

Film Inquiry
Submission No. 60.....



1 July 2003

The Secretary
House of Representatives
Standing Committee on Communications, Information Technology and the Arts
Parliament House
Canberra ACT 2600

Dear Sir / Madam

Inquiry into the Future Opportunities for Australia's Film, Animation, Special Effects and Electronic Games Industries

ASTRA welcomes the opportunity to submit to this inquiry.

The Australian Subscription Television and Radio Association (ASTRA) is the peak industry body for subscription television and narrowcast radio. ASTRA was formed in September 1997 when industry associations representing subscription (multi-channel) TV and radio platforms, narrowcasters and program providers came together to underpin and propel the new era in competition and consumer choice that these new services have brought to broadcasting, communications and entertainment in Australia.

Subscription broadcasting and open and subscription narrowcasting services were new categories of broadcasting services introduced by the Broadcasting Services Act (BSA) in 1992. These new services added to the mix of existing categories of service, those being the national broadcasting services, commercial broadcasting services (commercial TV and radio) and community broadcasting services.

ASTRA's membership includes the major subscription television operators as well as the great majority of channels that provide programming to these platforms. Other members include narrowcast television and radio operators and communications companies such as OPTUS and Telstra. A complete list of ASTRA members can be found at www.astra.org.au/members.asp.

Features of subscription television

Subscription television services are provided across Australia (both in metropolitan and regional areas) extending audience choice in terms of the range and diversity of entertainment and information programming. Subscription television services may be delivered by a number of technologies including: multipoint microwave distribution systems (MDS), broadcast direct by satellite to the home (DS or DTH) and broadband cable communications systems (CTV or Cable).

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Services include movie channels; news channels (including regional news services and a comprehensive Australian news service); dedicated children's channels; documentary/education channels; entertainment/drama channels (including arts channels); sports channels; music channels; ethnic language channels (Greek, Arabic, Chinese, Cantonese, Lebanese, Japanese, and Italian programming); local weather channels and pay per view event channels, as well as radio services and interactive television services. Channels are owned by over 30 different media companies, 12 of which are Australian owned or based. As a result, ASTRA's members provide diversity and depth of entertainment and information services, both Australian and foreign in content, to a very broad range of the Australian community.

Through its substantial capital investment in infrastructure, investment in services and productions and the establishment of a loyal and growing customer base, subscription television has made a significant mark upon the Australian film and television industry by substantially impacting on the way Australian's experience entertainment and information in the home.

Subscription television is now in 1.5 million homes throughout the country, meaning over 5 million Australians watch subscription television services. Market penetration in Australia remains short of the penetration rate in the world's most mature subscription television market in the US where up to 70 per cent of homes are connected to cable or satellite subscription television after 30 years. The Australian experience is nonetheless impressive given the risks and costs involved in investing and developing the industry in a regulatory environment which continues to present obstacles to the growth of the industry.

Economic, social and cultural benefits

Since its inception, over \$A8 billion dollars has been invested in infrastructure, capital, facilities, productions, licence fees and services in order to establish the subscription television industry. ASTRA's members are responsible for the bulk of this investment which has been distributed throughout metropolitan, regional and remote markets. Consequently, the sector has created an enormous number of jobs, investment, infrastructure and production content throughout Australia.

The industry continues to invest heavily in its own growth and the growth of the Australian film and television broadcast sectors – recent examples being the \$600 million commitment to digitise the FOXTEL cable network, the decision to roll out new set top boxes by AUSTAR providing improved services for consumers and the continuing investment in programming, production and human resources by the entire sector.

Content

ASTRA's members invest millions of dollars and broadcast thousands of hours each year of Australian film and television productions across all television genres: factual, news, documentaries, sport, children's, general entertainment, music and drama. As a consequence, ASTRA's members are responsible for:

- promoting and making available to Australian audiences a diverse range of broadcasting services through a variety of genres;

- facilitating the development of the Australian broadcasting and production industry through its own investment and productions (both ‘commissioned’ and ‘in-house’); and
- continuing to develop and reflect the Australian identity, character and the broad diversity of Australian culture like no other broadcast medium through its targeted niche programming.

ASTRA members are committed to producing new Australian programming and recognise that Australian content has an important role to play in promoting and developing a sense of Australian identity, character and cultural diversity.

ASTRA members also aim to provide their subscribers with new, innovative and high quality programming and a variety of choices across the vast array of channels.

In so doing ASTRA and its members recognise equally the value to the Australian public of providing Australian as well as non-Australian content. Language specific or focused genres such as UK TV or World Movies or even news services such as CNN or BBC World cater specifically for Australians interested in receiving different viewpoints and cultural experiences.

ASTRA’s members are regulated by Division 2A of the BSA which requires 10% of a drama channel provider’s program expenditure to be spent on New Australian Drama (as defined in the BSA). ASTRA recently completed a submission to the Australia Broadcasting Authority’s inquiry of the operation of this provision as well as providing additional information about Australian content on subscription television services.

ASTRA has made a number of recommendations regarding the operation of the provision in its submission. Most relevant to this inquiry is ASTRA’s concern as to a narrow interpretation placed upon what can be considered eligible New Australian Drama under the provisions.

ASTRA notes that Division 2A of the BSA was set up in order to facilitate contributions to production and to increase the opportunity for export of Australian productions. The regulations were not set up with a reference specifically to cultural importance.

This is illustrated in the Explanatory Memorandum and the Second Reading speech of the Broadcasting Services Bill 1992 in the Senate:

*“It is intended that this licence condition will provide opportunities for the Australian drama production industry to provide new material for these services that people are willing to pay to watch”.*¹

*“The Government’s aim in setting Australian content regulation for subscription television satellite services is to send a signal to the industry that it has a role to play in the development of the Australian film and television industry”.*²

¹ Explanatory Memorandum, Broadcasting Services Bill 1992

² Second Reading Speech by the then Minister for Transport and Communications for the Broadcasting Services Bill 1992 in the Senate

The 'industrial' nature of the Scheme, to contribute to the Australian film and television production sector, and the recognition that subscription television in Australia operates in a global market is also supported by the Second Reading Speech to the BSA which states:

“Our film and television production industry will also benefit from the new demand for programming. An Australian content requirement for drama channels on all (satellite) broadcasting services has been set ...This will make a significant contribution to the development of the Australian production industry in providing jobs and developing creative Australian product, with potential for export.” (emphasis added)

It is clear that the then Government's intention, as agreed to by Parliament, was that the original section 102 obligation should lead to new opportunities for the Australian drama production industry. This is echoed in the introductory comments for the amended obligation under Division 2A of the BSA.

However, under the current definition of New Australian Drama and the sector's need to develop productions that meet the strict requirements of this definition, ASTRA's members have at times been unable to develop productions that meet all the requirements of the definition. This has been problematic to the development of the film and television sector as a whole and certainly created many limitations for the industry.

It is on this basis that ASTRA has previously argued for a broader interpretation given to the meaning of New Australian Drama in line with the original intent of the legislation, so as to take into consideration broader production opportunities and that are currently being frustrated but which would be of considerable value to the film and television industry. ASTRA's current submission touches on this and addresses the need for other flexibilities in the legislation.

More information about the investment in content of Australia's subscription television services can be obtained by reference to this submission (available at www.astra.org.au).

Education and Training

The subscription television industry employs a very broad mix of individuals including creative producers, on air presenters, business professionals (administrators, lawyers and accountants), engineers, technical staff (vision mixers and presentation controllers) and production staff (camera or video tape operators) including those involved in interactive television production. In the case of media specific roles (such as production or technical positions) the sector is responsible for training and providing a vast quantity of Australia's future media professionals with their first media positions and experiences.

Thousands of Australians are directly employed by the subscription television sector. Tens of thousands are employed indirectly.

Incentives to continue and develop this training opportunity would be welcomed by ASTRA and its members.

Digital Television

The subscription television industry has consistently been a trail blazer in terms of pushing the envelope of broadcast technologies. The most recent example of this is in the development and growth of digital television services – a massive investment and commitment by the sector.

Despite free to air broadcasters receiving government assistance through extensive funding and provision of spectrum to encourage digital services over the last two years, the most generous estimate is that approximately 50,000 digital set top boxes have been purchased by Australian consumers. Currently this means that less than 0.4% of televisions are connected to digital terrestrial services.

Contrasting this is the subscription television industry which has and continues to invest significant sums to create to build digital television services. This ranges from platform investment in infrastructure upgrades to channel provider's investment in digital interactive programming and application.

FOXTEL and AUSTAR currently provide subscribers (more than 500,000 subscriber homes in total) with digital reception through digital satellite television. Consequently approximately 1.5 million Australians experience digital television through the subscription television sector. This translates into sharper pictures, clearer sounds, widescreen, extra channels and interactive services. The commitment to digitise also results in the use of scarce spectrum and bandwidth with greater technical and economic efficiency. AUSTAR in particular has been providing interactive television services since 2000.

Advancing the growth of digital is the much anticipated roll out of FOXTEL's digital cable and satellite services in 2004. This will expand the digital offering to many more Australians.

The growth and development of digital television in Australia is a direct product of the investment and commitment of subscription television service providers.

Interactive Services

Currently, more than 300,000 households - which equates to more than 1 million viewers - in rural and regional Australia are iTV enabled using AUSTAR's digital satellite platform. These services enrich the customer's viewing experience, increasing their choice of entertainment, information and services available over the television and offering greater convenience and choice.

The range of additional interactive television services available today includes; HOME which provides a gateway to interactive services, Channel Enhancements, special program events, interactive Digital Radio, Games, Interactive Television Guide and Interactive Advertising. The offering of interactive applications will increase with the growth of digital services.

Barriers to growth

Anti-Siphoning

It is well documented that a significant driver of subscription television take up (and the resultant industry growth that this entails) is the broadcast (in particular, the live broadcast) of sporting events on subscription television. However, the current anti-siphoning scheme implemented under the BSA has operated to impede, and unless reformed on a sensible basis, will continue to impede the growth potential of the subscription television industry.

The scheme was ostensibly established in 1994 to ensure that a wide range of sporting events would be available on free to air television. At the time there were fears that sporting events would be siphoned away from free to air television by subscription television operators. The way the scheme was implemented however, meant that the free to air networks could effectively restrict the way in which broadcast rights were acquired and broadcast, both on free to air television and subscription television.

The scope of the anti-siphoning scheme is so broad that it captures events which are, or have not been previously, broadcast live on free to air television as well as events which are not, or have not previously been, broadcast at all on free to air television. Recent research undertaken by one of ASTRA's members: FOX SPORTS, confirms the limited coverage of listed events on free to air television. This analysis, which has been independently audited and verified by the accounting firm Ernst & Young, demonstrates that of the hours of sport protected under the anti-siphoning scheme, 85% are never broadcast live on free to air television and 75% are not broadcast at all on free to air television. This research clearly illustrates that there is no reason for the current anti-siphoning scheme to be maintained.

As is well known, ASTRA and its members have been seeking reform of the anti-siphoning scheme. Without the anti-siphoning scheme or with a much more tightly defined scheme, the Australian subscription television industry would be able to offer more live sport but more importantly more live sport to Australian consumers on a national basis who are presently denied access by the free to air networks to much of the sporting coverage available to be shown. Reforming the scheme is also in the interests of sporting bodies who would be able to receive the wider exposure and the subsequent benefits that this entails from the subscription television industry being able to provide national coverage of their particular sport.

Piracy

Signal theft, otherwise known as piracy, is the unauthorised receipt of a subscription television service. Unauthorised means that the person receiving the service has not paid the subscription television service provider a fee for receipt of the service but is able to watch the service for free.

Subscription television service signals are encrypted to ensure that people pay for the service, so that a customer needs a set-top box which includes a decoder which is authorised and provided by the subscription television service provider in order to decode the encrypted signal and receive the service. The encryption methods are complex algorithms that alter the signal, which are decoded by appropriate software in the decoder if that decoder is found to be "authorised" when the signal is sent. In order to receive a service without paying the subscription television provider it is necessary to have equipment that duplicates the functions of the Subscription TV provider's decoder.

Piracy of subscription television services exists in Australia in a number of ways:

- use of stolen decoder boxes or smart cards
- manufacture of an unauthorised decoder box or smart card
- importation of an unauthorised decoder box or smart card.

Evidence suggests that each of the above methods is currently being used in Australia for the unauthorised receipt of subscription television services.

Subscription television piracy results in significant loss of revenue for subscription television distributors and in turn to subscription television channel providers and copyright owners. Generally subscription television distributors pay the channel providers on the basis of subscriber numbers. If people are able to receive a service without subscribing to the distributor then there is a direct loss of revenue that flows down the supply chain. This in turn adversely affects and undermines the investment of ASTRA's members in Australian film and television production and facilities.

Currently there is inadequate legislative protection against signal piracy in Australia. Express legislative provisions need to be enacted to make signal theft an offence, as is the case in other countries such as the USA, the UK and New Zealand. ASTRA has made a number of submissions to the Department of Communications, Information Technology and the Arts; the Attorney General's Department and the Minister for Communications, Information Technology and the Arts regarding piracy of subscription television services since 2001 and seeks urgent legislative reform to assist the industry in its fight to prevent the theft of its services.

ASTRA and its members have also noted the recent comments by the US Trade Representative's (USTR) Robert Zoellick to the US Congress and the potential for the US trade negotiators to seek strengthening of Australian copyright laws in relation to the stricter anti-technology circumvention provisions under the US Digital Millennium Copyright Act.

The USTR's latest annual review of National Trade Estimates for 2002 with Australia provides the following analysis:

"A relatively low priority is assigned to intellectual property enforcement at both the State and Federal levels. The Australian Copyright Act, its interpretation by Australian courts in certain instances, and the position taken by the Australian Federal Police not to pursue criminal prosecution where civil remedies are available, have created costly and burdensome obstacles to enforcement. Civil remedies have not proven an effective deterrent to piracy."

For the subscription television industry, time is of the essence to enact legislative remedies as the larger the problem becomes the harder it will be to contain

Hoarding of Digital Rights

ASTRA's members have recently noted the practice by some free to air broadcasters of hoarding what is being described as a "digital right", purportedly exercisable in parallel with free to air and subscription rights to broadcast programming. Traditionally and commercially, rights within the Entertainment industry have been described in language based on how the consumer receives the product (for example, "video" or "free to air" or "subscription"). The parameters of each right are well understood by industry participants, provide certainty for both producers and broadcasters, and often underpin funding of a project.

ASTRA indicates this attempt to carve out a new, technologically based right is at odds with the development of existing and future television services (regardless of technology) and has the potential to undermine the value able to be provided to underlying rights holders. The ability of program producers to distribute programmes across both free and subscription television platforms (and thereby maximise returns), is restricted by assertion of this unclear and uncertain "right". A 'digital right' will become an absolute right to all television services as all services will be delivered via digital means in the future.

Legislating now to enforce recognised industry practice as to management of rights, will provide certainty and avoid ongoing confusion which has the potential to inhibit future growth.

The current and likely future infrastructure needs of these industries, including access to bandwidth

ASTRA notes that satellite and cable bandwidth is a finite resource and access to capacity comes at a cost.

Should ASTRA be able to assist further please do not hesitate to contact me.

Yours sincerely

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