



12 July 2013

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

By email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

Dear Sir

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

Australian Football League (AFL) has recently become aware of the Inquiry.

The purpose of this letter is to provide the Senate Standing Committee on Environment and Communications (**Committee**) with a brief background on the licensing of AFL's radio rights in Australia and the licensing of online audio rights for AFL matches, and to briefly advise of issues associated with the subject matter of the Inquiry.

**Australian Football League**

AFL is a not for profit organisation. AFL conducts the AFL competition throughout Australia and is the governing body for Australian football. AFL is also a member of the Coalition of Major Professional and Participation Sports (**COMPPS**).

**AFL Media Rights generally**

AFL licences rights to communicate AFL matches and events on free to air television, subscription television, radio, Internet (including IPTV) and mobile device platforms (**media rights**). The media rights are licensed on a live, delayed and/or highlights basis.

Licensing of AFL's media rights is crucial to the AFL, the AFL Competition and Australian football. Broadcasting of AFL matches and events allow supporters and viewers to connect with and follow the AFL competition.

AFL receives significant revenues from the sale of each component of its media rights, including its radio rights. The revenue from the licensing of AFL's media rights is the major source of revenue for AFL.

After meeting operational costs, AFL allocates its operating surplus through (amongst other things) distributions to AFL clubs; through grants for game and facility development, throughout Australia and overseas; payments to the AFL Players Association; supporting grassroots football programs and infrastructure and venue improvements - to assist the upgrade and development of various stadiums around Australia where AFL matches are played.

**Australian Football League**



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## **AFL Radio Rights**

The Inquiry relates to the transmission of radio programs via broadcasting services and the Internet.

AFL currently licenses various broadcasters (both commercial broadcasters and a national broadcaster, ABC) to broadcast matches in the AFL Competition via radio. Each AFL radio rights licensee is allocated a specific geographic area within Australia that accords with its licensed area (with the ABC licensed nationally). Details of the current AFL radio rights licensees, and their respective licensed markets is **attached**.

None of the AFL's radio rights licensees are licensed to communicate via the Internet or on mobile platforms. AFL radio rights licensees make available their broadcasts for exclusive Internet communication via AFL's online and mobile licensee, Telstra.

## **The Inquiry**

It is very important for AFL to:

- (a) continue to be able to license audio rights (and audio-visual rights) in respect of AFL matches and events on segmented platforms, including the separate licensing of radio broadcasts and Internet transmissions of radio programs;
- (b) restrict communications by radio rights licensees to their geographic licence areas; and
- (c) protect (through copyright law or otherwise) any communications of AFL matches and events, whether made by a radio broadcast or Internet transmission.

AFL would be very concerned if the Committee was to propose any changes to the law that impacted adversely on AFL's current and future licensing arrangements.

In that context, AFL does not support the proposed Ministerial Determination proposed by ABC/Commercial Radio Australia (**CRA**) as part of the Inquiry (**proposed determination**). AFL believes the proposed determination:

- incorrectly seeks to merge the fundamentally different concepts of broadcasts and Internet transmissions.

The communications and copyright law relating to this area is complex and inter-related. An amendment to the relevant Ministerial Determination will have communications and copyright law implications. Given the complexity of the relevant legislation, AFL is concerned there is potential for unintended consequence to arise from a piecemeal amendment to the relevant Ministerial Determination.

The proposed determination is inconsistent with the approach of AFL (and other rights holders) in segmenting/differentiating 'traditional' broadcast from Internet transmissions. This segmenting is an established and important method for rights holders to increase value in the sale of their important and valuable media rights.

- has the potential to impact on existing and future media rights agreements of AFL.

- raises issues regarding the geographical scope / area of the broadcast/Internet transmission.

Confining communications to the specific licensed area is not an issue that can be addressed easily. A condition that broadcasters not simulcast via the Internet outside their designated licence area may provide limited protection for AFL as geo-blocking may be, firstly, practically difficult to implement and, secondly, may be capable of circumvention.

Further, the proposed determination has the potential to impact on the ability of AFL (and other rights holders) to commercialise international media rights as broadcasts could be simulcast on the Internet. Even if geo blocking is sought to be employed, there may be issues with effectiveness and circumvention.

- does not properly address the copyright issues associated with certain live communications of sporting and other events, identified by ABC/CRA; and
- raises communication and copyright policy issues which require further, detailed consideration. For example, AFL notes the Department of Broadband, Communications and the Digital Economy and Attorney Generals department has raised a number of significant issues regarding the proposed determination.

In addition, the proposed determination could have the effect of extending the broadcast/broadcasting exceptions under the *Copyright Act* to internet communications by ABC/SBS/radio licence holders. The Australian Law Reform Commission inquiry into 'Copyright in the Digital Age' is currently seeking submissions on whether these exceptions should apply to internet communications. The introduction of the proposed determination would pre-empt the recommendations of the ALRC following submissions from relevant stakeholders. This matter should be dealt with after the current ALRC inquiry.

#### **Other matters**

AFL understands the Inquiry is concerned with radio simulcasts only. For the record, AFL sees no reason to amend the current Ministerial Determination to allow simultaneous transmission of television programs via the Internet as part of the definition of 'broadcasting service' under the *Broadcasting Services Act*.

This correspondence has been prepared and provided as a matter of urgency to alert the Committee of some of AFL's issues regarding the proposed determination. If you have any questions in relation to matters raised in this correspondence or other aspects of the Inquiry, please contact me.

Yours faithfully

**Simon Lethlean**  
**General Manager - Broadcasting, Scheduling and Major Projects**  
**Deputy General Counsel**



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# AFL Radio Rights—National Coverage

## Regional Australia

- › **ABC Radio, Southern Cross Austereo, Crocmedia, NIRS** – Coverage into Tasmania, Northern Territory, Australian Capital Territory, Regional New South Wales, Regional Queensland, Regional Victoria, Regional South Australia and Regional Western Australia.



## Perth

- › **6PR 882** – Obligated to broadcast all West Coast Eagles and Fremantle matches, plus right to broadcast all other matches (minimum 4 per round). All finals to be broadcast.
- › **ABC Radio** – Obligated to broadcast all West Coast Eagles and Fremantle matches, plus right to broadcast all other matches (minimum 5 per round). All finals to be broadcast.
- › **92.9FM** – Right to broadcast all matches.



## Adelaide

- › **Triple M & FIVEaa** – Obligated to broadcast all Adelaide Crows and Port Adelaide matches, plus right to broadcast all other matches (minimum 4 per round). All finals to be broadcast.
- › **ABC Radio** – Obligated to broadcast all Adelaide Crows and Port Adelaide matches, plus right to broadcast all other matches (minimum 5 per round). All finals to be broadcast.



## Geelong

- › **K-Rock** – Obligated to broadcast all Geelong Cats matches, plus right to broadcast additional 2 matches. All finals to be broadcast.



## Brisbane

- › **ABC Radio** – Obligated to broadcast a minimum 3 matches per round, including all Brisbane Lions and Gold Coast Suns matches. All finals to be broadcast.
- › **Triple M** – Obligated to broadcast all Brisbane Lions matches, plus right to broadcast all Gold Coast Suns matches. All finals to be broadcast.
- › **4BC 1116** – Obligated to broadcast all finals in which Brisbane Lions or Gold Coast Suns compete.



## Gold Coast

- › **ABC Radio** – Obligated to broadcast a minimum 3 matches per round, including all Brisbane Lions and Gold Coast Suns matches, plus right to broadcast all other matches. All finals to be broadcast.
- › **GOLD FM** – Obligated to broadcast all Gold Coast SUNS matches, plus right to broadcast all other matches. All finals to be broadcast.



## Sydney

- › **ABC Radio** – Obligated to broadcast all Friday night matches, plus all Sydney Swans and GWS Giants matches, plus right to broadcast all other matches. All finals to be broadcast.
- › **Triple M** – Obligated to broadcast all Sydney Swans matches, plus right to broadcast all GWS Giants and other matches. All finals to be broadcast.
- › **2UE 954** – Obligated to broadcast all finals in which Sydney Swans or GWS Giants compete.



## Melbourne

- › **Triple M & 3AW 693** – Obligated to broadcast all Friday night, Saturday afternoon, Saturday night and Sunday afternoon matches with the right to broadcast Saturday and Sunday twilight matches. All finals to be broadcast.
- › **774 ABC Melbourne & 1116 SEN** – Obligated to broadcast all Friday night, Saturday afternoon, Saturday twilight, Saturday night, Sunday early and Sunday twilight matches. All finals to be broadcast.

