



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

Second Supplementary Submission to the
Environment, Communications, Information
Technology and the Arts Legislation Committee
3 March 2005

3 March 2005

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

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

The Australian Subscription Television and Radio Association (ASTRA) is providing this second supplementary submission to the Senate inquiry on the provisions of the Broadcasting Services Amendment (Anti-Siphoning) Bill 2004 (**the Bill**) in light of recent announcements by Channel Seven and SBS that each of them have acquired free-to-air TV rights to one-day internationals and Test matches to be played as part of the Australian cricket team tour to England in 2005 (**the Ashes tour**).

As the Committee is aware, the free-to-air television networks have repeatedly claimed in public and to the Committee that because the Ashes tour was going to be broadcast on Fox Sports, it was economically unviable for them to acquire the free-to-air TV rights and broadcast them on free-to-air television.

This has underpinned their arguments about a so-called "loophole" in the anti-siphoning scheme because they have claimed they must have the opportunity to negotiate exclusive rights before pay TV rights are licensed.

Some examples of these types of claims include:

1. David Leckie, the CEO of Channel Seven in a letter to the Hon Peter Beattie MP Premier of Queensland dated 18 November 2004:

"the economics of advertiser funded broadcasting mean that it is not commercially viable to acquire an event like the Ashes and for it to be on pay TV at the same time."

This letter was tabled in the Queensland Parliament and a copy is attached in PDF format as Annexure 1.

2. Shaun Brown, SBS' Head of Television to the Senate Estimates Committee on 14 February 2005:

"the free-to-air economic model requires a degree of exclusivity and volume in order to generate sufficient sponsorship and advertising to justify the bid."

3. Julie Flynn, CEO of FreeTV Australia to the Committee in FreeTV Australia's submission relating to this inquiry claimed:

“As a result [of the rights being offered to free-to-air networks on a non exclusive basis] the event will only be available to pay television subscribers.

In the complex world of sporting rights exclusivity is of paramount importance to advertisers.

Advertisers demand exclusivity to maximise the available audience and the value of their advertising dollar.”

There are numerous other examples of similar public statements but these three amply illustrate these claims.

ASTRA has consistently rejected these claims and the arguments raised by free-to-air television about the existence of a so-called “loophole” in the legislation.

Our submission of 28 February highlighted a small number of the many examples where there has been simultaneous coverage on both free-to-air television and subscription television of major sporting events.

The events of this week amplify and validate ASTRA's position on these points. The decision by both SBS and Channel Seven to acquire non-exclusive rights to upcoming cricket matches, for which Fox Sports has acquired subscription television rights, proves that there is no “loophole” and that Fox Sports had not prevented a free-to-air network from bidding for or acquiring rights to these events.

We trust that the Committee will closely examine this issue and reach the same conclusion.

If you require any further information or clarification of the material provided please do not hesitate to contact me.

Yours sincerely

Debra Richards
Executive Director

	Paper No.: 2310	
	Date: Tabled	
	Member: Premier	
<input checked="" type="checkbox"/> Tabled	<input type="checkbox"/> Tabled, by leave	David Leckie Chief Executive Officer Seven Television
<input type="checkbox"/> Incorporated, by leave	<input checked="" type="checkbox"/> Remainder incorporated, by leave	
Clerk at the Table:		

18 November 2004

Peter Beattie MP
Premier of Queensland
PO Box 185
Brisbane Albert Street
QLD 4002

Department of the Premier and Cabinet - 10000 mail		
Received in Records	FILE No LM/00001	FILE No.
	FOLIO ID 18/11/04.110	
Tracking No. 24/11/04	Mail No. 67104	



Seven Network
Limited
ABN 21 052 816 789

Australia's Olympic
Television Network

28-42 Pirrama Road
Pyrmont NSW 2009
Australia

Postal Address
PO Box 777
Pyrmont NSW 2009
Australia

Telephone
+61 2 8777 7177
Facsimile
+61 2 8777 7144

Dear Premier

Thankyou for your letter of 9 November 2004 concerning the Ashes Test series.

I share your concern that the Ashes Series will not be available on free television next year. Ultimately, this is the result of a loophole in the anti-siphoning rules.

The anti-siphoning rules are intended to ensure the availability of important sporting events on free television by preventing pay TV from purchasing rights to events on the anti-siphoning list until they have been acquired by a free-to-air broadcaster. However, a drafting loophole allows pay TV channels to acquire listed events before they are offered to free to air networks. This is because the rules only apply to pay TV licensees such as Foxtel and channel providers such as Fox Sports are not licensed.

The economics of advertiser funded broadcasting mean that it is not commercially viable to acquire an event like the Ashes and for it to be on pay TV at the same time. Complementary coverage on free and pay TV does work for some sporting events but showing the same thing at the same time does not. It serves only to split the audience and to significantly reduce the level of advertising revenue that can be earned from the broadcast.

This is particularly the case where a free-to-air station does not have an association with the sport in the minds of the public. In that case, it is even harder to achieve the necessary audience numbers attractive to advertisers.

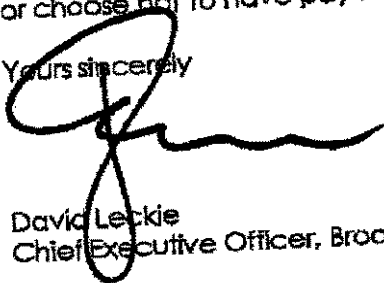
The Seven Network had discussions with the English Cricket Board in mid-2003 in relation to acquiring the rights to the 2005 Ashes tour. However from the start the rights were only offered a non-exclusive basis as they had already been sold to Fox Sports before they were offered to us.

When we broadcast the Ashes in 2001, Seven ensured that all sessions of play were available on free television by entering into an arrangement with community television to broadcast any sessions we were unable to cover. However arrangements of this kind are only possible where the broadcaster is able to ensure coverage is complementary rather than head to head.

Free-to-air broadcasters have been consistently calling for the loophole to be closed for many years. In fact when we first became aware that the Ashes were in danger of being siphoned to pay television, Seven raised the issue in the strongest terms with both the ALP and the Government and called on them to fix the loophole. This did not occur and unfortunately our predictions have been proven correct.

I am concerned that other listed events might also be in danger of disappearing from free TV as long as this loophole remains. Seven will continue to lobby for legislation to address this important issue in the interests of the 75% of Australians who cannot afford or choose not to have pay TV.

Yours sincerely



David Leckie
Chief Executive Officer, Broadcast Television