

ATT: Sophie Dunstone

Senate Environment and Communications Legislation Committee

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10 April 2012

Dear Ms Dunstone

**Broadcasting Services Amendment (Anti-siphoning) Bill 2012**

Further to my email of 4 April 2012 please find attached the submission made by Viacom International Media Networks in relation to the Second Exposure Draft of the Broadcasting Services Amendment (Anti-siphoning) Bill 2011.

We wish that this submission be taken into consideration in relation to the Broadcasting Services Amendment (Anti-siphoning) Bill 2012.

Kind regards

  
Ant Horn  
VP, Business & Legal Affairs and Operations  
Viacom International Media Networks Australia & New Zealand



Senator the Hon Stephen Conroy  
Minister for Broadband, Communications and the Digital Economy  
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21 September 2011

Dear Minister

### **Broadcasting Services Amendment (Anti-siphoning) Bill 2011**

Viacom International Media Networks Australia is a unit of Viacom Inc (**Viacom**). Viacom is one of the world's largest media networks. Through its BET Networks, MTV Networks and Paramount Pictures divisions, Viacom connects with audiences through compelling content across television, motion picture, online and mobile platforms in more than 160 countries and territories. Viacom operates approximately 170 media networks reaching more than 600 million global subscribers;

Viacom owns MTV Networks Australia Pty Limited (**MTVNA**) and Nickelodeon Australia Management Pty Limited (**Nickelodeon**) which respectively operate the MTV and Nickelodeon branded subscription television channels in Australia.

Viacom is also a significant distributor of audio-visual content to free-to-air and subscription television, digital media services and DVD in Australia.

MTVNA and Nickelodeon are both members of ASTRA and support the recent submission made by ASTRA regarding the proposed changes to the anti-siphoning regime.

We would also like to add some specific comments:

### **Viacom and Australian Subscription Television**

Viacom's Australian business involves diverse content distribution but our core local presence is based on our subscription television operations.

Viacom has been a key player in Australian subscription television since 1995 when the Nickelodeon channel first launched.

In 2004, Viacom reacquired, from Optus, the licence to use the MTV brand in Australia and established MTVNA.

Nickelodeon and MTVNA now provide 6 subscription television channels in Australia and employ over 120 fulltime staff.

Viacom's ability to continue this contribution to the Australian economy and local film and television industry is dependent on the long term health of the Australian subscription television industry. A fair and open market for sports rights is a key element of this long term health.

It is short sighted and unrealistic to expect international media organisations such as Viacom to continue to make ongoing investment in the Australian subscription television if the regulatory regime is so unfavourable to that industry.

## **Minister's Discretion**

We acknowledge that it is important for legislation to allow some degree of ministerial discretion to enable unusual or significant circumstances to be addressed appropriately.

We are concerned, however, that the level of discretion that may be exercised by the Minister under the draft legislation creates uncertainty and may make the legislation unworkable. This seems more so because there are no specific guidelines or criteria that the Minister must apply in making a determination.

We also note that the broad discretionary power available to the Minister enables, for example, the anti-siphoning list to be amended by legislative instrument thereby significantly diluting the consultation process.

The uncertainty created by this broad ministerial discretion is very likely to impact the confidence of industry participants to make business decisions including how and where to invest.

While Viacom is not currently active in the area of sports rights, multi-national companies such as ours look closely at the regulatory environments of the territories in which they operate. Decisions to invest or expand in particular territories often hinge on the clarity and favourability of the legal and regulatory environment.

We are also concerned that this expansion of ministerial discretion could be a precedent for increased discretionary powers in other regulatory areas that affect the media.

## **Reduction in bargaining power for sports rights holders**

As a significant international producer and distributor of audio-visual content we are sensitive to regulation that has the effect of reducing competition and the ability of rights holders to obtain appropriate value for their content in an open market.

Looking across Viacom's international operations it is apparent that the anti-siphoning regime in place in Australia is unique in its scope and the extent to which it provides protection to privately owned commercial enterprises. We respect that regulation needs to be tailored for each territory and its specific needs but the Australian situation is met with surprise when we discuss it with our international colleagues.

Our view is that a broad anti-siphoning regime and extensive anti-siphoning list such as those in place in Australia reduce the bargaining power of sports rights owners by giving one section of the available market, namely free-to-air broadcasters, a negotiating head start.

Viacom has played a significant role in the Australian subscription television industry since its inception. We strongly believe that the Australian communications and media landscape is stronger and more vibrant with a robust Australian subscription television industry. A fair, balanced and practical regulatory regime in respect to sports rights is a key factor in the long term future of Australian subscription television and the broader media landscape.

In conclusion we would like to restate our support for the submission by ASTRA regarding the Second Exposure Draft of the Anti-Siphoning Legislation.

Kind regards

Katrina Southon  
Managing Director  
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