

Online Content Services Bill - challenges and proposed solutions

Overview

The Government's policy is to restrict all gambling commercials and promotions during live coverage of sporting events, from five minutes before the scheduled start of play to five minutes following the conclusion of play (including scheduled and unscheduled breaks in play). The restrictions would only apply between the hours of 5:00am and 8:30pm, and will apply to commercial television and radio broadcasting licensees, subscription television broadcasting licensees, subscription radio and television narrowcasting service providers, the Special Broadcasting Service, and online content service providers.

There are currently restrictions which apply to the above licensees and providers (other than online content service providers) under relevant industry codes of practice, or guidelines. Outside of the 5:00am to 8:30pm time zone the Government's policy is that restrictions equivalent to those which currently apply to live sports events in existing broadcast codes of practice should continue to apply to those licensees and providers, and should also be applied to online content service providers.

The Government intends that the new restrictions will be in effect by 30 March 2018.

Specific comments / feedback

There has been limited consultation with the digital industry about the implementation of these restrictions and the proposed introduction of a new Schedule 8 to the Broadcasting Services Act 1992. DIGI has a number of overarching concerns with the proposed amendments.

We urge the Department to undertake a more meaningful and less time constrained consultation with the entire digital industry on the effects of Schedule 8.

Proposal	Relevant legislative text	Problem / challenge	Solution
<p>Legislative regime enforced by the regulator (as opposed to industry Codes of Conduct as for traditional broadcasters)</p>	<p><i>Australian Communications and Media Authority Act 2005</i></p> <p>1 After paragraph 10(1)(m) Insert: (ma) to monitor compliance with the online content service provider rules;</p> <p>2 Paragraph 53(2)(k) After “of that Act”, insert “, a notice under Schedule 8 to that Act or a notice under any other provision of that Act so far as that provision relates to Schedule 8 to that Act”.</p>	<p>This significant discrepancy could lead to inconsistent regulation of the broadcasting industry versus the digital industry, and subsequently an uneven playing field.</p>	<ul style="list-style-type: none"> • Work with DIGI and other relevant industry associations to develop self-regulatory Codes of Conduct similar to those for broadcasters
<p>A singular definition for three separate (albeit related) functions of online content service providers, online content creators, and online advertising platforms.</p>	<p><i>Broadcasting Services Act 1992</i></p> <p>(1) For the purposes of this Schedule, online content service means: (a) a service that delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of an internet carriage service; or (b) a service that allows end-users to access content using an internet carriage service;</p> <p>where the service: (c) is provided to the public (whether on payment of a fee or</p>	<p>There has been little consultation with the digital industry about expanding the ACMA’s powers to regulate <u>any content</u> provided by an online content service under these amendments. We request more time to consult and consider the impact of this expanded remit.</p> <p>The breadth of this power may operate to undermine the ability of online content service providers to manage the services they deliver and place undue and unnecessary burden on content providers by providing a shifting and uncertain legal landscape in</p>	<ul style="list-style-type: none"> • We consider that more work needs to be done to identify the different roles and responsibilities undertaken by these different entities.

	<p>otherwise); and (d) has a geographical link to Australia;</p> <p>(We note the Bill seeks to identify the different types of broadcasting services in the proposed Section 125A(5) but makes no such attempt to break down the multiple entities involved in delivering online content, services and advertising.</p> <p>As a result, the over-simplified concept of an “online content service provider” serves only to conflate the roles and responsibilities of what in practice can include up to four or five different entities.)</p>	<p>which to provide their services to consumers.</p> <p>There is also a need to better distinguish between online content providers, online service providers and digital advertising platforms.</p> <p>The use of the term “online content service provider” presumes that it will always be one entity that delivers the content, the service on which the content appears and any advertising, or gambling promotional content, that appears alongside content. This is a misguided presumption as an online service provider can deliver content that is not produced or created by the online service provider. In some cases, the online service provider may not even be aware of the exact content that is being delivered.</p> <p>Furthermore, advertising appearing alongside or within online content can be sold, programmed and served by a third party who is also separate from the online service provider. Ultimately, an online service provider can be a separate entity to the online content creator who is often separate from the online advertising platform operator.</p>	
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<p>Definition of geographical link to Australia</p>	<p><i>Broadcasting Services Act 1992</i></p> <p>(1) For the purposes of this Schedule, a service has a geographical link to Australia if an ordinary reasonable person would conclude that:</p> <p>(a) the service is targeted at individuals who are physically present in Australia; or</p> <p>(b) any of the content provided on the service is likely to appeal to the public, or a section of the public, in Australia.</p> <p>(2) For the purposes of this clause, content is provided on a service if the content is:</p> <p>(a) delivered by the service; or</p> <p>(b) accessible to end-users using the service.</p>	<p>This Clause is vague and creates an incredibly wide link to Australia - potentially all content online may be of interest to Australians.</p> <p>In the context of sport, this means that broadcasts of sporting events originating from outside Australia that appeal to Australians such as American football or basketball would potentially fall within the scope of these restrictions.</p>	<ul style="list-style-type: none"> • Develop a clearer and enforceable definition of “geographic link to Australia” by removing the criteria that “(b) any of the content provided on the service is likely to appeal to the public, or a section of the public, in Australia”. • Alternatively, specifically identify the sporting codes or sports that are targeted at / appeal to the Australian public and are intended to be caught within the scope of the Act, e.g. AFL, NRL as there is a long tail of sports that are currently made available largely through digital platforms (e.g. Australian surfing and darts). • Make the legislation applicable to .com.au domains only

<p>Time-based restrictions on online content</p>	<p><i>Broadcasting Services Act 1992</i></p> <p>14F When gambling promotional content is provided in conjunction with live coverage of a sporting event</p> <p>(1) For the purposes of this Schedule, gambling promotional content (other than a commentator betting odds promotion) is provided on an online content service in conjunction with live coverage of a sporting event if, and only if, the content is provided on the service during the period:</p> <p>(a) beginning 5 minutes before the scheduled start of the sporting event; and</p> <p>(b) ending 5 minutes after the conclusion of the sporting event.</p>	<p>It may not be possible to place time-based restrictions on the delivery of all online content especially considering the increasing preference by users to consume video content on demand. Furthermore, ad insertion technologies have wide ranging functionalities and are likely to differ from service to service.</p> <p>By way of background, ad serving technology companies provide software to Web sites and advertisers to serve ads, count them, choose the ads that will make the Web site or advertiser the most money, and monitor progress of different advertising campaigns.</p> <p>These technologies are highly customisable and enable the serving of ads to users to be based on a number of criteria that can be determined by the ad serving company, an online service provider, an advertiser or the online content provider.</p>	<ul style="list-style-type: none"> • Implement a self-regulatory Code-based model where 'online content providers' police and enforce their own policies to ensure timely takedown of infringing content.
<p>Gambling promotional content provided "in conjunction with" live coverage of a sporting event</p>	<p><i>Broadcasting Services Act 1992</i></p> <p>(3) For the purposes of this Schedule, gambling promotional content that consists of a commentator betting odds</p>	<p>There is a distinct difference between the kinds of licensees mentioned in the new s125A(1)(a) who have editorial control over the programming of content provided on their services, and</p>	<ul style="list-style-type: none"> • Implement a self-regulatory Code-based model where 'online content service providers' properly police and enforce their own

	<p>promotion is provided on an online content service in conjunction with live coverage of a sporting event if, and only if, the promotion is provided on the service during the period:</p> <p>(a) beginning 30 minutes before the scheduled start of the sporting event; and (b) ending 30 minutes after the conclusion of the sporting event.</p>	<p>providers of many online platforms, particularly those that make available primarily user generated content.</p> <p>Unlike licensees, certain online content or online service providers might have no practical way of distinguishing live sport from other content being distributed on their platforms, so the proposed legislation might have the effect of banning gambling advertising altogether.</p>	<p>policies to ensure timely takedown of infringing content.</p> <ul style="list-style-type: none"> •
<p>Require the ACMA to handle complaints</p>	<p><i>Broadcasting Services Act 1992</i></p> <p>Part 4—Complaints</p> <p>15 Complaints to ACMA—online content service provider rules</p> <p>(1) If a person has reason to believe that an online content service provider has contravened the online content service provider rules, the person may make a complaint to the ACMA about the matter.</p> <p>(2) The ACMA may conduct an investigation into the complaint if it thinks that it is desirable to do so, but is not required to conduct an investigation.</p>		<ul style="list-style-type: none"> • Encourage/educate concerned persons to firstly contact the online content service provider as this is the fastest way to remove infringing content.