



Australian Government
Attorney-General's Department

Civil Law Division

13/5611

5 July 2013

Christopher Lawley
Senior Research Officer
Senate Standing Committee on Environment and Communications

By email

Dear Mr Lawley

Inquiry into the effectiveness of regulatory arrangements to deal with the simultaneous transmission of radio programs

Thank you for your email to Mr Roger Wilkins AO regarding the current inquiry by Senate Standing Committee on Environment and Communications into the effectiveness of regulatory arrangements to deal with the simultaneous transmission of radio programs. Mr Wilkins has asked me to reply on his behalf.

You have asked four additional questions on notice. Please find the Department's responses below.

The Department understands the Department of Broadband, Communications and the Digital Economy has also been asked additional questions on notice with regard to the regulation of broadcasters under the *Broadcasting Services Act 1992*. The Department does not propose to cover broadcasting issues in answering these additional questions on notice.

1. What would be the potential copyright implications of the Minister for Broadband, Communications and the Digital Economy issuing a narrow determination to the effect outlined by CRA of ensuring strictly radio simulcasts are considered to be a 'broadcasting service' under section 6(1) of the *Broadcasting Services Act 1992*?

The potential copyright implications of a new determination limited only to radio broadcasts remain significant. As set out in my letter to the Committee Secretary dated 6 June 2013, these implications include:

- Overturning settled law that radio broadcasts and internet transmissions of content are fundamentally different. This law is consistent with other jurisdictions and international copyright treaties.
- Conflating broadcasts (ie content broadcast within a limited geographical or licence area) with internet transmissions (ie content transmitted to the world without geographical limitations) in the Copyright Act. The effect on the Copyright Act would be to fundamentally alter the carefully-balanced existing structure of the Act that supports the radio broadcasting industry.

Another effect of the proposed determination would be to extend all licences, protections and exceptions in the Copyright Act to commercial radio broadcast activity on the internet.

- Fundamentally distorting the market for licencing sound recordings on the internet. An effect of the proposed declaration would be that radio broadcasters could avail themselves of the statutory licence in section 109 and the one per cent cap in section 152(8) for transmitting sound recordings on the internet, providing a significant competitive advantage over other services that transmit music on the internet.

2. What would be the potential copyright and legal implications of the Minister for Broadband, Communications and the Digital Economy issuing a determination to the effect outlined by CRA of ensuring strictly radio simulcasts are considered to be a 'broadcasting service' under section 6(1) of the *Broadcasting Services Act 1992* with a condition the broadcasters do not simulcast outside of their designated licence areas? What are the practical implications of imposing such a condition?

The potential copyright implications for this proposal remain the same as the proposal set out in question 1. This is because this proposal maintains the commingling of two separate copyright rights. The Department does not have a view on the practical implications of imposing this condition. However, the Department of Broadband, Communications and the Digital Economy may be better placed to provide advice on the potential for technology to limit the availability of simulcasting services to geographical licence areas.

3. Can the Department comment on the implications of the Minister not issuing a new determination raised in CRA's submission under section 2.1(e)?

The overriding implication of the Minister not issuing a new determination is that the status quo remains. This would result in commercial and legal stability for industry.

4. What is the Department's understanding of the intent of the existing regulations and how they have been understood to apply until recent court rulings?

The Department notes the intent of the existing regulatory structure in the *Copyright Act 1968* is to give effect to international copyright treaties to which Australia is a party. However the Department is unable to comment further as the Department is unable to provide legal advice.

In preparing this letter, I have consulted with the Department of Broadband, Communications and the Digital Economy.

Yours sincerely

Matt Minogue
First Assistant Secretary
Civil Law Division

Telephone: 02 6141 3620