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**Australian Government****Department of Communications,  
Information Technology and the Arts**

our reference

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

Dear Secretary

I write in relation to the appearance of DCITA officers before the Committee on Monday 21 February as part of the Committee's hearings into the Broadcasting Services Amendment (Anti-Siphoning) Bill 2004. During that hearing, officers took two matters raised by Committee members on notice, and I wish to address those matters.

In relation to Senator Conroy's question as to whether an event on the anti-siphoning list had been the subject of a declaration to prevent its automatic delisting (Proof Committee Hansard p.34), there has been one instance in which the Minister has declared an event for this purpose. This related to the previous anti-siphoning list that was in effect before the new instrument was made in April 2004:

- On 3 October 2001, the Minister for Communications, Information Technology and the Arts declared that events included at clause 6B of the anti-siphoning list and that were scheduled to be conducted during November 2001 continued to be included on the anti-siphoning list after their automatic delisting period.
- Clause 6B listed those matches in the preliminary competition for the 2002 FIFA World Cup involving the senior Australian representative team played in Australia and overseas.
- The declaration (the Broadcasting Services (Event Continuation) Declaration No. 1 of 2001) was gazetted on 4 October 2001.


Senator Conroy also asked whether the Government could stop Foxtel showing a program to which it does not have the rights (Proof Committee Hansard p.36). My understanding is that this question relates to the issue of the acquisition of rights to listed events by pay television licensees, such as Foxtel, and is concerned with the possibility that pay TV licensees may be able to broadcast listed events without ever acquiring the rights to those events. I note that the anti-siphoning provisions relate to the acquisition of rights to listed events, not the actual broadcast of those events.

The Department sought advice on the issue of the acquisition of rights to listed events from the Attorney-General's Department in August 1994. The Department received advice to the effect that:

- the acquisition of broadcasting rights to an event could occur through a formal contract of acquisition or through some less formal acquisition arrangement;
- if the licensee broadcasts an event, without committing some breach of the law (for example, breaching a contract or infringing copyright), it follows that the licensee has the 'right' to do so, and it must have 'acquired the right' at some stage;
  - this applies even if another person publicly and formally acquires the right to broadcast the event. That person must have 'permitted' the licensee to broadcast the event before the licensee can broadcast the event without committing some breach of the law;
  - the permission may be a formal assignment of a right, or some less formal arrangement;
  - this applies even if the person who initially acquires the right to broadcast the event is related to the licensee.

I hope this is of assistance to the committee.

Yours sincerely



James Cameron  
Chief General Manager  
Broadcasting

25 February 2005