

Subject: URGENT FINAL KEY POINT FOR Senate Inquiry - Simulcast

Dear Committee

Please find below a final and key point that we would like to place before the Committee after reviewing the latest comments from the DBCDE and as the Committee considers is report.

Please note this is being sent on behalf of ABC, CBAA, CRA and SBS – not just on behalf of CRA alone.

The latest DBCDE advice is largely a repetition of its earlier commentary which has been dealt with by the advice submitted earlier provided by John Hennessey SC.

However, there is one very key point on which DBCDE is incorrect. DBCDE states:

"The Department notes that this proposal would, in essence, seek to modify a broadcasting regulation to address a copyright issue. Specifically, the proposal would amend broadcasting legislation, via legislative instrument, to address a dispute over copyright royalties between the CRA and the Phonographic Performance Company of Australia (PPCA). This approach risks unintended consequences in terms of the scope and interpretation of broadcasting legislation to address what is essentially a commercial dispute, which may be better addressed through commercial negotiations between the parties."

This statement deliberately ignores the actual situation that had existed since 1999 until less than six months ago. Please note:

- the broadcasters' (ABC, CBAA, CRA and SBS) proposal seeks to restore the position which had existed since 1999 until the Appeals Court's Decision;
- any unintended consequences would be known by now as they would have emerged over the last 14 years;
- the "cap" issue is entirely separate and should not be used to misdirect or confuse this straightforward issue;
- if the Determination is not made the very real and actual consequence, due to inaction, is that broadcasters may cease simulcasting for fear of copyright infringement.

We respectfully request once again that the real and former longstanding status quo be returned with a recommendation for the Minister to make the Determination as requested as soon as possible.

Yours sincerely

Joan Warner
Chief Executive Officer
Commercial Radio Australia