SBS

SBS SUBMISSION

Senate Standing Committee on Environment and Communications

Broadcasting Services Amendment (Anti-siphoning) Bill 2012

Introduction

SBS welcomes the opportunity to provide information to the Committee on the Broadcasting Services Amendment (Anti-siphoning) Bill 2012.

SBS is Australia's multilingual and multicultural national broadcasting service. SBS's principal function, is to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians, and, in doing so, reflect and promote Australia's multicultural society. SBS broadcasts to a national television and radio audience and delivers content online on its website www.sbs.com.au.

SBS prides itself on its coverage of important sporting events of interest to all Australians, and has a long and proud association with football, including the FIFA World Cup. SBS has the exclusive Australian television broadcast rights to the 2014, 2018 and 2022 FIFA World Cup tournaments.

The new scheme

SBS supports the continuing operation of the anti-siphoning scheme and agrees in principle with the new scheme. The changes will in many respects strengthen the scheme and ensure that the Australian public has access to live coverage of sports and other events of national significance.

SBS has concerns in the following areas.

Delisting – FIFA World Cup qualifiers

The FIFA World Cup qualifiers (the qualifiers) involving the Socceroos have been flagged as Tier B anti-siphoning events.[1] SBS would like to have a reasonable opportunity to acquire the rights to televise the Socceroos qualifiers however it is hampered by timing and rights issues.

Under the new section 145E the qualifiers are delisted from either the number of hours as specified by the Minister before the start of the first event (if they are defined as a multi-round competition – section 145E(d)) or otherwise, 4,368 hours (26 weeks) before the start of the event (section 145E(e)).

SBS's experience is that a cut-off period of 26 weeks leaves a very small window of opportunity, and for some matches no opportunity at all, to acquire the rights to televise the qualifiers for the following reasons:[2]

- Each qualifying country's federation owns the right to their team's home matches. The owning federation may also sell the right to, or engages to represent them, another agency, which can prolong and complicate the process, further reducing the lead-in time.
- While the dates of each round of the qualifiers are roughly known, who is playing who is not actually known until the results of the previous round are finalised and the relevant draw occurs. This can occur very close to the first match in the round, leaving very little time to negotiate and acquire the rights to it.

[1] DBCDE, Future anti-siphoning list, December 2010 – Tier B.
[2] Using the example of the away matches for the qualifiers.

- For example, a cut-off period of 26 weeks from the date of the first event in the current (fourth round) of qualifiers would have been around 8 December 2011 (the date of the first match is 8 June 2012). However the rights holders were only known from the date on which the draw was announced, that is 9 March 2012. Under the scenario envisaged by section 145E(e) the event would have been delisted before the rights holders were even known, meaning that effectively it might as well not even have been on the list.

SBS will therefore have to rely on the Minister to determine an appropriate delisting time under section 145E(d) or determining an alternative delisting time under section 145E(f). SBS trusts that the Minister will be able to provide it and its viewers with certainty on this matter by making appropriate arrangements. A better way of dealing with these situations would be to specify an appropriate delisting period which allows for a reasonable opportunity to acquire the rights to the event counting back *from the date on which the rights holders are known*.

Limited anti-siphoning restrictions on content service providers

SBS has concerns regarding section 145ZO, which provides that "a person must not confer on a content service provider the right to provide particular audiovisual content on a content service to end-users in Australia" if the content consists of live coverage of an anti-siphoning event that "*occurs or is to occur in Australia"* (section 145ZO(1)(b)).

- The requirement that the event occur "in Australia" is too limited and introduces a further tier of lesser protection for events occurring outside Australia. In SBS's view, if an event has qualified for the list, it should qualify to ensure that it cannot be siphoned by either a subscription television broadcasting licensee or a content service provider. For example the current drafting would mean that a Socceroos match in Australia would be potentially protected from siphoning by an IPTV provider but not one played overseas, even if a World Cup match – a distinction unlikely to be appreciated by SBS's viewers.
- The restriction does not apply to the content service provider licensee as it does to the licensor or "person" conferring the rights. This is reflected in the different application of the restrictions. In the case of subscription television broadcasting licensees, the restriction applies to the licensee and prevents them from *acquiring* the rights (section 145ZN). In the case of content service providers, the restriction applies to the rights holder and states that they "must not *confer* on a content service provider" the rights (section 145ZO). Accordingly, an Australian content service provider may licence the rights from an overseas "person" or licensor who determines that it is out of reach of Australian regulation. There would be no penalty on the Australian content service provider for flaunting the legislation, and there would be doubt as to whether the licence would be void or voidable under the Australian legislation. In our view this would make the provision easily circumventable.

SBS submits that section 145ZO should apply to an anti-siphoning event wherever it is played, and apply both to the licensor "person" and the licensee content service provider so that either may be injuncted or penalised if breaching the provision.

SBS is concerned that this restriction would not prevent an overseas IPTV provider from acquiring the rights to events on the anti-siphoning list played either in Australia or overseas and streaming that game live into Australia.

Register of events
The new notification requirements (Part 10A, Division 6) are to ensure "the effective enforcement of the anti-siphoning scheme" (Explanatory Memorandum). In order to strengthen these provisions, SBS recommends that the ACMA should be required to make available to the relevant parties (or publish) a register of those events on the anti-siphoning list for which the rights have been acquired and, if relevant, when they cease to hold the rights. This would assist in ensuring that the free-to-air broadcasters have had a reasonable opportunity to acquire the rights when they are made available.

4 April 2012