



Committee Secretary
Senate Environment and Communications Committee

By email: ec.sen@aph.gov.au

16 February 2024

Dear Secretary

Draft Broadcasting Services (Minimum Prominence Requirements) Regulations 2024

The Special Broadcasting Service (**SBS**) appreciates the opportunity to make a supplementary submission to the Committee's inquiry into the Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 (**the Bill**).

This submission comments primarily on the draft Broadcasting Services (Minimum Prominence Requirements) Regulations 2024 (**the regulations**). We refer to our main submission¹ for a more fulsome exploration of the policy issues the Bill and regulations are seeking to address, and for SBS's submissions on necessary amendments to the Bill.

SBS welcomes the release of the draft regulations as an important step in ensuring informed consideration of the Bill.

Comments on the regulations

SBS welcomes the inclusion in the regulations of the following requirements:

- 'Must carry' requirements for free-to-air (**FTA**) broadcaster video-on-demand (**BVOD**) (clause 6(3)(a))
- Visibility requirements for FTA BVOD apps (clause 6(3)(c))
- Requirements for FTA BVOD apps to be a similar size and shape to other apps (clause 6(3)(d))
- Requirements for FTA BVOD apps to be co-located with similar apps (clause 6(3)(e))
- Requirements for an icon on the primary user interface that takes users to linear SBS services (clause 7(2)(c) and (d))
- Requirements for the icon leading to linear services to be of a similar size and shape of comparable apps for content services (clause 7(2)(e))
- Requirements ensuring the ready availability of electronic program guides, and the inclusion of SBS's services in those guides using logical channel numbers (clause 7(3)) and requirements for included information in the guides (clause 7(3)(e) and (4)).

However, we are concerned that some of the language used in drafting is not sufficiently clear and precise, and may lead to uncertainty regarding what is required for regulated services and devices. This uncertainty could lead to outcomes which are not aligned to the objectives of the overall prominence framework.

In particular, terminology such as 'visible', 'similar size', 'located in the same area', 'visual representation' and 'readily accessible' would benefit from additional detail or guidance in

¹ <https://www.sbs.com.au/aboutus/2024/01/25/prominence-and-anti-siphoning-bill-2023/>



explanatory materials to ensure the Government's policy objectives are clearly communicated and implemented by way of the requirements.

For example, 'visual representation' could be taken to mean a variety of things such as an icon, a tile, or a banner ad. To enable certainty for all stakeholders, additional specificity for definitions such as these should be provided.

An outcome whereby the prominence and visibility of FTA BVOD services are compromised because it is possible for manufacturers of regulated devices to 'read down' the requirements should be avoided through clear drafting at the outset.

An alternative approach may be to specify that FTA BVOD apps should be 'not less prominent' or 'as prominent' than other, comparable apps.

Visibility of applications

Of primary importance to SBS is the presence and visibility of the SBS On Demand app on the primary user interface of regulated television devices when the device is first utilised by the user.

We infer that the provisions in clause 6 are intended to secure this outcome, however additional drafting may be required to ensure this objective is fully met.

The outcome for users must be that the SBS On Demand app (and the apps of other FTA broadcasters) are present and visible at start up on the primary user interface, without the user having to scroll through pages, rails or subsections of the primary user interface. There are a range of designs and layouts utilised by various operating systems, and hence it may not be feasible to make regulations which specify in detail exactly where an app should appear in a given interface.

Hence the emphasis must be on the user experience – ensuring FTA broadcaster apps are able to be seen and launched without the user having to undertake a navigation journey through rails, pages, subsections or any other layout features of the primary user interface – that is, without scrolling or taking any other action.

SBS proposes that additional drafting be added to clause 6 to specify that 'visible' means visible without scrolling or navigating away from the first visible representation of the primary user interface upon start up, or taking any other action.

Inclusion of search and discoverability in prominence regulations

As set out in SBS's main submission on the Bill, the inclusion of search and discoverability requirements in the prominence framework is crucial to protect access to public interest content.

The regulations should be amended to include measures to ensure that content provided on FTA BVOD apps is prioritised, or at the least, not disadvantaged, in search and discoverability tools.

Search and discoverability tools are a key feature of contemporary user interfaces on connected TVs. Users are able to enter keywords or request content via spoken input, and the operating system installed on television will deliver curated results, which in effect, direct and drive a user's access to content. Search results often appear alongside algorithmically driven content recommendations, which provide further potential for manufacturers and platform providers to disintermediate the relationship between viewers and providers of content.

It is increasingly common for these search results to be driven by commercial arrangements or imperatives, with the result that paid versions of content otherwise available for free (and, potentially, produced with public funding support), are promoted in search results. In some



cases, this includes where a user may have already installed the app for the free service – for example, a search for streaming the Logie-winning SBS/NITV kids program *Little J and Big Cuz* will recommend audience members view the content via YouTube or Netflix, rather than the SBS On Demand app.

Position in relation to the Bill

SBS reiterates the key arguments and positions put forward in its main submission to the Inquiry on the Bill. Comments in relation to the regulations should be read in conjunction with SBS's earlier submission.

Of critical importance is the need to address the unjustifiable 18-month delay in commencement of the prominence provisions. Adopting this unwarranted timeframe will significantly compromise the effectiveness of the Bill and unduly delay the benefits to Australian audiences that it seeks to deliver.

The clause implementing this timeframe should be removed from the Bill and replaced with a power for the Minister to make regulations regarding the appropriate timeframe for each prominence requirement, which must be no longer than 6 months from assent. The obligations should also be able to be complied with in respect of sets already manufactured and which are still receiving software updates from the manufacturer.

Thank you again for the opportunity to contribute to the inquiry. If you require further information, please contact Clare O'Neil, Director of Corporate Affairs

Yours sincerely,

James Taylor
Managing Director