



**Submission to the Australian National Preventative Health Agency in  
response to its issues paper *Alcohol Advertising: The effectiveness of  
current regulatory codes in addressing community concerns***

**8 March 2013**

## **Introduction**

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to provide comments on the Australian National Preventative Health Agency issues paper *Alcohol Advertising: The Effectiveness of Current Regulatory Codes in Addressing Community Concerns*.

## **About ASTRA**

ASTRA is the peak industry body for subscription television (STV) in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multi-channel) television and radio platforms, narrowcasters and program providers came together to represent the new era in competition and consumer choice. ASTRA's membership includes the major STV operators, as well as channels that provide programming to these platforms. A list of ASTRA members is attached to this submission.

## **Overview of the STV Sector**

The STV sector gives Australians access to quality, live, original and award-winning international and Australian programming across many genres, including movies, news, children's, documentaries, light entertainment, lifestyle and drama, live local and international sport, music, ethnic language, local weather and pay per view events.

The Australian STV industry employs over 6,400 people and in 2011–12 invested \$667 million into Australian content. Deloitte Access Economics estimates the overall direct contribution made by STV to the Australian economy at \$1.4 billion in 2011–12 and at least \$7 billion overall since the start of STV in 1995.

With over 200 channels (including HD and Plus 2) from over 20 different media companies broadcast on the Foxtel platform and channel packages offered through Telstra T-Box and Xbox 360, the breadth, range and diversity of STV programming remains unsurpassed in the Australian broadcasting environment. Received by 34% of Australians through their homes and over a million more through hotels, clubs and other entertainment and business venues, STV provides 24 hour news, sport and entertainment.

## **General Comments and overview of regulation of alcohol advertising on STV**

### **The co-regulatory scheme for content on STV**

ASTRA submits that the existing framework for regulating content, including advertising, on STV works effectively to maintain community standards and protect children from harm while enabling subscribers to view the content they want to see when they want to see it. The current co-regulatory model for STV, overseen by the federal communications and media regulator, is an example of industry-based content regulation that works well both for consumers and broadcasters.

Under the *Broadcasting Services Act 1992* (BSA), industry groups representing the providers of subscription television services must develop, in consultation with the Australian Communications and Media Authority (ACMA), codes of practice applicable to the broadcasting operations of subscription television services.

Codes of practices developed under the BSA are expected to address a range of public policy concerns, including:

- preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by STV providers;

- the protection of children from exposure to program material which may be harmful to them;
- methods of handling complaints from the public about program content or compliance with codes of practice; and
- other matters relating to program content that are of concern to the community.

By law the ACMA may only register a code of practice if it is satisfied that:

- the code of practice provides appropriate community safeguards for the matters covered by the code;
- the code is endorsed by a majority of providers of broadcasting services in that section of the industry; and
- members of the public have been given adequate opportunity to comment on the code.

ASTRA commences a review of its codes of practice every three years to ensure they remain relevant to community and industry. The ACMA will take into account submissions made during the public consultation process—which must be undertaken as part of the review—as well as its own research and any other information it deems relevant, before being satisfied that a code of practice provides appropriate community safeguards.

### **Rules for alcohol advertising under the ASTRA Codes**

The Subscription Broadcast Television (SBT) and Subscription Narrowcast Television (SNT) Codes of Practice ('the ASTRA Codes') have specific requirements for STV licensees relevant to alcohol advertising.

The SBT Codes require that any advertisements broadcast by STV licensees must comply with any relevant Australian Association of National Advertisers' Codes, including the Code of Ethics, the Code for Advertising to Children and the Food and Beverages Advertising & Marketing Communications Code. Licensees must refer advertising complaints to the Advertising Standards Bureau (ASB) where appropriate.<sup>1</sup>

The ACMA retains oversight of compliance with complaints-handling procedures under the ASTRA Codes.

Licensees must, to the extent applicable, ensure advertisements promoting goods or services defined in the Alcohol Beverages Advertising Code (ABAC) comply with that Code and must refer any specific complaints relating to these types of advertisements to complaints procedure specified under the ABAC Scheme. By ensuring that, to extent applicable, alcohol advertisements on STV must comply with the ABAC, the SBT Codes incorporate the obligations under the ABAC into the co-regulatory arrangements for the SBT Codes, as overseen by the ACMA.

Importantly, the SBT Codes recognise that special care must be shown in the broadcast of advertisements on channels intended for consumption by children, or whose audience may include children. These apply to both the content and scheduling of advertisements:

- Advertisements broadcast during programming directed at children must comply with the Australian Association of National Advertisers' Code for Advertising to Children (AANA Children's Advertising Code) and the Food and Beverages Advertising & Marketing Communications Code.<sup>2</sup> The AANA Children's Advertising Code provides

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<sup>1</sup> SBT Code, cl 6.1(a)

<sup>2</sup> SBT Code, cl 6.3

strong restrictions preventing alcohol being included in advertising and marketing directed at children.<sup>3</sup>

- In addition, the SBT Codes specifically require licensees to take into account the intellectual and emotional maturity of its audience when scheduling advertising relating to certain categories of products and services, including alcoholic beverages.<sup>4</sup>

Under the SNT Codes, STV narrowcasters will, where practicable:

- ensure that advertisements broadcast will be consistent with the relevant industry codes applicable to advertising;
- broadcast advertisements appropriately in the light of current community attitudes and the need to limit exposure of children to material intended for adult viewing; and
- subject television advertisements for products and services which are of particular concern or sensitivity to additional placement restrictions.<sup>5</sup>

In practice, alcohol advertisements are never scheduled on STV channels dedicated to children. On the Foxtel platform, there are a range of dedicated children's channels. Unlike free-to-air channels which provide children's content at certain times, and content aimed at older audiences at other times, these STV channels are exclusively targeted to children.

STV licensees have invested heavily in technology to assist parents and carers to limit their children's viewing to these and other channels they consider suitable.

- The parental lock system provides subscribers with control over the programs they and their children watch via their set top unit. For example, entire channels can be blocked.
- Foxtel also has a remote control—the 'Mini Mote'—specifically designed for children, which provides an additional tool for parents to manage their children's television viewing through restricted channel availability. The 'Mini Mote' features eight pre-programmed buttons that only link to the children's channels. Two extra buttons exist for parents to program other channels they may wish to enable their children to view.

STV is a discretionary service. STV subscribers expect to be able to see the content they want, when they want. The regulatory framework for broadcasting recognises that different broadcasting services should be regulated differently depending on the nature of the service.

Commercial free-to-air (FTA) television, for example, as an open-access service with near universal reach, is subject to different regulatory requirements than those that would apply to a subscription-based television service providing niche channels.

The ASTRA Codes acknowledge the unique relationship between a STV licensee and its audience. This distinction is recognised in the different treatment of alcohol advertising on STV under the ASTRA Codes, which do not have time zone restrictions compared to the codes for commercial FTA television. Even so, as noted above, an STV licensee must take into account the intellectual and emotional maturity of its intended audience when scheduling advertising of alcoholic beverages.

### **Complaints and enforcement under the ASTRA Codes**

An industry-based regulatory framework for content regulation provides more flexibility and allows content providers to be more responsive to changes in community expectations about

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<sup>3</sup> In particular, cl 2.13 of the AANA Children's Advertising Code states that "Advertising or Marketing Communications to Children must not be for, or relate in any way to, Alcohol Products or draw any association with companies that supply Alcohol Products."

<sup>4</sup> SBT Code, cl 6.5

<sup>5</sup> SNT Codes, cl 3.9.

the suitability of content. Industry is best placed to assess – and resolve – complaints in the first instance.

Furthermore, from an STV perspective it is an issue of customer relationship management. In this context, the content provider has an existing commercial relationship with its customer and, as in any commercial setting, it is imperative that the business is the first point of contact regarding customer concerns. This allows the business an opportunity to resolve complaints and, ultimately, retain its customers.

The ACMA monitors compliance with the Codes and can investigate complaints and take action where breaches occur. The regulatory framework provides the ACMA with appropriate powers to investigate and enforce the Codes. ASTRA contends that the current range of sanctions available to the regulator is adequate.

## **Comments on the themes and issues arising in the Issues Paper**

ASTRA does not propose to provide commentary in relation to the evidence cited in the Issues Paper, and would refer the Agency to submissions from the Brewers' Association and the Australian Association of National Advertisers. ASTRA does note that the Issues Paper and, in particular, the questions for comment in Part C of the paper, assume that:

- a) there is a causal relationship between alcohol advertising and increased alcohol use in young people, and
- b) that a more restrictive regulatory regime for alcohol advertising would be effective in reducing alcohol use in young people.

ASTRA members are supportive of measures that are likely to be effective in reducing instances of alcohol abuse in the community. However, ASTRA would not support more restrictive alcohol advertising regulations when the evidence of the effectiveness of such measures appears inconclusive at best.<sup>6</sup>

## **Effectiveness**

ASTRA submits that the existing co-regulatory approach to advertising on STV is highly effective in addressing community concerns while enabling STV subscribers to watch the content they want, when they want.

As described above, the codes of practice developed for STV are required to provide appropriate community safeguards to address matters of community concern, and indeed, will not be registered by the ACMA if, in the view of the ACMA, they do not. The ASTRA codes are reviewed regularly, which includes an opportunity for public input into the codes development process.

ASTRA submits that the ASTRA Codes, working together with codes developed by the AANA and other industry bodies, are highly effective in providing an appropriate framework for the responsible advertising of alcohol on STV, within the context of STV as a discretionary service that people pay to receive.

ASTRA notes several references in the Issues Paper to the advertising of alcohol during live sports broadcasts, including claims that the exemption from commercial FTA television time

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<sup>6</sup> See for example, Nelson, J.P. & D.J Young (2001) "Do Advertising Bans Work? An International Comparison" *International Journal of Advertising*, June 2001, which found that there was no correlation between alcohol consumption in OECD countries with bans on alcohol advertising compared to those that did not. See also Grube, J.W. & E. Waiters, (2005) "Alcohol in the Media: Content and Effects on Drinking Beliefs and Behaviors Among Youth," *Adolescent Medicine Clinics*, 16, 327-343, which concluded that the available research provides little consistent support for a relationship between aggregate alcohol advertising expenditures and aggregate alcohol sales, consumption, or problems.

zone restrictions for alcohol advertising during live sports broadcasts is a “key factor in children and young people’s exposure to alcohol advertising”.

ASTRA notes that children under 18 comprise a very small proportion of the audience for live sports events on STV. For the Top 50 most-watched live sports broadcasts shown on STV in 2012, children under 18 comprised just 11.3% of the total combined audience for those broadcasts, with less than one-third of those (or 2.3% of the total audience) being children under 18 watching without an adult present. The average number of children under 18 nationally watching any one of the top 50 live sports broadcasts on STV in 2012 was just over 39,000.<sup>7</sup>

Given STV in Australia reaches around 2.2 million homes with a potential reach of over 7 million people, the numbers of children in STV homes watching live sport on STV, and thus any alcohol advertisements that may be shown during sports events, will be extremely small.

ASTRA is only aware of two written complaints to STV licensees regarding alcohol advertising since October 2011. Neither of these complaints related to the appropriateness of broadcasting alcohol advertisements during a particular program, and neither raised concerns that the alcohol advertisement in question may have been viewed by children. Instead, each related to the general tone or style of the advertisement.

## **Scope**

ASTRA does not believe that there is evidence which would warrant broadening the scope of alcohol-related advertising regulations with respect to broadcasting. In particular, we disagree with the contention in the Issues Paper that codes on alcohol advertising generally focus on advertising content rather than the placement of advertising.

This view does not take into account the interaction and complementarity of codes developed by different sections of industry, operating at different levels of the marketing process. The AANA and ABAC codes, for example, may focus on advertising content; however, as detailed above, the codes for broadcasters include provisions relating to appropriate placement of advertising.

These codes, as part of a holistic self-regulatory and co-regulatory system, work together to effectively protect community safeguards and address community concerns.

## **Management**

ASTRA submits that the current arrangements for reviewing, administering and enforcing the ASTRA Codes are sufficient to ensure that any community concerns regarding alcohol advertising are adequately taken into account.

As noted above, the ASTRA Codes are subject to regular review under the auspices of the ACMA – a review process which includes the opportunity for public comment. Under the BSA, the ACMA may only register a broadcasting code of practice for a particular section of the industry if it is satisfied that the code provides appropriate community safeguards.

The ASTRA Codes also provide a clear and transparent process for any complaints relating to alcohol advertising. A STV licensee must refer any complaints relating to advertisements promoting goods or services defined in the ABAC to the complaints procedure under the ABAC Scheme.

Under the ABAC Scheme, complaints regarding alcohol advertising are made to the ASB, which triggers two independent but parallel processes. Complaints received from the ASB are all assessed by the Chief Adjudicator under The ABAC Scheme. In turn, some complaints may

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<sup>7</sup> OzTam ratings for Top 50 Live Sport Programs on STV, 1/1/12 – 31/12/12.

be referred on to the full Alcohol Beverages Advertising Adjudication Panel and in these cases complainants are informed of the referral and sent a copy of the final determination.<sup>8</sup>

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<sup>8</sup> See the ABAC website for details: <http://www.abac.org.au/about/>

## **ATTACHMENT: ASTRA Members**

### **Subscription Television Platforms**

Foxtel

Telstra

### **Program Channel Providers**

Aurora

Australian Christian Channel

Australian News Channel

BBC Worldwide Channels Australasia

Discovery Networks

E! Entertainment

ESPN

Eurosport

Expo Networks

FOX Sports

MTV Networks

National Geographic

NBC Universal

Nickelodeon

SBS Subscription TV

Setanta Sports Australia

Sky Racing

Turner International (Australia)

TV1

TVN

TVSN

Walt Disney Company (Australia) Pty Ltd

### **Communications Companies and Other Associate Members**

Ai Media

Ignite Media

Multi Channel Network

BSA