Australian Government

Australian Communications and Media Authority

researchacma

The cost of code interventions on subscription television broadcasters

Contemporary community safeguards inquiry

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The traditional subscription broadcast television market (supplied over cable and satellite) has consolidated over the last five years, with Foxtel now being the dominant subscription broadcast television supplier after acquiring Austar in 2012. In contrast, the past five years has also seen the expansion of alternative subscription television providers, including internet protocol television (IPTV) providers such as Fetch TV, Apple TV and Foxtel over Telstra's T-Box.[1] For the most part, IPTV providers are not subject to the requirements of the subscription television broadcasters' code of practice.[2]

While subscription and free-to-air television broadcasters are competitors, the services are not perfect substitutes. However, IPTV services are likely to be closer substitutes with subscription broadcast television due to IPTV being offered via a subscription model.

According to Roy Morgan market share data, the number of viewers using Fetch TV, TiVO and Apple TV services increased from 625,000 in 2012 to 887,000 in 2013[3], compared with Foxtel's reported 2.3 million subscribers in 2012 and 2.5 million in 2013.[4] These figures provide an indication of growing strength of the IPTV market. In this market context, the traditional subscription broadcast television sector is likely to come under increasing pressure from other substitutes, as broadband speeds increase and smart devices proliferate.

Financial performance

The traditional subscription broadcasting television sector has proven resilient over the past five years. For example, the newly consolidated Foxtel experienced solid growth on all key financial measures since the global financial crisis.

While industry analysts forecast strong growth over the coming five years, much of this future growth is expected to occur in the IPTV sector. As such, the proportion of the

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[1] IPTV is essentially any television service that is delivered via an internet connection, rather than a dedicated cable or satellite connection. Foxtel provides both traditional subscription television over cable and satellite, as well as IPTV.

[2] The then Minister for Communications, Information Technology and the Arts on 27 September 2000 determined under section 6 of the BSA that 'a service that makes available television programs or radio programs using the internet, other than a service that delivers television programs or radio programs using the broadcasting service bands' was not a 'broadcasting service'. See www.comlaw.gov.au/Details/F2004B00501. However, some IPTV services may also hold a subscription broadcast licence (i.e. a licence allocated under section 96(1) of the *Broadcasting Services Act 1992)* or, depending on a provider's individual circumstances, may not fall within the scope of the determination.

[3] Roy Morgan Single Source, June 2013,

[4] www.theaustralian.com.au/media/Foxtel-boosts-subscribers-by-34pc-in-2012-13/story-e6frg996-1226693369738.

subscription broadcast television sector covered by the ASTRA Codes of Practice is likely to reduce over the forecast period.[5]

Impact analysis

Based on feedback from Foxtel, the ASTRA Codes of Practice impose three types of compliance costs on subscription broadcasters:

> the costs associated with classification requirements
> the costs associated with complaints-handling
> the costs associated with training staff.

The classification requirements impose the largest category of compliance costs on subscription broadcast television broadcasters. The biggest classification-related cost is the staff costs. Foxtel stated that it employed seven dedicated full-time equivalents (FTEs) to undertake classification work, as well as a proportion of the time of programmers, programming assistants, schedulers and editors for 28 channels owned and operated by Foxtel (estimated to be an additional 10.5 FTE). The classification code also imposes costs involved with operationalising the requirements, including editing productions and production of classification boards (1.8 FTEs). The total classification-related costs were estimated to be 19.3 FTEs, reflecting the large amount of content broadcast on subscription broadcast television.

Foxtel identified two separate groups of costs associated with complaints-handling:

> customer advocacy team and contact centre
> legal costs.

Foxtel estimated the costs associated with each group being 0.5 FTEs. Foxtel undertakes staff training to ensure adherence to the codes. The costs associated with staff training were estimated to be 0.5 FTEs.

Perhaps the most notable outcome of the research into the code-related costs borne by subscription broadcasters is the perceived lack of opportunity costs associated with the codes. Opportunity costs in this context can be defined as the reduced revenue or higher costs incurred by broadcasters because the codes restrict their commercial decision-making or choice of business model.

Foxtel stated that the other regulatory requirements with which they comply create a higher impost than the codes. For example, the cost of adhering to captioning requirements was estimated to be much higher than the costs of adhering to the codes. Under the Act, subscription broadcasting licensees are required to maintain a minimum 10 per cent expenditure on eligible drama.

The subscription broadcast television model is built on variety and a depth of niche programming that offers choice to targeted audiences. This involves the broadcast of large amounts of content, much of which attracts very few viewers. Relevantly, some regulatory costs increase proportionately to the amount of content broadcast (for example, where classification of programs is required).

[5] With the current wording of the direction, if Foxtel broadcasts content via IPTV and not via cable/satellite, it is not subject to the codes of practice.

The subscription broadcast television market

Chapter summary

The traditional subscription broadcast television market (supplied over cable and satellite) has consolidated over the last five years, with Foxtel now being the dominant supplier after acquiring Austar in 2012. In contrast, the past five years has also seen the expansion of alternative subscription broadcast television providers, including those IPTV providers which are, for the most part, not subject to the ASTRA Codes of Practice.

While subscription and free-to-air television broadcasters are competitors, the services are not perfect substitutes. IPTV is likely to be a closer substitute with the subscription broadcast television sector. For this reason, the subscription broadcast television sector (that is, the proportion of the market covered by the ASTRA Codes of Practice) is likely to face pressure from new providers which is likely to accelerate as broadband speeds increase and smart devices proliferate.

One unique aspect of the subscription television broadcasting market is the role of independent channel providers, many of which provide niche programming. Foxtel, for example, offers 93 distinct channels.

Traditional subscription broadcast television broadcasters that are subject to code regulation are competing with unregulated providers. Relevantly, the cost of some types of regulation will increase proportionally to the amount of content broadcast (for example where classification of programs is required).

Structure of the subscription broadcast television industry

Networks/platforms

In 2013, the subscription broadcast television market consisted of:

> suppliers of content over cable and satellite (Foxtel)

> suppliers of ‘over the top’ subscription broadcast television services supplied via internet protocol (such as Fetch TV and Foxtel on Telstra’s T-Box)

> suppliers of linear channels, catch-up and streaming content supplied over the internet to various devices including computers, smartphones and tablets (for example, Apple TV)

> suppliers of streaming or downloads of content to mobile devices including smart phones and an array of new ‘pad’ and ‘tablet’ style devices (for example, Telstra’s mobile Foxtel, Vodafone).

Of these content distribution mechanisms, only two platforms are members of ASTRA—Foxtel and Telstra.[6] Notably, for the most part, over-the-top and IPTV providers are not covered by the codes.

[6] www.astra.org.au/Menu/About-Us/Members

Key trends—Consolidation of traditional subscription broadcast television providers

The ‘traditional’ subscription broadcast television market (i.e. that provided over cable and satellite) has undergone significant consolidation over the past five years. In 2008, the market was made up of:

> Foxtel supplying services to five main metropolitan markets (Sydney, Melbourne, Brisbane, Adelaide and Perth) and the Gold Coast
> Optus TV supplying the three main metropolitan markets
> Austar supplying regional markets, as well as Darwin and Hobart
> SelecTV, Neighbourhood Cable and TransACT providing regionally focused services.[7]

At the end of 2002, Optus became a re-packager of Foxtel and scaled back its subscription broadcast television operation. Instead, it uses subscription broadcast television as an element in its telephony bundling strategy. In June 2008, Foxtel reported a combined figure for direct Foxtel sales and wholesale Optus Television sales.

In 2008, TransACT acquired Neighbourhood Cable, giving it a Victorian presence.[8] TransACT itself was acquired by iiNet in 2011. iiNet sold its TransACT fibre to the home network to NBNCo. in early 2013.[9]

In 2012 Foxtel acquired Austar, bringing together the only two participants in the industry with scale, though they had been operating in almost mutually exclusive markets.[10] Foxtel is currently owned by Telstra Corporation Ltd (50 per cent) and The News Corporation Ltd (50 per cent).[11] As such, in 2013 Foxtel is close to being the sole provider of traditional subscription broadcast television.

Key trends—Expansion of alternative subscription broadcast television providers

While the traditional subscription broadcast television market has consolidated, the past five years has also seen the expansion of alternative subscription providers. The key development has been the expansion of the IPTV market, as well as the rise of content delivered via OTT services.[12]

The IPTV market in Australia is still relatively immature, although the market is expected to expand in coming years with the rollout of high-speed broadband networks that can support video quality content. Analyst firm Telsyte estimated that by 2015, over one-third of all subscription broadcast television services will be provided over broadband.[13] PwC estimates that 27 per cent of households will be using an IPTV service by 2017.[14]

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[7] www.screenaustralia.gov.au/research/statistics/archpaytvismarket.aspx

[8] TransACT is an Australian telecommunications company based in Canberra which provides cable television services to areas of the ACT, south-east New South Wales and Victoria.

[9] http://delimiter.com.au/2013/05/22/iinet-sells-transacts-fttp-to-nbn-co/

[10] See, for example, http://transition.accc.gov.au/content/index.phtml/itemId/1044881/fromItemId/751043.

[11] http://en.wikipedia.org/wiki/Foxtel

[12] ‘Over the top services’ is a general term for voice, video and data services that are delivered over a network and are provided by an entity other than the operator of the network.

[13] www.telsyte.com.au/?page_id=693

[14] PwC report for the ACMA: *The cost of code interventions on commercial broadcasters*, 2013.

Independent channel provider companies

According to the ASTRA website, there are 19 separate member 'channel providers' that deliver content on Foxtel and Telstra (via the T-Box). These organisations that make up the independent channel providers are a wide cross-section of companies. For example, Aurora is a not-for-profit, independent community channel. Viacom International Media Networks is the international division of Viacom, a global mass media company. FOX SPORTS Australia is a group of channels owned by News Corporation and Consolidated Media Holdings. Thoroughbred Vision Network is a thoroughbred horse-racing channel that is 50 per cent owned by Victorian racing organisation Melbourne Racing Club, Victoria Racing Club, Moonee Valley Racing Club and Country Racing Victoria; and 50 per cent owned by the Sydney-based Australian Turf Club.

Competitive environment

The ACCC's competition assessment undertaken during Foxtel's Austar acquisition provides some analysis of the state of competition in the market in 2012

> ... the ACCC considered there was a national market for the supply of subscription broadcast television services, delivered by any distribution method including cable, satellite and IPTV.
>
> The ACCC considered that SVOD [subscription video on demand] was likely to become a closer substitute for subscription broadcast television over time, particularly in relation to certain types of content such as movies.
>
> Based on available information, the ACCC considered that other sources of supply of audiovisual content to end consumers including FTA television, mobile TV and audiovisual content delivered on a transactional basis, including over the internet, were not sufficiently close substitutes to be considered in the same market as subscription broadcast television services.[15]

However, the ACCC considered that the availability of free-to-air (FTA) television, in combination with other sources of audiovisual content, would be likely to provide an 'ultimate competitive constraint to subscription broadcast television', but that other subscription broadcast television services were closer substitutes.[16] The growing IPTV market, the ACCC concluded, is a direct substitute to Foxtel/Austar's traditional subscription broadcast television product. It is likely therefore that IPTV is a closer substitute to subscription broadcast television than it is to free-to-air television.

Drivers in the trends in the competitive environment

Regarding the growth in IPTV popularity, former Austar CEO identified it as a 'bullet train heading towards the industry'.[17] In its report to the ACMA, PwC identified two key trends that are likely to shape how Australians access and consume content over the next five years:

> increasing speed of fixed internet connections
> the continued proliferation of smart devices and supporting communications networks.

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[15] http://transition.accc.gov.au/content/trimFile.phtml?trimFileTitle=MER12+6727.pdf&trimFileFromVersionId=1058791&trimFileName=MER12+6727.pdf, p. 9.

[16] ibid, p. 8.

[17] John Porter, Austar CEO, cited in the *Financial Review*, 20 March 2013; www.afr.com/p/technology/high_speed_train_to_oblivion_2qZ0hn2pLvpLWFvjDURarK.

Both of these trends are likely to benefit newer market entrants. As PwC notes, the 'NBN—which is intended to provide households with speeds of up to 100 Mbps (or up to 40 times faster than current ADSL broadband speeds)—will accelerate and deepen these trends' of take-up of IPTV services.

The device proliferation is also likely to challenge traditional subscription broadcast television providers, due to the:

> increase in popularity of smart devices as a platform for content consumption

> consumer behavioural shifts from current multi-tasking habits (for example, checking emails on their smartphone while watching television) to dual screening (that is, watching audiovisual content on a television and a smart device simultaneously).

While IPTV is likely to be a major competitor to the traditional subscription television broadcasting platform, pressure is also likely to come from other content distribution channels including illegally downloaded content. According to an Australian Federation Against Copyright Theft (AFACT) report, one-third of the Australian adult population (aged 18+) is active in some form of movie piracy (downloading, streaming, buying counterfeit, borrowing unauthorised, burning), with an estimated 92 million pirated movies obtained or watched in the 12 months up to Quarter 3 2010.[18] It is possible that increasing speeds in fixed internet connections will contribute to the use of illegal downloading, adding further pressure to the subscription broadcasters.

The approach to programming

There are many similarities between the content supplier market and the trends in content provision across the subscription and free-to-air broadcasting markets. However, revenue models lead to inherently different approaches to programming, may impact on the nature of codes of practice and their potential cost.

Subscription broadcasting trades on the provision of niche programming. Foxtel, for example, offers 93 distinct channels (or over 200 including SD simulcasts, time-shifted channels and narrowcast radio services), many likely to attract only a small audience. Subscription broadcast television broadcasts both Australian-produced content and foreign content.

[18] www.afact.org.au/assets/research/IPSOS_Economic_Consequences_of_Movie_Piracy_-_Australia.pdf

Financial performance

Chapter summary

The subscription broadcast television sector has proven resilient over the past five years and achieved strong growth since the global financial crisis.

While industry analysts forecast strong growth over the coming five years, much of the growth is expected to occur in the IPTV sector.

Industry data

The ABS published the *2011–2012 Film, Television and Digital Games Survey* on 20 June, 2013, which provides an estimate of key financial data of the subscription broadcast television industry.[19] According to the survey, subscription broadcast television and channel providers employed 5,474 persons at the end of June 2012. During 2011–12 these businesses generated $4.65 billion in income and incurred $4.16 billion in expenses. Total industry value added was $1.6 billion.[20]

Foxtel financial performance

Given its current dominant position in the sector, Foxtel's past financial performance gives a picture of the past trends in revenue and profitability in the subscription broadcast television sector.

In August 2013, Foxtel reported an increase in revenues and earnings before interest, tax, depreciation and amortisation (EBITDA—a widely used measure for assessing the performance of companies) in its first full year of reported results since it acquired Austar. Key results were:

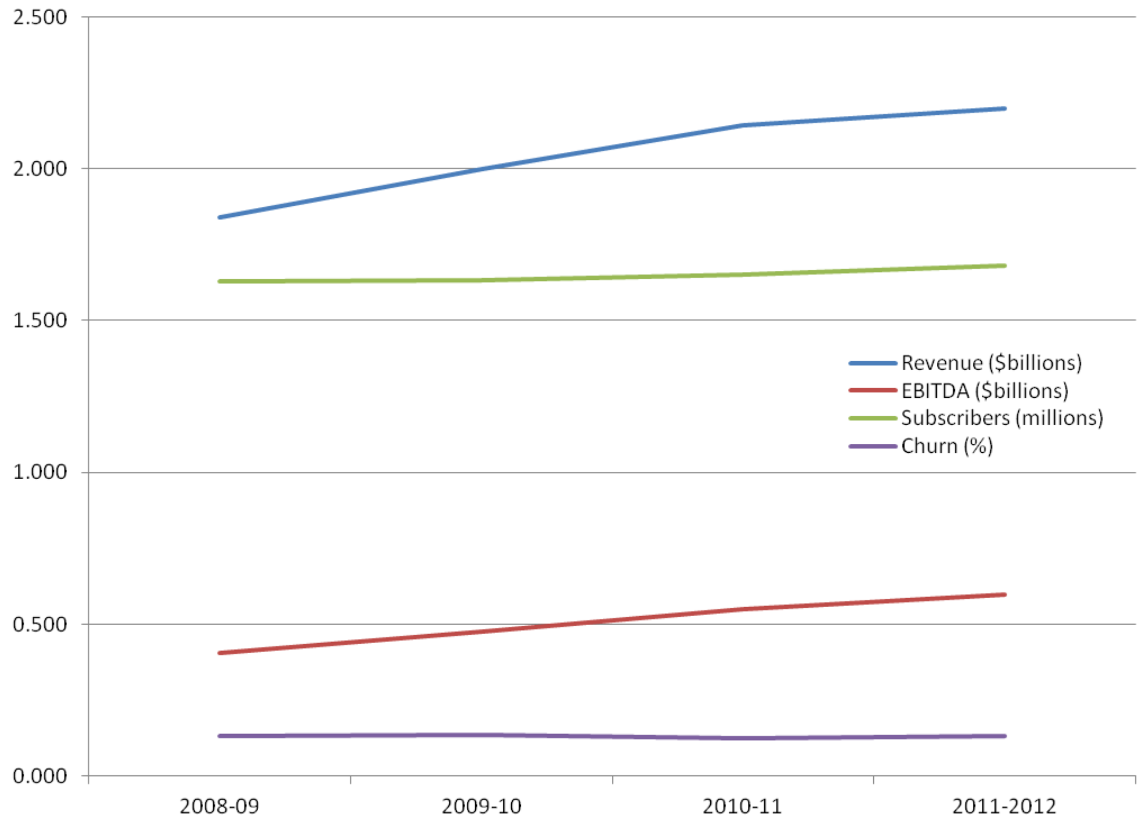
> total subscribers reached 2.5 million, up from 2.3 million in the prior corresponding period
> revenue came in at $3.1 billion for the year to June 30, up from $2.9 billion in the prior corresponding period
> EBITDA jumped 22.4 per cent to $944m.

Figure 1 charts four indicators of Foxtel's financial performance for the years 2008–09 to 2011–12. Revenue and EBITDA grew strongly during this period, while subscribers grew at a subdued but positive rate. The churn rate, which refers to the proportion of subscribers who left Foxtel during the given time period, was largely flat, ranging between 12.5 per cent (2010–11) to 13.5 per cent (2009–10) over the four years.

[19] www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/E612C796E7A5461FCA257BA50012F64A/$File/86790_2011-12.pdf

[20] IVA is an estimate of the difference between the market value of the output of an industry and the purchases of materials and expenses incurred in the production of that output. IVA equals: Sales and service income *plus* Funding from federal, state and/or local government for operational costs *plus* Capital work done for own use *plus* Closing inventories *less* Opening inventories *less* Purchases of goods and materials *less* Other intermediate input expenses.

Figure 1 Foxtel revenue, EBITDA, subscribers and churn rates, 2008–09 to 2011–12



Source: Foxtel

Industry analysts Global Media Analysis provide further scrutiny of the performance of the newly consolidated Foxtel:[21]

> The main conclusion of GMA's assessment of the pro-forma consolidation of Foxtel and Austar in both CY [calendar year] 2012 and over the five preceding years is that, unlike more traditional media companies, the consolidated subscription TV entity continued to improve on most key performance indicators throughout the global financial crisis (GFC) albeit at a lesser rate, and more specifically;
>
> > residential subscriber numbers increased by about 1.7 per cent in calendar year (CY) 2012 to reach 2.3 million as at 31 December 2012
>
> > total Revenues grew by about 4.7 per cent to exceed $3.0 billion in CY 2012, which was below the 7.5 per cent CAGR (spell out) experienced between CY 2007 and CY 2012
>
> > perhaps most importantly, estimated Operating Expenses (Opex) of $2.1 billion in CY 2012 represented an annual increase of only 1.8 per cent, which was well below the 5.2 per cent CAGR in Opex which was recorded between CY 2007 and CY 2012; consequently
>
> > Earnings Before Interest Depreciation & Tax (EBITDA) in CY 2012 rose by an impressive 12.0 per cent to exceed $0.9 billion in CY 2012, not far below the 14.4 per cent CAGR recorded between CY 2007 and CY 2012; and
>
> > EBITDA profit margins improved for the sixth straight year to reach 30.1 per cent in CY 2012.

[21] www.thebadgeshop.com.au/globalmedia/Foxtels-solid-financial-pro-forma-performance-in-2012/

Subscription broadcast television industry forecast

The PwC Outlook report includes forecasts of subscription broadcast television penetration rate, advertising revenue and consumer spending (Table 1). As displayed in this table, the PwC are forecasting strong growth in the subscription broadcast television sector. It should be noted that these figures include all subscription models, not only the traditional subscription broadcast television market.

However, it is not clear to what extent this is driven by IPTV providers. These figures therefore do not provide much insight into the forecast financial performance of subscription broadcast television platforms that are covered by the ASTRA Codes of Practice.

Table 1 *PwC Outlook 2012-2016* subscription broadcast television historical data and forecasts

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Subscription TV penetration	30.0%	30.0%	29.9%	30.2%	30.6%	31.1%	31.6%	32.8%	34.0%	35.0%
Subscription TV advertising ($ millions)	292	307	350	362	408	442	485	529	588	645
% change	14.9%	5.0%	14.4%	3.1%	5.6%	3.6%	0.2%	7.4%	4.3%	
Subscription TV consumer spending ($ millions)	2,539	2,732	2,873	2,949	3,046	3,110	3,199	3,330	3,457	3,586
% change		7.6%	5.2%	2.7%	3.3%	2.1%	2.9%	4.1%	3.8%	3.7%

Source: PricewaterhouseCoopers

PwC estimates that 27 per cent of households will use an IPTV service by 2017. In contrast, the subscription TV consumer spending is forecast to grow at a CAGR of 3.3 per cent annually (or to be 17 per cent larger in 2017 than it is in 2012).

Given that it is unlikely that Foxtel will capture the entire future growth in IPTV, it is possible that these companies will not be in the same dominant position that they are currently. Further, the proportion of the subscription broadcast television sector covered by the ASTRA Codes of Practice is likely to decline over the forecast period.

Impact analysis

Chapter summary

Based on feedback from Foxtel, the ASTRA Codes of Practice impose three types of compliance costs on subscription broadcasters:

> the costs associated with classification requirements
> the costs associated with complaints-handling
> the costs associated with training staff.

The classification requirements impose the largest category of compliance costs on subscription broadcast television broadcasters. The biggest classification-related cost is the staff costs. Foxtel stated that it employed seven dedicated full-time equivalents (FTEs) to undertake classification work, as well as a proportion of the time of programmers, programming assistants, schedulers and editors for 28 channels owned and operated by Foxtel (estimated to be an additional 10.5 FTE). The classification code also imposes costs involved with operationalising the requirements, including editing productions and production of classification boards (1.8 FTEs). The total classification-related costs were estimated to be 19.3 FTEs, reflecting the large amount of content broadcast on subscription broadcast television.

Foxtel identified two separate groups of costs associated with complaints-handling:

> customer advocacy team and contact centre
> legal costs.

Foxtel estimated the costs associated with each group being 0.5 FTEs. Foxtel undertakes staff training to ensure adherence to the codes. The costs associated with staff training were estimated to be 0.5 FTEs.

Perhaps the most notable outcome of the research into the code-related costs borne by subscription broadcasters is the perceived lack of opportunity costs associated with the codes. Opportunity costs in this context can be defined as the reduced revenue or higher costs incurred by broadcasters because the codes restrict their commercial decision-making or choice of business model.

Foxtel stated that the other regulatory requirements with which they comply create a higher impost than the codes. For example, the cost of adhering to captioning requirements was estimated to be much higher than the costs of adhering to the codes. Under the Act, subscription broadcasting licensees are required to maintain a minimum 10 per cent expenditure on eligible drama.

The Australian Subscription broadcast television and Radio Association (ASTRA) is the body responsible for the development of the codes of practice for the subscription broadcasting and narrowcasting industry in Australia.[22]

It is worth noting that at the time the research was conducted, ASTRA was in the process of updating its codes of practice.[23] The costs identified in this section relate to the 2007 Codes of Practice. Staff did not consider the impost associated with the new limits on the promotion of betting odds and gambling advertisements in live sports coverage, due to the timing of the introduction of these requirements.

[22] www.astra.org.au/Menu/Policy/Codes-of-Practice

[23] In November 2013, the ACMA registered the ASTRA Subscription Broadcast Television Codes of Practice 2013, www.astra.org.au/Menu/Policy/Codes-of-Practice.

Table 2 Summary of ASTRA Subscription Broadcast Television Codes of Practice

Clause	Title	Objective
2.1	General programs	To prohibit licensees from knowingly broadcasting certain program material including any program which is likely to incite or perpetuate hatred against, or vilify, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, transgender status, HIV/AIDS status, age, religion or disability; programs that simulate news or events in a way that misleads or alarms the audience, depict the actual process of putting a person into a hypnotic state, are designed to induce a hypnotic state in the audience or use or involve the process known as "subliminal perception" or any other technique that attempts to convey information to the audience by broadcasting messages below or near the threshold of normal awareness.
2.2	News and current affairs programs	To ensure that, in news and current affairs programs, licensees: present news accurately, fairly and impartially; clearly distinguish the reporting of factual material from commentary, analysis or simulations; do not simulate news or events in a way that misleads or alarms the audience; to the extent practicable do not present material in a manner which creates public panic, only sparingly include material likely to cause some distress to a substantial number of viewers, display sensitivity in broadcasting images of, or interviews with, bereaved relatives and survivors or witnesses of traumatic incidents, all reasonable efforts to provide warnings when there are identifiable public interest reasons for broadcasting material which may seriously distress or seriously offend a substantial number of viewers; only broadcast reports of suicide or attempted suicide where there is an identifiable public interest to do so and will exclude any detailed description of the method used and any graphic details and will not glamorise suicide in any way and make reasonable efforts to correct significant errors of fact at the earliest opportunity; do not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there are identifiable public interest reasons for the material to be broadcast
2.3	Program promotions and news updates	To ensure licensees will have particular regard to the need to protect children from unsuitable material in program promotions, news updates and news promotions; the content of program promotions, news updates and news promotions will be consistent with the classification of the programs during which updates or promotions appear and will, where relevant, include classification information about the programs being promoted, (see Part 3 of these codes) and that program promotions, station promotions and advertisements are readily distinguishable from program material.

2.4	Closed captioning	To ensure that where closed captioning programming is made available it will be clearly identified with program schedule information provided to the press and in program guides and that when a Licensee introduces closed captioned programming, or extends the range of programs captioned, it will consult with organisations representing deaf or hearing impaired and organisations specialising in providing closed captioning.
3.1-3.5	Program classification code	To ensure that licensees will classify films and drama programs, applying the program classification system contained in the Guidelines for the Classification of Films and Computer Games ('Guidelines'). Classifications, together with appropriate consumer advice, will be provided to ensure adequate warning regarding program content (as set out in clauses 3.4 and 3.5); licensees will use their best endeavours to ensure that, where other programs are classified they will carry only classification symbols and that this classification will have particular regard to the protection of children and will take into account relevant aspects of the Guidelines.
4.1-4.5	Subscriber code	To ensure that licensees will inform prospective subscribers about the nature of the service they are subscribing to, including service options, prices and program content; licensees are conscious of the importance of being open and informative in their relationship with subscribers and the need to implement arrangements which ensure fairness in their dealings with subscribers and that these considerations will be reflected in management processes, methods of billing, responsibility for fault repair, service costs, credit arrangements and subscriber privacy; licensees will express agreements with subscribers in 'plain English'. Includes requirements in relation to management processes, rental agreements, methods of billing, fault repair, service costs, credit arrangements and subscriber privacy
5.1-5.3	Complaints code	To ensure that ensure that relevant staff are aware of the codes and their provisions, the importance of handling customer complaints professionally and the procedures to be followed in doing so. Includes requirements in relation to oral and written complaints, response times, complaint resolution, retention of content, maintenance of records, reference of complaints to the ACMA and publicising of codes.
6.1-6.5	Advertising code	Identifies licensees obligations in relation to the content of advertising, classification of advertising, advertising directed at children, approval of advertising and scheduling of advertising. Includes requirements in relation to compliance with all relevant codes and state and federal laws, offensive advertising, dangerous behaviour, discrimination and competitions.

Foxtel interview

Foxtel stated that the ASTRA Codes of Practice imposed a general compliance cost that could not be attributed solely to one code provision. It also identified two specific code requirements that imposed compliance costs.

General compliance costs

Due to the nature of the business, subscription broadcasters have a significant number of call centre staff. The ASTRA complaints code allows for complaints to be made orally via telephone rather than in writing. Section 5.1 of the Subscription Broadcast Television Codes of Practice states:

> a) Every effort will be made to deal with a telephone complaint during the course of the telephone call. If the complaint cannot be properly dealt with immediately Licensees will respond within the shortest possible period from initial receipt of the complaint.

All call centre staff therefore have to be familiar with the codes. In order to achieve this, regular training is undertaken as part of the staff training program. According to information provided by Foxtel, the cost of the code-related training program is approximately 0.5 FTE each year.

Code-specific compliance costs

Foxtel identified complaints-handling and classification as being the only two code requirements that imposed compliance costs on the broadcaster.

Classification

The costs associated with the classification requirements in the code are much higher than other code-related costs. According to a Foxtel submission, there are two groups of classification related costs brought about by the codes:

- classification team costs (17.5 FTEs):
  - a team of seven FTEs in the central classification team
  - a proportion of the time of programmers, programming assistants, schedulers and editors (estimated to be 10.5 FTE) is spent on classification-related activities for 28 channels owned and operated by Foxtel
- operational costs (1.8 FTEs):
  - includes classification production edit costs
  - production of new classification boards[24]
  - cost of voiceover artists.

Total classification related costs associated with the codes of practice are an estimated 19.3 FTEs according to Foxtel.

This substantial cost is likely to be the result of the large amount of content that is broadcast on Foxtel. As outlined above, Foxtel offers 93 distinct channels, many of which broadcast content that is required to be classified (that is, films and drama programs).

[24] Classification boards are the information broadcast prior to the content displaying the classification information.

Complaints-handling

Foxtel identified two separate groups of costs associated with complaints-handling:

- customer advocacy team and contact centre
- legal costs.

The additional costs brought about the codes associated with the customer advocacy team and contact centre are estimated by Foxtel to be 0.5 FTEs.

There are also legal costs associated with the complaints that are escalated, which include the costs associated with investigations by the ACMA. According to Foxtel, these costs are around 0.5 FTEs.

Opportunity costs

Foxtel stated that no codes imposed opportunity costs. Opportunity costs in this context can be defined as the reduced revenue or higher costs incurred by broadcasters because the codes restrict their commercial decision-making or choice of business model.

Independent channel providers

In addition to Foxtel, over 20 separate independent channel providers also have code-related costs. As such, the costs put forward by Foxtel are unlikely to reflect the full costs borne by the subscription television broadcasting industry.

Relative costs of the codes of practice

Foxtel stated that the other regulatory requirements with which they comply create a higher impost than the codes. For example, Foxtel estimated that the cost of adhering to captioning requirements was estimated to be around 50 FTEs annually.

Each subscription broadcast television licensee is required to spend 10 per cent of their total drama programming expenditure on Australian drama. In 2010–11, the total program expenditure for all programs by participating drama service channel providers and licensees was $296.87 million, equating to an expenditure obligation of $29.69 million.[25]

[25] www.acma.gov.au/webwr/_assets/main/lib550049/comms_report_2011-12.pdf, p. 103.

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