

25 July 2018

Mr Joseph Crichton
Acting Manager Content Projects and Policy Section
Content Projects and Policy Section
Australian Communications and Media Authority
PO Box Q500
Queen Victoria Building
Sydney NSW 1230

RE: Second round consultation – revised draft online content service provider rules – Gambling promotional content provided in conjunction with live coverage of a sporting event.

Dear Joseph,

Communications Alliance (CA) welcomes the further opportunity to provide feedback on the *Draft online content service provider rules – Gambling promotional content provided in conjunction with live coverage of a sporting event* (draft rules).

CA appreciates the ACMA's consideration of our comments made in our April submission on the draft rules and welcomes changes proposed in the revised draft rules. We note there are still a few areas of concern and raise these below for further consideration by the ACMA.

Compliance with new rules

While CA acknowledges that it has been aware that new rules would be developed for gambling advertising on online platforms since the Minister's 6 May 2017 announcement¹, a relatively short period of time has been provided to review the practical application of the detailed rules. On this basis, and that fact that amendments have been made to the rules post the April outcome of this consultation, CA considers that 60 days, as opposed to 30 days, provides a reasonable time for an online content service provider to comply with the new rules, especially in areas where there are inconsistencies between the draft rules, and the ASTRA Codes.

Part 6 – Safeguards and exceptions

In our submission in the first round of consultation on the draft rules we noted the potential for confusion where the restriction on gambling advertising applies to an online service provided "in conjunction" with a live sporting event. There is a lack of clarity about what "in conjunction" means in an online context where it is possible to have multiple pages or windows open at the same time on the same device screen.

In the ACMA's second-round discussion paper it states that the ACMA will address this kind of issue on a reactive, case-by-case basis, and that "in some circumstances, it may be appropriate to find that restrictions only apply to the distinct part of an online content service that provides live coverage of a sporting event". This statement appears to acknowledge that a website may have parts other than the part providing the live stream that should not need to be subject to the restrictions.

¹ <http://mitchfield.com/Media/MediaReleases/tabid/70/articleType/ArticleView/articleId/1352/Major-reforms-to-support-Australian-broadcasters.aspx>

However, the only guidance as to what constitutes such a circumstance is the statement that “additional content generated by that part of the online content service (such as pop-up advertisements) will be subject to the restrictions”. While this is helpful (and logical), there is no positive guidance about what is not subject to the restrictions, and there is no clarification of the issue in the instrument itself that service providers can rely on.

Industry is concerned with the high level of uncertainty that service providers will be faced with under the current construct. Acknowledging that the ACMA does not generally give out prospective opinions on whether certain commercial arrangements will comply with regulation, it will be very difficult for service providers to accurately assess whether every proposed business practice is compliant with the rules unless appropriate clarifications are made.

Rather than expecting service providers to interpret the instrument and accompanying guidance as best they can and take the risk that the ACMA will later find that their interpretation is incorrect, we propose that a clear distinction is made in the instrument itself between the circumstances in which the restrictions will and will not apply, anchored around the concept that restrictions should apply only to content generated by the part of the online content service providing the live stream.

If this is made explicit, it would provide certainty to service providers that where a customer/viewer takes their own action to access another part of the website while the live stream is in progress, there is no need to ensure that the other part (and every other part) of the website is compliant with the restrictions. This would protect the aim of the instrument and the Schedule 8 of the *Broadcasting Services Act 1992* (BSA) without inadvertently extending the restriction beyond its intended reach.

Responsible Gambling Message (17(2))

CA believe there is still a need for alignment of responsible gambling messaging with State and Territory requirements. We note that s17(2) requires gambling promotional content to “conclude with” a responsible gambling message, which is more prescriptive than the ASTRA and Free TV Codes which require gambling promotions to be “accompanied by” a responsible gambling message (i.e. it could be displayed at any time during the promotion, not just at the conclusion).

CA understands that this wording is consistent with the various State and Territory gambling advertising rules which do not prescribe when the responsible gambling message needs to be displayed. We recommend that the draft rules are amended so that rules for responsible gambling messaging are consistent across platforms.

Record Keeping Rules

CA again raises the need for clarification on what RKR would apply to exempt online simulcast services as defined under s4 of Schedule 8 to the BSA.

Industry are also concerned that the requirement to keep “audio or audio-visual records, as the case may be, sufficient to enable the provider’s compliance with these rules to be readily ascertained” will require them to keep records of the exact point in time the audio or audio-visual records appear on a digital platform. These records are very difficult to achieve given the many constantly moving parts on a digital platform, such as the variety of creative assets that can be served to the same web page (that may change when a user refreshes the page) and different ads that can be served to a user based on cookies or tracking. An alternative method to the keeping of these records may be for service providers to share copies of the creative material, and a summary of gambling operator bookings.

Please contact Craig Purdon (c.purdon@commsalliance.com.au) or myself (stanton@commsalliance.com.au) if you have further questions or would like to discuss.

Yours sincerely,

A handwritten signature in black ink that reads "John Stanton". The signature is written in a cursive style with a large, stylized initial "J".

John Stanton
Chief Executive Officer