



Australian Government

Attorney-General's Department

Civil Law Division

13/5611

9 July 2013

Sophie Dunstone
Committee Secretary
Senate Standing Committee on Environment and Communications

By email

Dear Ms Dunstone

Inquiry into the effectiveness of regulatory arrangements to deal with the simultaneous transmission of radio programs

Thank you for your email to Mr Roger Wilkins AO regarding the current inquiry by Senate Standing Committee on Environment and Communications into the effectiveness of regulatory arrangements to deal with the simultaneous transmission of radio programs. Mr Wilkins has asked me to reply on his behalf.

The Department does not consider it appropriate to comment in detail on Commercial Radio Australia's legal advice. The Department reiterates the comments made in response to questions on notice on 6 June 2013 and 5 July 2013.

However, the Department notes that both the opinion and the summary document assert that the Department agrees 'that copyright protection would be lost for broadcasts which are simulcast online'. This is an overstatement of the Department's position. In my letter dated 6 June 2013, I wrote:

'The Department acknowledges there may be a risk that material ordinarily unprotected by copyright that makes up a broadcast (for example live content) may not be protected as a broadcast where it is transmitted on the internet rather than broadcast. The Department considers this risk may be mitigated through industry practices. The Department notes that all copyright protection in underlying content (films, sound recordings, musical works, and literary works) would continue to apply irrespective of whether the transmission is described as a broadcast or a communication to the public.'

However, the Department suggests these industry practices may involve a broadcaster making a recording of the broadcast before or at the moment of simulcast. The simulcast material would then not lose its status as a 'broadcast' as the material being communicated would be protected as a cinematographic film or sound recording of the initial broadcast.

In preparing this letter, I have consulted with the Department of Broadband, Communications and the Digital Economy.

Yours sincerely

Matt Minogue
First Assistant Secretary
Civil Law Division