



Tennis Australia

Submission

*to*

Sport on television:

A review of the anti-siphoning scheme in  
the contemporary digital environment

October 2009



## Introduction

Tennis Australia derives a significant amount of income from the sale of media rights. Through deals negotiated with Australian and international Free-to-Air (FTA), Pay television (Pay TV) and radio broadcasters, Tennis Australia generates funds to support tennis development across Australia. Any dilution of Tennis Australia's ability to leverage these rights to generate income not only affects Tennis Australia as an entity, it affects our ability to promote active engagement in the sport at all levels, from grass-roots to elite.

Maintaining a balance between the commercial and public interest in the broadcasting of sporting events is vital to the ongoing viability and development of tennis at all levels. Over the past four years, a combination of FTA and Pay TV broadcasting of the Australian Open has provided an example of the anti-siphoning legislation working to ensure that as many Australian residents as possible have access to coverage of the Australian Open, (Australia's primary annual international sporting event), whilst also allowing the sport of tennis to gain a fair and reasonable financial return for product.

Notwithstanding the excellent relationship Tennis Australia has established with our broadcast partners to ensure the anti-siphoning scheme works as intended, there are still a number of short comings with the scheme in its current form that should be addressed as part of this review. The continual and rapid emergence of digital media and other new media platforms also has the potential to negatively impact on the intent and integrity of the anti-siphoning scheme if not appropriately regulated. These issues and concerns will be addressed in the following.

For Tennis Australia to generate the income required to invest back in the sport at all levels, it is essential the value of our broadcast media rights are protected. Tennis Australia is pleased to present this submission to Government on the review of the Anti-Siphoning scheme. Should you require any further information or detail regarding this submission, or should you wish to meet with Tennis Australia at any time, please do not hesitate to contact me.

Best regards

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## 1. The purpose of the anti-siphoning scheme and its impacts

Tennis Australia understands and fully supports an appropriate balance between the commercial interests of the sport, and the need for widespread broadcast access to our events. Tennis Australia has worked hard to establish a very successful and rewarding partnership with our primary broadcast partner. This mutually beneficial relationship has ensured that all Australians have free to air access to major tennis events, (such as the Australian Open and Davis Cup ties that involve Australian teams), whilst also allowing Tennis Australia to derive an appropriate commercial return on our product.

Tennis Australia understands the intent of the anti-siphoning scheme is to ensure sporting events of significant national and international interest are able to be viewed by Australians via FTA access.

For the most part, Tennis Australia has been able to successfully manage the restrictions of the anti-siphoning scheme due to our strong relationship with our host broadcast partner, and the unquestionable value of Australian Open Championships and Davis Cup ties to the Australian public, and in turn to broadcasters. Tennis Australia is mindful that the anti-siphoning scheme, if appropriately regulated and managed, can play an important role achieving the desired outcome. It is vital however, that the restrictions and limitations imposed by the scheme do not unfairly or negatively impact on the ability of a sporting event organiser to derive fair and reasonable financial return for their product.

There is no doubt in some cases, particularly for smaller events, the anti-siphoning scheme limits the sport's ability to negotiate the best deal possible as it in effect locks Pay TV networks out of negotiations for listed events. This process gives a definite advantage to FTA networks that have the first option for negotiation.

Many sports have long argued that the inclusion of some events on the List has resulted in limiting their ability to negotiate return for product. The current anti-siphoning regulations allow FTA channels, either inadvertently or by design, to in effect lock out competition by Pay TV providers. The ultimate result in such cases is that an event is not aired live on either FTA or Pay TV, and both the sport, and the Australian public lose out. There can be no argument that using the anti-siphoning scheme to lock-out other broadcasters, when there is no intent or opportunity to show the event live, is an inappropriate use of the scheme by FTA broadcasters.

To limit the opportunity to misuse the anti-siphoning regulations to lock out competition from non-FTA providers, and to ensure organisers of sporting events are able to negotiate appropriate return for product it is recommended:

- (i) That the use it or lose it regulations be reviewed and tightened so that any listed event that is not picked up and shown live by a FTA broadcaster on their primary channel, is immediately reconsidered with a view to removing that event from the List. If an event is not considered by FTA broadcasters to be worthy of live coverage, it must surely be argued it has no place on the List.



- (ii) That the de-listing period be extended beyond 12-weeks to provide event organisers with a realistic opportunity to negotiate broadcast deals with other partners (refer item 4 for further details).
  
- (iii) That the current anti-hoarding requirements be reviewed. The anti-hoarding requirements unfairly provide a double advantage to the ABC and SBS, (both of which are FTA channels and therefore have already had equal rights to bid for a listed event along with other FTA providers), and impose a secondary disadvantage on Pay TV providers who have already been limited in their ability to bid for listed events. It is recommended that in cases where a primary FTA provider does not intend to show a listed event live and on their primary channel, that the event rights automatically be opened up to Pay TV and digital multi-channel providers, along with the ABC and SBS.

## 2. The appropriateness of the events on the anti-siphoning list and their rationale for inclusion

Included in the Government's own discussion paper is a table detailing broadcast coverage of listed events. This table clearly shows that many of the events listed are not shown live on FTA channels. Clearly the inclusion of such events on the list must be questioned. If an event is not considered important enough by FTA broadcasters to air live on their primary broadcast channel, then it is argued such an event has no place on the List and should be de-listed in line with the recommended changes to tighten the use it or lose scheme.

In addition, the organisation that is responsible for the delivery of any event on the List should be provided with the opportunity to present a case for the inclusion or otherwise, of their event on the List at the time of List review. Currently, decisions regarding which events are to be listed are made at the sole discretion of the Minister and imposed on the sport. It is recommended that a compulsory consultation process with the sport organisation responsible for the event be undertaken prior to the Minister making a decision regarding the inclusion of that event on the List.

## 3. The duration of the anti-siphoning list

Given the rapidly changing broadcast environment it is recommended the duration of the anti-siphoning list be no more than five years. Significant changes in the sport and broadcast environ can take place over a five year period. In addition, the normal period for a broadcast contract is in the vicinity of three to four years. Anything longer than a five year review period will potentially see sport and broadcasters disadvantaged by the scheme.



#### 4. The appropriateness of the current automatic de-listing arrangements

Tennis Australia argues that the 12-week de-listing period is not enough, particularly in the case of a FTA channel deciding at the last minute not to televise an event. Completing broadcasting negotiations for a major sporting event takes many months and leaving a 12-week period to negotiate a deal is inadequate. For a major event, it is recommended that a 6-month time frame for negotiation is required. A 6-month lead in period is more than enough for a broadcaster to determine their broadcast schedule and decide if they will, or will not be televising a listed event live. A de-listing period any shorter than 6-months simply allows FTA broadcasters to potentially hold out on a decision until the last minute, thereby placing excessive pressure on event organisers to try and negotiate a deal with a Pay TV or other provider that allows for a reasonable return on investment to be derived.

#### 5. Scheduling and coverage of events on the anti-siphoning list

FTA broadcasters must be required to show listed events live and in full on their primary channel. The whole aim of the anti-siphoning list is to provide as many Australians as possible with live coverage of listed events that are of *"national importance and cultural significance"*. The sole reason FTA broadcasters are provided with the significant competitive advantage they receive from the anti-siphoning scheme is to provide live access to events on a primary FTA channel. If a FTA broadcaster is not willing to provide live coverage of an event that is considered to be of national significance on their primary channel, then one would have to question the relevance of the said event being listed in the first place. At the very least, a listed event not aired on a primary channel should be immediately reviewed under a tightened use it or lose it regime.

#### 6. The restriction on free-to-air television broadcasters being able to show an event on the anti-siphoning list exclusively on their digital multi-channels

Digital multi-channels must be treated in the same way as any Pay TV or other non-FTA provider. For listed events, the proviso must be that live feed of the event goes to air on the primary FTA channel. If a FTA broadcaster does not intend to televise an event live on their primary channel, then the event must be delisted and digital multi-channels and Pay TV providers alike then have fair and equal opportunity to bid for the event.

As is the case for many major sporting events, by agreement the primary FTA provider or the sport may negotiate with other broadcasters to provide selected feed on other channels. Digital multi-channels must be treated in the same way. An FTA broadcaster



must not be entitled to show an event on the anti-siphoning list exclusively on a digital multi-channel as this will undermine the whole intent of the anti-siphoning scheme, (to provide free coverage of events to all Australians); and will only serve to add yet further disadvantage to Pay TV broadcasters and their ability to access sporting content. This in turn will significantly undermine an event organiser's ability to negotiate a maximum return on product investment.

## 7. Coverage of sports on new media platforms

Piracy of digital media content is a matter of great concern to sport organisations as well as television and other media broadcasters who pay for the right to exclusively televise sporting events. The growth in digital technology, and the changing patterns of consumers means that all manner of information, including news, weather, sport, entertainment and personal information, can be accessed from a range of "new media" sources. Internet-based web sites, web based "blogs", mobile "blogs", instant messaging, podcasts, P2P sites and the like, all lend themselves to unofficial broadcasting of content.

As the quality of encoding improves, high speed internet servicing grows, and increased bandwidth access is made available to more consumers, the rate of illegal streaming of live sport coverage in full is rapidly increasing.

New media platforms can play an important role in supplementing broadcast feeds. In cases where a televised feed is not accessible however, new media platforms, if not adequately policed, do have the potential to have a significant negative impact both on the sport, and the broadcaster's ability to lock down streaming, and in turn derive appropriate return for product.

In cases where new media can be appropriately regulated and fair and reasonable return for product can be negotiated, new media platforms have an important role to play in supplementing primary broadcast. In the context of the current poorly regulated new media environment however, the potential for illegal use of new media to have a negative impact on the ability of the broadcaster to lock down feed, and in turn the ability of the sport to derive appropriate financial return for product, is significant.