

Anti-siphoning Review

Commercial Broadcasting Section
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
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AANA Submission: Sport on television: A review of the anti-siphoning scheme in the contemporary digital environment

The Australian Association of National Advertisers (AANA) welcomes the opportunity to provide comment on the above review discussion paper dated August 2009.

AANA has long considered the anti-siphoning regulations to be anti-competitive and not necessarily in the best interests of the community. AANA acknowledges there will be circumstances where broadcasting regulation can be justified to ensure community access to sporting event coverage. However, AANA considers these should preferably be managed as the exception rather than the rule and in-principle agrees with the Productivity Commissions' recent recommendation in relation to anti-siphoning (see below).

AANA suggests that the current review provides an opportunity to completely re-visit the anti-siphoning scheme. Indeed, the current aims of the anti-siphoning scheme cannot be maintained given the new (and ever evolving) media environment with its lack of consistent, or achievable, regulatory 'supervision' at the national and international level. In acknowledgement of the complexities of maintaining sport and broadcast rights AANA considers that a similar scheme cannot be applied across the media and that a new way of managing the objectives of the scheme can be achieved through government policy position statements and innovative commercial resolutions to rights protection (as legal mechanisms are often limited).

Rather than maintaining broadcasting restrictions, AANA firmly believes the underpinning role of advertising in sustaining broadcast content, including coverage of sports events, and the revenue this provides to sporting organizations to also support sports development in the community, provides the basis for ensuring a market that delivers the widest opportunities for the availability of advertising 'space' across the media and thus the access to events by the public.

Advertising and related marketing investments are a major stimulator of the Australian economy, and AANA considers that it makes sense at a time when the Federal Government is looking for means of providing economic stimulus for advertisers to be encouraged to play their part. Advertising investments cover every area and every interest in Australia, and could be a key contributor to stimulating the Australian economy, including the sport sector. According to data from the Commercial Economic Advisory Service of Australia (CEASA) the advertising, marketing & media industry provide in excess of \$30 billion contribution to the economy annually.

There is evidence, both internationally and nationally, that media and sports rights holders are actively developing new business models in relation to broadcasting of events. These include examples of

collaborative and rights sharing arrangements. The International Olympic Committee (IOC) recently negotiated European broadcast rights on the basis of widest broadest possible coverage including free-to-air TV. Industry recognizes that the current model on the allocation and use of those rights cannot be maintained into the future. As with any other economic and social changes a period of 'structural' adjustment is to be expected as new markets and rights holders in those markets are defined. AANA believes the future will see sports events available to consumers through a mix of media, some of which will be free and others not. Consumers have an ever increasing expectation in relation to an innovative media delivering on how and when content can be made available and accessed.

AANA considers that in a competitive market free-to-air television will continue to have some advantage in that it can still achieve greater viewer coverage than other forms of media for the longer-term viability of their sport. AANA notes that the discussion paper illustrates that the audiences for most popular events for free-to-air TV far exceeded those for subscription TV. We also note that access to events via other media is still somewhat limited within the Australian community. For example, in 2006–07, 64 per cent of Australian households had home internet access¹ and at the end of 2007, subscription TV had a national household penetration rate of about 27 per cent².

For government, any future commitment to some form of ensuring broadcast of events of national significance, including sporting, are available free to the public may also be addressed differently. For example, government may articulate the objective of free broadcast access to significant events (short list based on criteria) through a policy statement (rather than regulation) which is not prescriptive on how this is to be achieved. As government is often a major financial contributor to such events it could make it conditional for that support for the rights holder to ensure a level of free public access to event coverage. This model is also achievable for those sports not staged in Australia. For example, government provides significant support to sports organisations that in turn are often members of an international sporting organization. Conditional on funding the Australian sport bodies could include an obligation to ensure broadcast rights along the lines of IOC objective (above). It would then be the responsibility of the rights holder to negotiate the best 'package' to achieve this obligation.

General Comments

AANA, in principle, supports the recommendation 4.4 of the recent Productivity Commission, *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services Research* report August 2009 in relation to anti-siphoning:

The anti-siphoning regime imposes regulatory burdens because of the protracted commercial negotiations required in respect of listed events. To address this issue the Australian Government should substantially reduce the anti-siphoning list. (p164)

AANA also agrees with the following comments contained in the report:

- However, there has also been a significant growth in the reach of the subscription television sector that reduces the case for maintaining the current anti-siphoning regime. (p 156).
- However, shortening the existing list would be a more effective approach to this problem, while being consistent with the overall policy objective. (p156).
- The anti-siphoning list is inherently anti-competitive. (157).
- If the restrictions on multi-channel broadcasting were removed, while the anti-siphoning restrictions on subscription television networks remain, the impact on subscription networks

¹ <http://www.dfat.gov.au/facts/ict.html>

² <http://www.screenaustralia.gov.au/gtp/wptvanalysis.html>

- could be significant. (p161).
- However, this may be difficult to do, given that subscription IPTV services could be supplied from overseas. Such technological change is likely to decrease the effectiveness of the scheme. Attempts to increase the reach of anti-siphoning regulations could exacerbate the anti-competitiveness of the scheme and may prove difficult to achieve in any case. (p162).

The following specific comments relate to the issues raised in the Sport on television discussion paper:

1 The purpose of the anti-siphoning scheme and its impacts

AANA considers that the anti-siphoning scheme as introduced was created to address an issue in a media environment that no longer exists. We also note that the scheme was/is imperfect and one that never achieved its desired objective. The anti-siphoning scheme, as widely acknowledged, does not guarantee that any particular event is shown on free-to-air television or that it meets community expectations that an event will be shown live or uninterrupted.

AANA also notes that current rights holders under the existing scheme have limited effective options to protect their rights. For example, the unauthorized delivery of content by streaming or linking to streams of sporting events is not an uncommon occurrence; in fact it is a significant issue for sports organisations internationally. Such actions are likely to increase into the future inevitably further undermining the current scheme. Consumers already have the opportunity (and choose) to view events either for free or at cost even if that cost is associated with unauthorized broadcast³.

2 The appropriateness of the events on the anti-siphoning list and their rationale for inclusion

As noted above, AANA supports the Productivity Commission's recommendation on reducing the list. We note that the discussion paper notes that actual coverage of listed events is not currently fully achieved and that the voluntary 'use it or lose it' system has not been considered particularly effective in assisting greater free-to-air television coverage of those events.

AANA considers that in the event of an anti-siphoning list continuing into the near future that it be significantly reduced and that criteria be established on which to base an event's national significance. AANA does not propose suggestions for those criteria at this time.

3 The duration of the anti-siphoning list

With a preference for the reduction or removal of a legislatively mandated list AANA considers that a schedule of regular policy review by government and the sports rights and media market, in close collaboration with advertisers and marketers as key stakeholders, can effectively deal with delivering policy objectives and meeting consumers demands for media access to events.

AANA would welcome the opportunity to discuss the role of advertising further.

Yours sincerely



Scott McClellan
Chief Executive Officer

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³ <http://www.allianceagainstiptheft.co.uk/downloads/reports/Digital%20Piracy%20of%20Sporting%20Events.doc>