

23 October 2009

Sport on Television Review
Commercial Broadcasting Section
Department of Broadband, Communications and
the Digital Economy
By email: sportontvreview@dbcde.gov.au



ABC
Australian
Broadcasting
Corporation

ABC Ultimo Centre
700 Harris Street
Ultimo NSW 2007
GPO Box 9994
Sydney NSW 2001
Tel. +61 2 8333 1500
abc.net.au

2009 Review of the Anti-Siphoning Scheme

Dear Madam/Sir,

The ABC welcomes this opportunity to make a submission to the Department of Broadband, Communications and the Digital Economy (DBCDE) "Sport on Television" Review. The Corporation offers comments on the key issue identified by the Review.

In considering the purposes of the anti-siphoning scheme and its impacts, the ABC supports the original objective of the scheme, namely, that "events of national importance and cultural significance [should] ... be received by the public free of charge". In setting out this objective the Explanatory Memorandum (EM) to the original Bill also noted the importance, "on equity grounds, that Australians continue to have free access to important events". The EM noted that the scheme "will also allow subscription television broadcasters to negotiate subsequent rights to complementary, or more detailed, coverage of events."

The ABC believes that the current settings have been successful in achieving both policy objectives: providing the community free access to sporting events of significance to the nation, while providing the subscription television industry the ability to successfully pursue its business goals.

As Section 115 (1) of the *Broadcasting Services Act 1992* ("BSA") notes the legislation ensures events are "available free to the general public". This remains an important and necessary provision in an increasingly complex media environment.

The operation of the anti-siphoning scheme has, since its introduction, ensured the Australian community has freely available access to sporting events, many of which may not have otherwise been available. While the ABC's resources limit its capacity to broadcast listed events, it has broadcast events such as international Netball matches. It also worked with the Nine Network in 2005 to broadcast parts of test cricket matches played in Darwin and Cairns during the Australian winter.

The ABC notes and agrees strongly with the Discussion Paper's identification of the importance of sport in Australian culture and its popularity with television viewers. Sport has a major role in contributing to Australian national identity. In submissions to previous reviews of the anti-siphoning regime the ABC has commented on these issues. For example in 2001 the ABC stated, "Sport remains a defining element in the formation of Australian national identity. The international success of Australians in sport has created a keen following and appetite for all sports. Free-to-air television has helped foster this and the ABC believes audiences should continue to be offered a wide variety of sporting events on free-to-air television, particularly events of national significance."¹

In contributing to this aspect of national identity, broadcasting has a major role in ensuring that all Australians have the opportunity to freely share in these significant sporting events.

Rationale for including events on the list

The Discussion Paper raises issues relating to the criteria for including events on the anti-siphoning list. In general terms, the ABC supports the current approach to listing events. There have been a number of opportunities for the community to provide comment on the approach and the events that are included on the list. This has resulted in events being removed from the list and this is an appropriate mechanism for the continued evolution of the scheme. Further, the regulatory process provides an opportunity for events to be delisted (a process for which the timeframe was doubled in 2006).

If criteria for inclusion of items on the list were to be developed, the ABC would want to see criteria that allow additional events to be added as they rise in public prominence.

For example, the Corporation believes there is benefit in adding the Paralympic Games to the anti-siphoning list. The winter and summer Paralympics are major, international sporting

¹ Australian Broadcasting Corporation, "Submission to the Australian Broadcasting Authority Investigation Review of Anti-siphoning List", April 2001.

events held every two years, with national and international significance. Since the first Paralympics broadcast in Australia by the ABC from Seoul in 1988 there has been a significant growth in community awareness and support for the Games. For example in 2008, an average metropolitan audience of over 1.5 million viewers watched each day's events on ABC 1 and ABC2.

The event's cultural significance to Australians and the awareness and support it has in the community provide an argument for its inclusion on the anti-siphoning list. The ABC believes that increased support and awareness for the Paralympics is, at least in part, due to its continued availability on free-to-air television. Further, the ABC believes there would be considerable concern in the Australian community if the Paralympic Games were no longer available to the free-to-air viewing audience.

Similarly, the development of women's sport such as the Women's Football World Cup and matches played Australian National Women's Football team, the "Matildas," are further example of the need for flexibility in considering events for inclusion on the anti-siphoning list.

The application of tests such as "current public expectations" will not achieve the desired policy objective.

The restriction on digital multi-channels

The ABC supports the carriage of sporting events on the anti-siphoning list on free-to-air multichannel services. This would provide Australians with a greater opportunity to view listed events. A major issue for broadcasting live sport is the variability due the nature of the sport (running over scheduled cessation of play, extra time, or disruptions due to weather). The ABC has experienced the situation where an event that has a delayed starting time and/or has run over time has forced a choice between curtailing the broadcast or interrupting other programming.

The nature of sporting events also means it is not always possible to schedule all elements of the event on a single service. There is the potential for clashes with other broadcast activity, such as major news bulletins and children's programming. Allowing the carriage of listed events on digital free-to-air services would address this problem.

The greater flexibility provided by the ability to utilise multichannel services would benefit the community, the events and sporting organisations. As the ABC submitted to the Media Reform Options Review in 2006, the restrictions on multi-channelling anti-siphoning listed

events “inhibits an opportunity to increase the public benefit provided by the anti-siphoning list.”²

Coverage on new media platforms

The ABC believes there is merit in the application of the policy objectives underpinning the anti-siphoning list to other platforms. Rapid developments in IP-based delivery should be carefully considered to ensure that the policy is not undermined.

If delivery of content on new platforms was to limit the availability of events of national significance to the Australian community, then the application of a similar condition to that which applies to pay television and prevents acquisition of the right to “televise” events would be appropriate. While there are significant regulatory hurdles involved, the Corporation believes this issue needs to be explored further to ensure the policy objectives underpinning the anti-siphoning scheme can be sustained in a more complex media environment.

Other issues: Closure of loop-hole

Paragraph 10(1)(e) of Schedule 2 of the BSA places a condition on subscription television licences which prevents them from acquiring rights to televise an event on the “anti-siphoning” list unless a free-to-air broadcaster has already acquired rights to the same event. The ABC supports the implementation of the scheme through the operation of the licence condition.

However, this condition does not prevent entities related to subscription licensees, such as channel providers, from acquiring such rights. As such, the legislation is unable to ensure community access to significant events via free-to-air television as intended.

In a submission to a Senate Inquiry into the provisions of an Anti-siphoning bill in 2005, the ABC drew attention to the issues that arose as a result of this loop-hole in legislation, noting the instance of the sale of the 2005 Ashes test cricket subscription television right prior to offers to free-to-air broadcasters. The ABC continues to hold the view it submitted in February 2005, that the loop hole should be addressed.

² Australian Broadcasting Corporation. “Submission to the Department of Communications, Information Technology and the Arts on the Discussion Paper on Media Reform Options”, April 2006.

Conclusion

The massive changes that are transforming media and the way Australians gain access to information and entertainment require ongoing review and consideration of media and cultural policy settings to ensure they continue to deliver value to the community. The current policy has been successful in achieving the policy objective of ensuring nationally significant events are freely available to Australians. In this context, while monitoring their effectiveness in a changing media environment, it is important that the current policy be retained.

If you would like further information, please contact Dr David Sutton, Head of Corporate Governance and Strategy on 8333 2429, or by email at sutton.david@abc.net.au.

Yours faithfully,

A handwritten signature in black ink that reads "Michael Millett". The signature is written in a cursive, slightly slanted style.

Michael Millett
Director of Communications