).

On 31 January 2018, the ACMA found that the Ten Network had not breached the provisions of the Commercial Television Industry Code of Practice relating to the feelings of relatives and viewers in the presentation of a news report involving a motorbike accident. The full report is available [here](#).

On 9 February 2018, the ACMA found that WIN Television had not breached the Commercial Television Industry Code of Practice in relation to impartiality in a Ten Eyewitness News report about bank profits and job cuts. The full report is available [here](#).

On 15 February 2018, the ACMA found that the ABC had not breached the harm, offence and classification provisions of its Code in relation to an offensive remark in the program Hard Quiz. The full report 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 has issued four reports in 2018 to date:

- Complaints regarding a commercial for Hanes clothing were dismissed. The ASB considered the complaint under the sex/sexuality/nudity provisions of the AANA Code.
- Complaints regarding a commercial for Foxtel were dismissed. The ASB considered the complaint under the violence and health and safety provisions of the AANA Code.
- A complaint regarding a commercial for health products was dismissed. The ASB considered the complaint under the health and safety provisions of the AANA Code.
- Complaints regarding a commercial for photo book printing were dismissed. The ASB considered the complaint under the unsafe behaviour 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 the efficacy and efficiency of site blocking laws. Submissions are due 16 March 2018.