

3.2 ACMA REGULATION OF ONLINE SERVICES

LEAD/SUPPORT: CATHY RAINSFORD | JEREMY FENTON

The Australian Communications and Media Authority's (ACMA) formal regulatory role for online content and digital platforms is currently limited but could change subject to passage of legislation enabling regulation of misinformation and disinformation and Australian content on streaming services.

KEY ISSUES

- The ACMA's online regulatory remit is currently limited to online gambling and gambling advertising during live sport.
- The government is currently considering submissions on exposure draft legislation to provide the ACMA with new powers to support and strengthen industry self-regulation measures for addressing misinformation and disinformation online. The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) is leading this work.
- These powers, if passed by Parliament, will enable the ACMA to collect information, register and enforce industry codes, and to make standards. **See Executive Brief 1.4.**
- While the ACMA has a broad remit for content that is broadcast on terrestrial TV and radio, we do not have an equivalent role in relation to like-services on online platforms.
- The government has flagged an intention to harmonise media regulation by establishing a framework that provides for consistent regulation of audio-visual and audio services that make available television and radio-like content. In the meantime, we are encouraging broadcasters to voluntarily extend their code safeguards to their catch-up services.
- Similarly, the ACMA's powers to combat scams are limited to services regulated under the *Telecommunications Act 1997*, and unsolicited communications laws. They do not extend to scams on digital platforms.

Current regulatory remit

- The ACMA regulates areas of online gambling under the *Interactive Gambling Act 2001* (IGA) which, amongst other things, prohibits certain interactive gambling services from being offered or advertised to Australians.
- The ACMA regulates gambling advertising during live sport streamed online, in line with powers to regulate similar content on free to air television and subscription television broadcasting services.
- The ACMA is also responsible for the registration of eligible news businesses that produce and publish news content online under the News Media and Digital Platforms Mandatory Bargaining Code.

Areas of regulatory expansion

- In January 2023, the government committed to introduce requirements for Australian screen content on subscription streaming platforms. The government is committed to commencement of the obligation by 1 July 2024. We already administer Australian content rules on commercial television and subscription television broadcasters and receive voluntarily reports from subscription video on demand providers (SVODs) about Australian programs. **See Executive brief 1.8.**

- The government has recently announced key reforms to the National Classification Scheme. Broader classification reforms may involve a larger regulatory role for the ACMA. **See Cross-division Executive brief 3.1.**

Extent of the ACMA's regulatory remit

Content safeguards and Australian content

- The ACMA has a broad regulatory remit in relation to terrestrial broadcasting content including issues such as Australian content, election, political and tobacco advertising, captioning, accuracy and fairness, privacy and distressing content.
- However, this does not extend to 'like' content that is provided by broadcasters on their catch up and streaming services or distributed via subscription streaming services such as Netflix, Disney+ or Stan.
- Through its *What Audiences Want* position paper and ongoing code review processes, the ACMA is encouraging broadcasters to consider voluntarily expanding their content safeguards to cover programming delivered over their catch-up and streaming services.
- Since 2021, the ACMA has also collected and reported on Australian program and expenditure information voluntarily provided by subscription video on demand services.

Anti-siphoning

- The ACMA is responsible for enforcing compliance with licence conditions of commercial and subscription tv broadcasters, including the licence condition that prevents subscription TV licensees from acquiring the right to televise an event on the anti-siphoning list unless a free-to-air TV broadcaster has a right.
- The government is currently reviewing the anti-siphoning scheme. In August 2023, the consulted on a Proposals paper, and submissions closed on 17 September. A preliminary finding in the Proposals paper identified there is a regulatory gap in relation to online services and there is a case to broaden the remit of the regulatory framework. **See Cross-division Executive brief 3.1.**

Scams

- The ACMA's powers to combat scams largely come from the *Telecommunications Act 1997*, the *Spam Act 2003* and the *Do Not Call Register Act 2006*. They do not extend to scams perpetrated over digital platforms.
- As a sectoral regulator for the telecommunications industry, our focus is on stopping scams before they reach Australians. The enforceable obligations which we introduced and enforce have had a significant impact to date. **See Executive brief 5.2.**
- We support the Australian Competition and Consumer Commission's regulatory reform recommendation (from the fifth interim report of the Digital Platform Services Inquiry), to introduce targeted measures to require digital platforms to take additional steps to prevent and remove scams on their platforms.

Clearing Officer
Cathy Rainsford
General Manager
Content Division
Ph (02) 6219 5500
[REDACTED]

Clearing Officer
Jeremy Fenton
Acting General Manager
Consumer Division
Ph (03) 9963 6909
[REDACTED]

Date 3/10/2023