

From: Joan Warner

Subject: Further comment on latest Attorney General's Comments

Dear Committee

On behalf of the Broadcasters – ABC, SBS, CBAA and CRA – we would like to put the following comments before the Committee on the most recent Attorney General's response :

- It is obvious that the Attorney-General's Department has not read the opinion of JM Hennessy SC dated 1 July 2013, which addresses the copyright implications raised by the Department in its earlier advice.
- The 'status quo' erroneously mentioned by the Attorney General's Department is actually the position adopted by all participants in the industry up until 2009 and by all participants in the industry (other than PPCA) and Justice Foster of the Federal Court until the decision of the Full Court of the Federal Court on 13 February 2013 in *Phonographic Performance Company of Australia v Commercial Radio Australia Limited* [2013] FCAFC 11 (see paragraph 8 of the joint submissions of CRA, CBAA, the ABC and SBS dated 10 May 2013). It is not correct to say that the 'status quo' is the decision of the Full Court made less than 6 months ago.
- The ALRC in its Copyright and the Digital Economy Discussion paper raised a number of issues in relation to the concept of a 'broadcast' and proposed that in the context of media convergence and given the desirability for a technology-neutral approach to copyright reform, the concept of 'broadcast' should generally extend to similar content made available using the internet (paragraph 16.4 of the Discussion Paper). The issues raised by the ALRC in its Discussion Paper suggest that if the Proposed Determination is not made it could result in broadcasters having to cease simulcasts.

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