

25 February 2005



Ms Louise Gell
Committee Secretary
Senate Environment, Communications, Information
Technology and the Arts Committee
Department of the Senate
Parliament House
Canberra ACT 2600

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**Supplementary information for the Senate Environment, Communications, Information
Technology and the Arts Committee inquiry into the provisions of the Broadcasting
Services Amendment (Anti-Siphoning) Bill 2004**

Dear Secretary,

The ABC gave evidence at the 21 February 2005 hearing of Senate Environment, Communications, Information Technology and the Arts Committee's inquiry into the provisions of the Broadcasting Services Amendment (Anti-Siphoning) Bill 2004. At that hearing, the ABC was asked to comment on a letter to the Committee dated 18 February 2005 from Octagon CSI in relation to rights negotiations for the 2005 Ashes cricket test series on behalf of the England and Wales Cricket Board (ECB). While the ABC was only able to make preliminary comments on the letter during the hearing, it has now undertaken an extensive search of its records and is able to provide the following detailed response.

The letter in question was tabled by representatives of the Premier Media Group (PMG). It states that in mid-2001 Octagon approached free-to-air broadcasters in relation to the sale of the rights to the 2005 Ashes series and that the ABC "indicated that [it] had no interest in pursuing the opportunity to acquire the series". The claim that these events occurred in mid-2001 is significant in that they thus predate the sale of the subscription television rights to Fox Sports, which the letter gives as occurring in May 2002.

The ABC has undertaken a comprehensive search of its records and cannot find any record of approaches from Octagon or the ECB in relation to the 2005 Ashes series before July 2003.

The ABC's search has involved retrieving and reviewing archived files as well as currently-held files in areas relevant to television sport. The issue has also been raised with staff who were involved in these areas in 2001, including the then Head of Television Sport.

No files have been identified as containing any correspondence from Octagon, the ECB or other parties relating to the 2005 Ashes prior to emails received in July 2003. In addition, there is no evidence of any file notes, notes of meetings or phone calls indicating any approach to the ABC regarding the Ashes.

Staff who would have been involved in any discussions of such rights in 2001 have not been able to recall any approaches or offers either verbally or in writing regarding the 2005 Ashes during 2001. Staff also advised that such a significant matter as the Ashes would have been upwardly referred for decision. By comparison, relevant staff do recall the July 2003 email correspondence and their recollection is of this as the first approach to the ABC.

In addition, the ABC has checked its January 2002 anti-siphoning report to the ABA. This is a report provided on a six-monthly basis outlining the offer and use of any events on the anti-siphoning list. The January 2002 report is for the period July–December 2001. The report does not record any offers regarding the 2005 Ashes.

As the ABC can find no record or recollection by staff of any approach, it has written to Octagon, asking if they are in a position to provide the ABC with a copy of any relevant correspondence or other information. Octagon have replied that they will “investigate [their] offsite archive”; they suggest this may entail a lengthy search.

The ABC will continue to check its records. However, the current, extensive search and review has identified no offer of the rights to the 2005 Ashes in 2001.

Accordingly, the ABC does not believe that the account given in Octagon’s letter is accurate. While the company may have offered the rights to the 2005 Ashes to commercial free-to-air broadcasters, current indications are that it did not make such an offer to the ABC.

Instead, the ABC was first invited to bid for the rights in July 2003 by the ECB, with whom the Corporation has had all discussions of the rights to the 2005 Ashes.

The ABC attaches a copy of the first available communication in relation to the rights to the 2005 Ashes, namely an email message dated 23 July 2003 from the Commercial Director at the ECB to the then Head of ABC Television Sport. It begins with the statement “I am in the process of offering the free to air television rights to the Ashes in Australia and was wondering if the ABC could be interested in acquiring them”. The ABC submits that this can only be interpreted as the initial invitation to commence negotiations. Further, the message does not reflect previous communication in relation to the Ashes between the ABC and the ECB, or any other body acting on the ECB’s behalf, as might be expected if such communication had occurred.

The email message also states that the ABC “should be aware that we [the ECB] have already concluded a deal with Fox who can simultaneously go live”. Thus, as the ABC has argued, both in its submission to the present inquiry and in its evidence at the 14 February 2005 Senate Additional Estimates hearing, the subscription television rights had been sold before it was given an opportunity to bid for the free-to-air rights.

The ABC also believes that the question of whether offers of rights to free-to-air broadcasters were made before they were sold to the subscription television industry is beside the point. What is relevant is that a subscription television channel acquired the rights to the Ashes before they were either sold to a free-to-air broadcaster or removed from the anti-siphoning list. While this may have been permissible under the current loophole in the anti-siphoning rules, the ABC believes that it is contrary to the spirit of those rules. Further, Octagon claim that in 2001 all free-to-air broadcasters had been given a “full and final opportunity” to purchase the rights to the 2005 Ashes and had declined. If that was the case, it might be asked why no application was made for the event to be removed from the anti-siphoning list at that time. Instead, it appears that the ECB is now, for the first time, applying to have the 2005 Ashes series delisted.

Finally, the ABC draws the Committee's attention to a curious inconsistency between Octagon's letter and further evidence about the negotiation process provided during the hearing. During the hearing, the Committee was advised that Octagon had previously handled rights negotiations on behalf of the ECB, but that the ECB had "brought the negotiations in-house at some point in the past two years" (ECITA Committee Hansard, 21 February 2005, p.34). This evidence sits oddly with the second page of the Octagon letter, which presents Octagon as handling negotiations throughout when it states that "from May 2002 until January 2005, Octagon did not receive any interest in (or offers for) the Ashes series from any of the FTA broadcasters in Australia." The ABC is curious as to why Octagon did not instead simply state that it was not involved in negotiations on the ECB's behalf after a certain point, as indicated in this additional evidence, if that was the case.

I hope this further advice is of assistance to the Committee in its consideration of the issues surrounding the Bill.

Yours faithfully,

P.P. 

Michael Ward
Head of Policy and Administration
ABC Television

Refer Attachment A

David Sutton

From: Mark Sibley [Mark.Sibley@ecb.co.uk@NET@VAXC]
Sent: Wednesday, 23 July 2003 7:13 PM
To: 'barlow.geoff@abc.net.au'
Subject: Re: The Ashes 2005



Untitled



Untitled

Dear Geoff,

I am in the process of offering the free to air television rights to the Ashes in Australia and was wondering if the ABC could be interested in acquiring them especially in light of the fact that you have recently been broadcasting the series between Australia and Bangladesh.

The Ashes Series in 2005 will consist of 5 Test matches and a Triangular One Day Series consisting of 10 games involving Australia, Bangladesh and England. In total there will be 35 days of international cricket available. Test matches will commence at either 10:30/10:45 and conclude between 18:00/19:00. The Triangular One Day Series commences at the same time with the exception of Day/ Night games which will start at 14:30 and end at approx: 22:15. Normally three of the ten Triangular ODI matches are Day/ Night games.

You should be aware that we have already concluded a deal with Fox who can go simultaneously live.

Please let me know your thoughts regarding the above and if you are going to be at Sportel in Monaco in September, it would be good to meet.

Best wishes,

Mark Sibley.

ECB, Commercial Director.

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