



**Senate Inquiry into the provisions of the Broadcasting
Services Amendment (Anti-Siphoning) Bill 2004**

Submission to the Environment, Communications,
Information Technology and the Arts Legislation Committee
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Committee Secretary
Senate Environment, Communications,
Information Technology and the Arts Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

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The Australian Subscription Television and Radio Association (ASTRA) appreciates the opportunity to comment on the provisions of the Broadcasting Services Amendment (Anti-Siphoning) Bill 2004 (**the Bill**).

ASTRA provides this submission on behalf of its members. ASTRA's members include the subscription television platforms and individual channels encompassing over 50 separate Australian and international businesses. A full list of ASTRA's members can be found at www.astra.org.au/members.asp.

Summary

In brief, ASTRA fully supports the provisions of the Bill and seeks further immediate reform to:

1. amend the list to include only parts of events or tournaments rather than the whole of the event or tournament;
2. provide for regular monitoring of the amount of broadcast coverage of listed events; and
3. include a 'use it or lose it' mechanism which would automatically and permanently remove an event from the scheme if a free-to-air broadcaster did not broadcast that event in full.

Overview

ASTRA's views on the anti-siphoning regime are well documented having been thoroughly canvassed in its numerous submissions to forums such as previous Senate Committee inquiries (including the previous 2001 Senate ECITA Committee inquiry into automatic de-listing), relevant ABA, ACCC and Productivity Commission inquiries and most recently the Digital TV Reviews.

The anti-siphoning regime established by Parliament ensures that free-to-air broadcast licensees have priority over subscription TV licensees for the acquisition of all rights to listed (sporting) events. The regime however does not require nor compel free-to-air broadcasters to show those events once acquired. The legislation gives the Minister discretion to remove an event from her anti-siphoning list where free-to-air broadcasters have chosen not to acquire an event.

ASTRA has consistently called for the anti-siphoning scheme to be abolished because it unfairly protects the free-to-air networks from competition and distorts the broadcasting market. However, ASTRA recognizes that it is the policy of both the Government and Opposition to continue to support an anti-siphoning scheme until penetration of subscription television services in Australia increases.

In these circumstances, ASTRA submits that the scheme should be reformed to better balance the interests of free-to-air and subscription television broadcasters. Most importantly, reform would benefit consumers as more sports events would be capable of being seen on television, rather than being hoarded by free-to-air television as is currently the case.

For this reason ASTRA fully supports the provisions of the Bill. The Bill delivers one aspect of the minor anti-siphoning reforms announced by Government in April 2004. While ASTRA is strongly of the view that the anti-siphoning regime remains flawed and is still in need of urgent reform, the provisions of this Bill, which simply amend six weeks to 12 weeks, is a reform that at least attempts to redress the anti-competitive nature of the scheme.

ASTRA supports this policy approach to reduce any unnecessary anti-competitive effects and improve the efficiency of the regime. Such a sensible regulatory change can only be supported. It is a minor amendment that acknowledges the continued administrative hurdles to access rights to unwanted events.

The extension of the automatic de-listing period from six weeks to twelve weeks is an issue which has been widely debated and ASTRA notes that it is supported by both the Government and the Opposition. Although the reform is only a minor administrative change to the scheme, ASTRA agrees that a period of 12 weeks is obviously timelier and more useful than the current automatic de-listing period.

As has been noted by both the Government and the Opposition, the Bill attempts to better balance the interests of subscription television and free-to-air television broadcasters and will improve the efficiency of the operation of the de-listing provision of the anti-siphoning scheme to the benefit of sporting bodies and viewers.

ASTRA also notes that there has been no evidence presented which indicates that a period of 12 weeks before an event takes place is insufficient for a free-to-air network to finalise its telecast plans. The current six week automatic de-listing period, originally introduced to redress the anti-competitive aspects of the scheme, has now been in place for well over two years. A twelve week period provides a better opportunity for subscription television operators to acquire rights to events and market and promote those events to subscribers and potential subscribers.

The provision gives certainty for sports bodies, broadcasters and viewers. It is transparent, reduces administrative burden for all parties and provides a safety net for the Minister to intervene. It is a sensible balance of responsibilities and obligations and does not detract from the objective of the anti-siphoning regime.

Further Reform

Provision for regular monitoring

Since May 2004, ASTRA has been providing monthly monitoring reports of all free-to-air broadcast coverage of anti-siphoning listed events, both the current list and the revised list which takes effect from January 2006. This monitoring aims to determine

exactly which and how many listed events are actually broadcast on free-to-air television in Australia.

Given that the anti-siphoning regime is in place to try and ensure free-to-air coverage of 'listed' events, ASTRA believes it is essential that a formal mechanism be implemented to regularly report on free-to-air coverage of such events and is mindful of the need to have an 'independent' monitor.

ASTRA recommends that an appropriate independent monitor is the industry regulator, the Australian Broadcasting Authority and its successor. ASTRA believes that such monitoring will provide the basis for an effective 'use it or lose it' scheme to ensure the broadest possible live coverage is available for sports viewers.

"use it or lose it" mechanism

One of the major concerns that ASTRA has with the current scheme is that it still covers too many events which are not televised in full on free-to-air television. This problem could be reduced in part by listing only the most important components of the relevant tournament instead of whole tournaments being included on the list.

For example, in relation to the Cricket World Cup, the whole tournament is currently listed. However, it would be more appropriate to only include on the list the final of the World Cup and the semi-final, assuming that Australia participates in that match.

Another major concern is that the free-to-air networks continue to hoard events and not televise them live and in full. This problem can be remedied by introducing a "use it or lose it" mechanism. That is, if a free-to-air network acquires the rights to televise a listed event but hoards it and does not televise it in full, the event will be removed from the list for the duration of the period in which the relevant Anti-Siphoning Notice is in force.

This would act as a positive incentive for the free-to-air broadcasters to televise listed events and would benefit consumers because more sport would be televised on free-to-air television. As the free-to-air broadcasters would be much more likely to broadcast events if they knew that by failing to broadcast those events in full, they would be forced to negotiate for the rights to that event in an open market when the rights thereafter came up for renewal.

These further reforms would ensure a better balance of interests between the free-to-air and subscription television broadcasters and would ensure that the free-to-air broadcasters are "kept honest" in not abusing their protected privileged position which the anti-siphoning scheme delivers to them.

ASTRA would welcome the opportunity to give evidence on these matters and the need for further reform at the proposed public hearings in February 2005.

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