

8 July 2013

Christopher Lawley  
Senior Research Officer  
Senate Standing Committee on Environment and Communications  
S1.57 Parliament House  
CANBERRA ACT 2600

Dear Chris

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

I refer to your email dated 2 July. Here are SBS's responses:

1. What would be the potential broadcasting, copyright and other legal implications for SBS should the Minister for Broadband, Communications and the Digital Economy issue a determination similar to the effect outlined by the CRA in their submission to the inquiry of ensuring strictly radio simulcasts are considered to be a 'broadcasting service' under section 6(1) of the *Broadcasting Services Act 1992*?
  - In SBS's view it would be unfortunate if the Minister issued a determination which applied strictly to radio simulcasts and did not extend to television simulcasts of the national broadcasters. The national broadcasters are funded by tax payers to provide broadcasting and digital media services to the nation. As such, their purpose and concerns are different to those of commercial broadcasters. SBS, as a national broadcaster, is keen to enable its audience to access SBS programs by the most convenient means available to each audience member.
  - It would be unworkable for SBS if its radio and television simulcasts were to be treated differently. SBS's ongoing blanket licences for broadcast of music have always covered both radio and television services in the one agreement. Payment is calculated according to a formula based on income including government appropriation. Appropriation is not tied to delivery of services by any particular platform.
  - Copyright protection for the simulcast of SBS television programs which do not contain underlying copyrights could be jeopardised as the copyright protection afforded to the simulcast is unclear. Examples include simulcasts of live sporting events such as the Tour de France, and the FIFA World Cup. There are a number of practical implications. SBS may not have copyright grounds to prevent third parties copying and exploiting simulcast programs for which SBS has paid a premium for exclusive broadcast rights. Further, organisations such as FIFA, which are concerned at piracy of their properties, may ultimately seek to limit the ability of SBS to simulcast the broadcast of the event, thereby restricting means of access for Australian audiences.

**A story still growing:** We thought six billion was a lot of stories to tell... until the world population officially clocked seven billion, and we re-set our sights on a brand new number. Seven billion stories (and counting) might seem like a big ask, but if anyone's up to the task, it's SBS, the world's most multicultural broadcaster, attuned to the diverse needs of a growing nation.

*Seven Billion Stories and counting...*

2. What would be the potential broadcasting and legal implications to SBS of the Minister for Broadband, Communications and the Digital Economy issuing a determination to the effect outlined by CRA of ensuring strictly radio simulcasts are considered to be a 'broadcasting service' under section 6(1) of the *Broadcasting Services Act 1992* with a condition the broadcasters do not simulcast outside of their designated licence areas? What are the practical implications of imposing such a condition?

SBS is a national broadcaster established by virtue of the Special Broadcasting Service act 1991. As such it does broadcast or provide simulcasts into a designated licence area, but broadcasts to the whole of Australia.

3. What are the implications for SBS should a new determination not be issued by the Minister?

If a new determination is not issued, SBS would anticipate that it would be required to pay a separate simulcast fee to rights owners for simultaneous transmission of the same content. However, there would not be any corresponding growth in audience as a result of payment of the extra fees as audiences are already accessing SBS programs on a range of platforms. Rights owners who are concerned about the uncertainty of copyright protection for simulcasts may seek to restrict SBS's ability to provide simulcasts of broadcast programs.

4. What is the understanding of SBS of the intent of the existing regulations and how they have been understood to apply until recent court rulings?

The existing determination was issued in 2000, at the advent of internet communications in the media sector. SBS understands that the intent of issuing the determination was to provide some clarity during a period of technological disruption and transition. In practical terms, SBS has not paid for the right to simulcast as part of the broadcast licence with any collecting society. As audience consumption patterns have settled, SBS understands that the simulcast of television and radio broadcasts is regarded by audience as part of the broadcast. Individuals may choose to access a program which is broadcast at a particular time by means of the device which is most convenient to them. The proposed determination could be revisited in the future should changes to technology or business models mean that it is out of date.

Yours sincerely,

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