

2 May 2008

Mr Ian Holland
Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
By Email: eca.sen@aph.gov.au

Dear Mr Holland

INQUIRY INTO THE EFFECTIVENESS OF THE BROADCASTING CODES OF PRACTICE

ASTRA writes to you with regard to the Senate Standing Committee on Environment, Communications and the Arts' ('**Committee**') inquiry into the effectiveness of the broadcasting codes of practice ('**Inquiry**'). ASTRA appreciates the opportunity to contribute to the Inquiry.

ASTRA represents the interests of what are primarily subscription television platforms and channel providers. A list of ASTRA's members can be found at www.astra.org.au/members.asp.

The Inquiry appears to cover and consider all broadcasting codes of practice for both television and radio including those managed by ASTRA. This is despite a smaller remit articulated by Senator Cory Bernardi, who in the media release of 20 March 2008 referred to a singular 'Code of Practice' – particularly the Commercial Television Industry Code of Practice when calling for an 'inquest into slipping tv standards'. ASTRA does not seek to make any direct comments upon the Commercial Television Industry code. However, on the basis that ASTRA's members and their activities and ASTRA's codes of practice are considered in the broader sense by the Inquiry, ASTRA makes the following submission.

ASTRA's Codes

One of ASTRA's primary functions is to manage four separate broadcasting codes of practice operating within the radio and television industry. Each code of practice represents a distinct area of broadcast operation. They are:

- Subscription Broadcast Television Code of Practice
- Subscription Narrowcast Television Code of Practice
- Open Narrowcast Television Code of Practice
- Subscription Narrowcast Radio Code of Practice

Copies of each of ASTRA's codes can be found at www.astra.org.au/codes.

Under the Broadcasting Services Act 1992 ('**BSA**'), ASTRA was originally required to develop codes of practice to cover the narrowcast radio and subscription television sectors. The then Australian Broadcasting Authority ('**ABA**') 'registered' these codes in 1997, 1999 and 2003. The codes were registered by the now Australian Communication and Media Authority ('**ACMA**') in 2007.



The ASTRA subscription narrowcast radio and subscription narrowcast television codes have been operating since September 1997. The ASTRA subscription broadcast television codes, including the advertising code, have been operating since April 1999 and the ASTRA open narrowcast television code has been in force since May 1999.

ASTRA developed these codes, taking into account relevant (then ABA) research, in consultation with the ABA and subject to public comment. The ASTRA Codes cover matters of community concern as set out at section 123 of the BSA. These matters include, the classification of programs, accuracy and fairness in news and current affairs, complaints handling, captioning, advertising and dealings with customers on matters such as billing and fault repair.

In light of regulatory policy set out under the BSA, the codes for subscription television recognize the fundamental differences between the mass appeal and mass market target of free to air television and the niche nature of subscription television. The codes are especially sensitive to the expectations of the audience about program and advertising content of particular channels at particular times especially as the audience is paying for the service.

The ASTRA Codes are intended to provide clear and consistent information to enable consumers to make informed decisions about the nature of the programming they elect to receive. ASTRA undertakes regular codes presentations to relevant staff of platforms, channels and call centres. These sessions provide an opportunity to discuss relevant code issues and highlight any areas that may need review in terms of procedures or of the ASTRA Codes themselves. Staff are provided with handouts that summarise the ASTRA Codes as well as a copy of the relevant code.

ASTRA's Codes were last registered by ACMA in 2007.¹ Registration occurs on the basis that the Codes reflect appropriate broadcasting standards, are endorsed by the majority of service providers captured by the code; and after demonstrating an adequate level of consultation regarding the code with the broader Australian community.

Prior to this registration, ASTRA embarked on an extensive public engagement about its codes and their appropriateness; issuing a press release alerting all to the process, seeking the views of its membership, taking out advertisements in the Australian newspaper and the subscription television operator (AUSTAR, FOXTEL and OPTUS) magazines seeking comment, as well as directly approaching Australian organizations and interest groups to seek their views. Comments and suggestions received that were relevant to the code review process, were incorporated into the current codes as appropriate.

Subscription Broadcast and Narrowcast Television Codes and Services

ASTRA's members' main activities concern the subscription broadcast and narrowcast television codes of practice as these represent the services on member platforms operated by FOXTEL, OPTUS and AUSTAR. Each of these platforms offer broadcasting services very distinct to those provided in an open broadcast world.

Subscription television operators are committed to the protection of subscribers' interests in all aspects of their service provider-subscriber relationships. This includes issues relating to subscriber options, fault repair, subscriber privacy, credit management and billing, all of which are covered by the subscription broadcast television codes.

A major distinctive feature of subscription television is the direct contractual relationship between the service provider and the subscriber. This voluntary relationship between the provider of a retail service and a

¹ There was a delay in registering ASTRA's Open Narrowcast Television Code of Practice due to the consideration of a late submission in ASTRA's code review process. ASTRA has been informed that the Open Narrowcast Television Code will be registered shortly.

subscriber to that service provides subscribers with freedom of choice along with the capability and responsibility to select the programs they wish to receive. In this sense, subscription television is in the nature of an invited guest, brought into the home in the full and prior knowledge of the guest's character.

The then ABA recognised the unique characteristics of subscription television when it commented in its *Final Report on Australian Content for Pay TV* that, “*Pay TV operates by offering as a package a range of ‘niche’ or specialised programming channels which subscribers must pay to receive. Within this context it enhances viewing options and complements free to air services. Pay TV has a smaller target audience to commercial television which is provided free to air with no direct cost to the viewer ... Pay TV is further differentiated from free to air television in terms of the number of different channels, total hours broadcast, reduced advertising opportunities and the niche nature of much of its programming.*”

The distinction is articulated directly in the Subscription Broadcast Television Code:

“A major distinctive feature of subscription television is the direct contractual relationship between the service provider and the subscriber. This voluntary relationship between the provider of a retail service and a subscriber to that service provides subscribers with freedom of choice along with the capability and responsibility to select the programs they wish to receive. In this sense, Subscription TV is in the nature of an invited guest, brought into the home in the full and prior knowledge of the guest's character.”

In short, subscribers have chosen to pay to receive subscription television services. Should they not appreciate the content on these services, they stop subscribing.

Packages of channels and content are matched to different groups and audiences depending on interests. An appropriate mix of services may thus be dependant on whether the subscribers are, for example, a young family interested in children's programming, an older couple who love movies; or a young adult household who enjoy music and comedy.

To further delineate service offerings, some operators permit entire channels to be blocked by account holders. Additionally entire classification levels may be blocked meaning that, for example, a household may choose to block content stronger than PG without an additional PIN security code. This is all achieved using what is termed a ‘parental control lock-out’ or ‘disabling devices’.²

This allows subscribers to pick and choose the type of content they receive at every possible point. They are entirely in control of the services they view. This is very different from broadcasting services delivered by open broadcasters.

As a result of our different relationship with the audience notification of the ASTRA codes of practice can be found in the subscriber monthly magazine (program guide) as a regular inclusion. ASTRA's Codes also appear on the website (www.astra.org.au/codes) and on ACMA's website. ASTRA's Codes are also available through each of the operators' call centres, and available to the public on request.

Complaints

ASTRA's members have a streamlined, effective and very efficient complaints process largely due to each subscription television operator having a call centre standing by to receive and address issues that may arise for their subscribers. Each operator has a vested interest in receiving feedback to ensure that subscribers are happy and to avoid ‘churn’: a term used to describe when a customer chooses to stop subscribing. Unresolved complaints are clearly to be avoided.

² Note that the use and communication of disabling devices is prescribed in the Subscription Broadcast Code of Practice.

This is again different from services delivered by other broadcasters. Commercial broadcasters for example, do not have direct relationships with their viewers: relationships and priorities are with advertisers. For subscription television services, the relationship with the viewer (subscriber) is paramount.

Consequently, complaints from subscribers are received over telephone and in writing. Telephone complaints are usually addressed at the time of the complaint then and there or if more complex, then very shortly afterwards. The process articulated in the codes of practice³ is designed to allow speedy resolution of issues directly from the supplier of the broadcast service – as opposed, for example, via a third party that may not be aware of any of the detail of the subscriber or the service being discussed. Only if a complaint is not able to be resolved does the complaint escalate to ACMA who conduct an inquiry to determine whether there has been a possible breach of a code.

ASTRA notes that the vast majority of complaints received by its licensee members largely concern billing or fault repair and are resolved to the customer's satisfaction. There are no patterns of complaint concerning or surrounding either classification or for example and more specifically, language. ASTRA further notes that in over 12 years of broadcasting that only on 2 occasions has a licensee been found to have breached an ASTRA code (there has been one breach of a condition of a license).

It is clear that there is no failure in any ASTRA code as reflected by the complaints process.

Classification Standards

ASTRA's members classify content on their services directly via the Federal and State Government's Guidelines for the Classification of Films and Computer Games ('**Guidelines**'). These guidelines are included in this submission as an attachment to the Subscription Broadcast Television Code.

ASTRA's members do not seek to censor content from viewers. This would be an inappropriate and intrusive exercise, attacking a key benefit to Australians of subscription television: that people should be able to view what they want when they want with appropriate protections for children from material that may be harmful.

ASTRA supports the approach provided for in the Guidelines that classification decisions are to give effect, as far as possible, to the following principles:

- (a) adults should be able to read, hear and see what they want;
- (b) minors should be protected from material likely to harm or disturb them;
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;
- (d) the need to take into account community concerns about:
 - (i) depictions that condone or incite violence, particularly sexual violence; and
 - (ii) the portrayal of persons in a demeaning manner.

Classifications, together with appropriate consumer advice, are provided at a variety of points. This can range from operator magazines and websites to program promotions to billboards (at the start of programs), and on the electronic program guide (at any stage) to ensure adequate warning regarding program content is provided. This consumer advice includes warnings concerning the use of coarse language in programs.

Coupled with an account holder's ability to block a particular classification level from being viewed, households receive every protection and warning about material that they would otherwise choose not to watch.

Conclusions

Section 4 of the *Broadcasting Services Act (C'th) 1992 (BSA)* states that "*Parliament intends that different levels of regulatory control be applied across the range of broadcasting services ... according to the degree*

³ The complaint process is outlined in the Subscription Broadcast Code of Practice: Code Number 5.

of influence that different types of broadcasting services... are able to exert in shaping community views in Australia”.

Given the level of impact and reach of subscription television services, their ‘invited guest’ characteristic, the speedy and effective complaint handling processes and low level of breach as well as the effective use of the Guidelines, ASTRA is of the view that its broadcasting codes of practice are very effective in guiding licensees in their behaviours and practices and reflecting an appropriate and accurate community standard.

Do not hesitate to contact ASTRA if there is anything further that we may be able to provide to assist in the inquiry process.

Yours sincerely

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CEO