



**SUBMISSION IN RESPONSE TO COMMUNICATIONS LEGISLATION AMENDMENT
(PROMINENCE AND ANTI-SIPHONING) BILL 2023**

DECEMBER 24, 2023

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100 Parliament House Canberra ACT 2600



1. About Janez Media

Janez Media is a specialist digital and media advisory and consultancy practice based in Australia. Janez Media's expertise extends across Free-to-air television, pay television, international and domestic sporting bodies, OTT networks and SVOD platforms, telcos and international media organisations.

Janez Media is led by Jon Marquard, who was previously the Chief Operating Officer of the Ten Network (**Ten**) and, prior to that, also the COO at Fox Sports.

As a result of those roles and Janez Media's ongoing engagements with sports federations, media distributors across the entire sector, and online sports services across the past 10+ years, he and the company are relevantly qualified to provide subject matter expertise input into the matters relating to the Environment and Communications Legislation Committee's consideration of the Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 (**the Bill**).

Janez clients and engagements have spanned a range of Australian and international entities across the tech, sport and media sectors: free-to-air television networks including the Nine Network, domestic sporting bodies including the NRL, the Australian Professional Leagues (which organises and oversees the Australian A League women and A League men's competitions), Rugby Australia (RA), New Zealand Rugby Commercial, international sporting organisations including SANZAAR (comprised of SA Rugby, NZ Rugby, RA and Union Argentina de Rugby) and MLB, as well as OTT platforms such as Optus Sport, Showmax, and international pay TV aggregators and pay TV networks such as Discovery and Multichoice.

Jon has also been a board member of FreeTV, FreeView and the Interactive Advertising Bureau (IAB) and ASTRA, while Janez Media has also been engaged in other jurisdictions in relation to sport listed event regimes imposed by other governments, most notably in South Africa in responding to ICASA's review of that jurisdiction's listed events regime.

For the avoidance of doubt, this submission reflects the views of Janez Media and not of any of its clients. Janez Media's views are formed from its direct and close involvement in the sports and media industry and the author's overall involvement with the media sector for over 27 years.

2. Overview

2.1. Janez Media refers the Committee to Janez Media's previous submissions made to the government's recent inquiry into the anti-siphoning scheme and the publication of the proposals paper which are both available publicly [here](#) [Proposals Paper response](#) and [here](#) [Discussion paper response](#). Many of the concerns raised by Janez Media have not been picked up by the government in the Bill. Janez Media repeats its view, that the government should be adopting a platform neutral approach, and a policy which factors in current and future state of affairs, and ongoing changes in consumption patterns, one in which online viewing is increasingly more important than linear FTA television viewing.

- 2.2. The challenge with the approach adopted in the Bill is that clearly favours one industry participant over others in relation to both prominence and anti-siphoning. In the media sector with so many structural changes occurring, the Committee should take a policy position of ensuring that these shortcomings are rectified and adopting a more balanced approach. The government should not try and pick industry winners and distort the media sector by favouring the FTA television networks when viewership and use of FTA television is not universal and is in gradual material decline,
- 2.3. The Bill flies in the face of demographic trends that younger Australians are not watching FTA TV so the question should be asked why the Bill is not future focused in recognising these trends. In 2023, only 18% of 18-24 year olds watched FTA TV in the previous seven days, while only 29% of those aged 25-34 watched FTA TV.¹
- 2.4. Since the government introduced the Bill, more cogent evidence has emerged that Australians are continuing to watch less and less free-to-air television, which further impacts the underlying tenet of the Bill in wanting to maintain the underlying prominence of FTA television. With this Bill, the government is fighting against an inexorable tide of the trend towards consumers choosing more diverse ways to consume video content than the ways they have traditionally done. In particular the Committee should consider the following data points recently published by ACMA:
- 2.4.1. Less people are watching linear free-to-air television on a regular basis and the decline is continuing every year. In June 2023 only 52% of the population had watched linear free-to-air television in the previous seven days compared to 56% a year earlier. Only 43% of the population had watched free-to-air catch up and streaming services.² It is likely that in 2024, the next ACMA survey will reveal that less than half of Australians watched FTA in the previous week.
- 2.4.2. Conversely the use of online subscription streaming services on a regular basis increased to 66% up from 59% the previous year³ while over 4 in 5 Australian adults used an online service to watch video content.
- 2.5. There is increasing evidence too that the concerns about ubiquitous access to the internet are overstated. In 2023 98% of Australians were able to access the internet at home either by the NBS or through 4G/5G mobile networks.
- 2.6. The Bill does not adequately account for the way in which Australians access online content. In focusing on prominence on smart TVs it ignores the multitude of other devices used such as mobile devices, laptops etc. In that sense it is a piecemeal approach and one which will be ineffective in its aims. Janez Media is not arguing that the Bill should extend to other delivery devices, merely pointing out that in focusing on smart TVs it does not address the many other ways that Australians access and consume catch-up services.

¹ <https://www.acma.gov.au/publications/2023-12/report/communications-and-media-australia-how-we-watch-and-listen-content>

² ACMA Trends and Developments in Viewing and Listening 2022-2023 page 5

³ *ibid*



- 2.7. Finally, since the Bill was introduced, there has been much media commentary about the acquisition by Amazon Prime of a package of ICC cricket rights and that warrants some discussion. The acquisition by Amazon of those rights does not represent a seachange in how sports rights are being acquired in Australia or the early stage of multiple future acquisitions by Amazon in Australia. Amazon is very opportunistic in its approach to sports rights globally as the following evidence indicates:
- 2.7.1. Amazon used sport to drive take-up of Prime subscriptions, but it is not required for retaining customers, unlike many other OTT or pay services, so Amazon does not need to keep acquiring multiple rights.
 - 2.7.2. For this reason, Amazon often does not re-bid or renew sports rights. For example, in the United Kingdom, Amazon is not renewing its small Premier League package it has held for the past few years.
 - 2.7.3. If Amazon was really interested in locking up the rights to the ICC package as part of a significant Australian expansion it would have acquired the rights for a period of eight years as was on offer from the ICC. Instead it only acquired the rights for a more modest four year term.
- 2.8. Amazon has always been open that its approach to sports rights outside of the USA is exploratory and data driven. It has also not ruled in or out making some games of the ICC package it has acquired available for free (like it did for its Black Friday NFL game in the US recently) or sub-licensing some rights to a FTA TV network.
- 2.9. The acquisition by Amazon is no different to the acquisition by any other OTT network (eg Optus' acquisition of the FIFA Women's World Cup in 2021) or pay TV operator. It does not provide any evidence that other sports are under threat from being snapped up by tech giants in the future. Other tech companies like Facebook and X have quietly moved away from live sports rights acquisitions in recent years, demonstrating that despite the hubris, there is no evidence of any real risk to sports rights being siphoned to global OTT players.
- 2.10. Finally, Janez Media repeats its earlier advice that the Bill extends the list to multiple women's and para sports event but that this will likely impede the recent growth in the audiovisual coverage of women's sport. Adding events for the sake of the list being gender neutral could have serious medium term ramifications by stifling the investment needed in women's sports and will stall sports bodies attempts to promote the growth of women's sports across a range of audiovisual platforms. There is simply no evidence that adding these events in the Bill is needed as a policy outcome.
- 2.11. Janez Media would be happy to elaborate on any aspect of this submission as required and would ask to be included in any further relevant updates undertaken by the Committee in relation to the Bill.

Jon Marquard
Director
Janez Media
December 2023