

11 November 2024

Media Policy Division

Department of Infrastructure, Transport, Regional Development, Communications and the Arts

By email: media.reform@communications.gov.au

Dear Madam/Sir

Response to Proposals Paper – Radio prominence on smart speakers

Free TV Australia (**Free TV**) welcomes the opportunity to provide a submission in response to the September 2024 *Radio prominence on smart speakers* proposals paper (**Proposals Paper**). Free TV is the peak industry body representing all of Australia's commercial television broadcasters who provide Australian, trusted and free content across broadcast and digital platforms.

Free TV supports the implementation of this scheme for local radio services, which provide important public goods.

Free TV's submission is also made in the context of the upcoming commencement of the legislated prominence framework for free-to-air television services on connected television devices (the **Television Scheme**), and ahead of the statutory review of that scheme commencing in 2028.

There are important parallels between the Television Scheme, and the proposed regulatory scheme for radio prominence on smart speakers (**Radio Scheme**). However, there are also important differences. As set out below, a number of the shortcomings of the Television Scheme appear capable of being addressed in the Radio Scheme—in particular:

- regulating software updates, including in relation to search;
- applying these regulated software updates to both new and existing smart speakers that can receive updates; and
- timely commencement of the new obligations.

The Proposals Paper notes that consumers and industry have a legitimate expectation for consistency, transparency and equity in our regulatory environment.¹ Free TV agrees and notes that this process gives policy makers an opportunity to concurrently improve the Television Scheme by which ensuring consistency with the Radio Scheme.

The importance of prominence regulation

As noted above, Free TV fully supports the introduction of a prominence scheme for radio—for smart speakers now; and, potentially for cars in future. As the Proposals Paper notes, this is important to ensure local broadcasting services continue to underpin the delivery of media policy objectives,

¹ Proposals Paper, page 5.

including an informed citizenry, a strong and vibrant democracy, and engaged and cohesive local communities.

Free TV endorses the objective of the Radio Scheme, which is aligned with the Television Scheme:

This framework would seek to ensure that the radio services that provide vital local content, news and emergency information would be available when Australian audiences ask their voice-assisted smart speakers for them. In this way, Australians would continue to have equitable access to the radio services they rely on in the digital age.²

Software updates

The Radio Scheme would apply to smart speakers, being internet-enabled devices that provide access to audio content through voice activation software (or voice assistants). Under the Government's proposal, the entity, or entities, required to provide prominence to regulated radio services would be the providers of voice assistants for smart speakers. That is, it would be the providers of voice activation software, not the suppliers of the devices themselves, that would be regulated.

By contrast, the Television Scheme regulates television devices, and only new devices manufactured and supplied in Australia on or after 10 January 2026.

Free TV argued strongly during the development of the Television Scheme for extension of the prominence requirements to cover not only new regulated television devices, but also existing devices where they continue to receive software updates. In support of the policy development process, Free TV commissioned an independent expert with nearly 30 years' relevant experience in the consumer electronics industry to provide a report detailing how connected television devices are typically manufactured, and maintained, and how the Television Scheme could be implemented.³ The report found that:

- The prominence requirements could be effected through server configuration changes or software implementation.
- None required hardware, system-on-a-chip, mechanical or physical changes.
- Some could be done by server configuration and some may require software implementation.

The Proposals Paper notes the differences between the Television Scheme and the Radio Scheme and indicates that they reflect differences in underlying technology. It says that for smart speakers access to content and services is almost entirely mediated via voice activation software, whereas for smart televisions, visual cues (lists, carousels, banners)—where consumers can browse from a range of programs and services—are the predominant means by which users select and access content.⁴

While this may be true (at least for now), it is also the case that these features are governed by software, meaning that existing devices that receive software updates can be regulated, whether they

² Proposals Paper, page 7.

³ For detail see Free TV's January 2024 submission to the Senate Environment and Communications Legislation Committee on the *Communications Legislation Amendment (Prominence and Anti-Siphoning) Bill 2023 (Free TV Submission)* – available at <https://www.freetv.com.au/wp-content/uploads/2024/02/Free-TV-submission-PA-S-Submission-2024-Final.pdf>.

⁴ Proposals Paper, page 36.

be smart speakers of connected television devices. Indeed, the fact that software on existing connected television devices can be updated is borne out by widely reported market developments.⁵

The Proposal Paper notes that there is a small number of dominant providers of relevant voice assistant software (Google, Amazon and Apple), integrating their software into their own devices or into third-party devices (Bose, JBL, Edifier, among others).⁶ It states that the framework would require the providers of this software to adhere to the access obligations for radio services on smart speakers, irrespective of whether the smart speakers are first-party devices (supplied by the provider or the voice assistant platform), or third-party owned (supplied by another party).⁷

The same logic should be extended to the Television Scheme, which should be augmented to additionally regulate manufacturers who have the ability to update software for existing sets. It should specify that they must comply with regulated prominence requirements where connected televisions continue to receive updates.

Recommendations

- Support a scheme that delivers easy, prominent access to the digital streams of all services and programs offered by radio operators who have broadcast licences to operate within Australia and national broadcasters.
- Support a radio prominence scheme that makes both the software providers and device manufacturers responsible for ensuring prominence regulations are met on any smart speaker sold in Australia.
- Amend the Television Scheme to require manufacturers to comply with prominence requirements with respect to software updates on regulated television devices.

Regulating search

The Proposal Paper looks at consumer preferences for content discovery, noting that global data on the use of voice assistants indicates that convenience is the key factor, with 90 per cent considering voice search to be easier and faster than a standard typed search.⁸ It establishes the importance of accurate search results, noting that Australian consumers should be able to access an Australian radio service when they request it via search on a smart speaker.⁹

It then goes on to propose that the Radio Scheme would require regulated access providers to respond to a user request for a particular regulated radio service and to play the service consistently and reliably.¹⁰

⁵ For example, in March 2024, it was reported that Google TV was changing the look of apps on the connected TVs for which it provides the operating system. Essentially it changed the app tiles from rectangles to circles. It did this for devices in the home, not just new devices. See the report 'Google TV's latest update finally ditches old boxy app icons' at <https://www.androidcentral.com/apps-software/google-tv-gets-a-major-revamp>.

⁶ Proposals Paper, pages 18, 35 and 36.

⁷ Proposals Paper, page 36.

⁸ Proposals Paper, page 17.

⁹ Proposals Paper, page 30.

¹⁰ Proposals Paper, page 31.

While the consumer usage data cited above is particular to smart speakers, it gives a strong indication of the importance more generally of search for content discovery, whether that be on smart speakers or connected television devices. This importance will only increase as connected televisions rely more heavily on content-led, rather than app-based user interfaces, in the future.

Free TV emphasised the importance of search in its submissions on the *Communications Legislation Amendment (Prominence and Anti-Siphoning) Bill 2023* (the **Bill**) ahead of its passage.¹¹ As Free TV noted at that time:

- Content search and discovery tools within connected televisions are an important part of the means by which Australian viewers become aware of content and obtain access.
- These tools include voice-activated searches, text-based searches and algorithmically-driven content recommendations.
- They should be covered by the framework, in particular to ensure that viewers who search for particular programs are offered freely available content as well as paid options.

Free TV submitted that the exposure draft of the Bill should be amended to include search and discoverability in the regulation-making power, and the regulations should set minimum requirements for content search, discoverability or prominence tools on connected television devices.

That did not occur and the failure to provide for regulation of search and discovery remains a significant shortcoming of the Television Scheme. This should be corrected noting that if the Radio Scheme can regulate search software, so too should the Television Scheme.

Recommendation

- Support requirements that search functionality be included in prominence regulations for radio. This functionality should be broad and include both specific searches for a radio brand but also specific content requests, such as “local news talkback” or “local sports show”.
- Amend the Television Prominence Scheme to empower the Minister to regulate search so that viewers who search for particular programs or genres are offered freely available Australian content as well as paid options.

Existing devices

There is a question towards the end of the Proposals Paper about whether the Radio Scheme should apply to voice activation software operating on devices that are already in the Australian market. It says that this question will turn on whether the radio prominence framework can be implemented by software updates, or whether it would necessitate changes in hardware or chipsets operating in smart speakers.¹²

For the reasons set out above, and given the proposal is to regulate software on internet connected devices, which can be updated remotely, it is clear that the Radio Scheme should apply to both new and existing devices that can receive software updates.

¹¹ Free TV Submission, pages 13–14.

¹² Proposals Paper, page 47.

Recommendation

- Support a Radio Scheme regulating a requirement to update software to deliver prominence requirements for both new and existing smart speakers.
- Given access to applications and content on connected television devices is also managed via software (not hardware) that is regularly updated and upgraded, the prominence regulations for television should also be amended to require software updates on both new and existing television (and related) devices.

Commencement

With respect to timing, the Proposals Paper notes that it may be desirable to include an implementation period of 6, 12 or 18 months, following the commencement of the enabling legislation, to allow regulated access providers time to ensure compliance.¹³

An unnecessarily long implementation timeframe of 18 months was provided for under the Television Scheme, meaning that a minority of Australians are likely to see a benefit from it before the end of the decade.

In designing the Radio Scheme, Free TV strongly encourages the Government to set a timeframe of no more than 6 months, and to apply the same commencement timeframe to future prominence requirements for software under an amended Television Scheme.

Recommendation

- The Radio Scheme should set an implementation timeframe of no more than 6 months given that it will be given effect through software updates.
- The same commencement timeframe should apply to future prominence requirements for software under an amended Television Scheme.

Next steps

Free TV would be pleased to provide further information about that matters set out in this submission, in particular how recommended amendments to the Television Scheme can be expedited and introduced prior to the 2028 statutory review.

Yours sincerely

Bridget Fair
Chief Executive Officer

¹³ Proposals Paper, page 47.