

12 December 2008

ABC SBS Review  
Department of Broadband, Communications and the  
Digital Economy  
GPO Box 2154  
CANBERRA ACT 2601

**By E-Mail :** [abcsbsreview@dbcde.gov.au](mailto:abcsbsreview@dbcde.gov.au)

Dear Sir/Madam

**Discussion Paper - ABC and SBS: Towards a Digital Future- December 2008**

Please accept this letter as a submission from the Communications, Entertainment and Technology Law Committee (**CET Committee**) of NSW Young Lawyers in response to the above Discussion Paper.

The CET Committee submission is separated into 3 discreet sections, being responses to:

1. Part 2 - Harnessing new technologies to deliver services;
2. Part 6 - Presenting Australia to the world; and
3. Part 7 - Efficient delivery of services.

**1. Part 2 - Harnessing new technologies to deliver services**

1.1 *What is the appropriate role for the national broadcasters in the conversion to digital television and the implementation of digital radio?*

In accordance with the charters for the national broadcasters, national broadcasters should lead the digital conversion of television and the implementation of digital radio.

The commercial networks currently broadcast in the high-definition format of 1080i,

whilst ABC<sup>1</sup> and SBS<sup>2</sup> currently broadcast in standard-definition of 720p only. Although there are cost considerations involved in producing and broadcasting in the high-definition format, as discussed in Part 3 (Section 7 of the Discussion Paper), it is appropriate for the national broadcasters to lead the digitisation of television and radio. This is especially true of the ABC which is required to provide an innovative and comprehensive broadcasting services of a high standard. For example, ABC currently provide a 'picture in picture' option by broadcasting two streams on one band.

1.2 *Are there opportunities for the national broadcasters to more effectively fulfil the objectives of universal access and the provision of local content by utilising new delivery platforms such as broadband internet?*

As more and more people move to the Internet for content traditionally provided by broadcasters, more opportunities arise for the national broadcasters to be effective in fulfilling the universality and localism objectives.

The Internet offers greater flexibility and choice for the audience to access content which may not otherwise be available through traditional broadcast means. By using IP addresses of users, national broadcasters can deliver localised content to each region, providing an even greater localised service compared to traditional media.

Although there are opportunities available, the relatively slow speed of broadband in Australia, compared to leading countries such as Korea and Japan<sup>3</sup>, will inevitably hinder the development and utilisation of Internet content.

1.3 *The national broadcasters, particularly the ABC, have substantial archives of material. Are there ways these archives can be more effectively used and accessed?*

In order for ABC's substantial archives of material to be more effectively used and accessed, they may be digitized and made available on the Internet.

As the ABC may accept payment for content which is not within the definition of "broadcasting services", the costs of digitizing the archives may be recovered by charging per view or download of archived materials.

The issue of copyright infringement, although ever-present, may be overcome by adopting and developing appropriate business models to provide access to archived content with minimal risk of litigation.

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<sup>1</sup> <http://www.abc.net.au/reception/digital/definition.htm>

<sup>2</sup> <http://www20.sbs.com.au/transmissions/>

<sup>3</sup> [http://www.oecd.org/document/54/0,3343,en\\_2649\\_34225\\_38690102\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/54/0,3343,en_2649_34225_38690102_1_1_1_1,00.html)

1.4 *Is there a role for the national broadcasters to be early adopters of new technologies and program formats?*

The charters of the national broadcasters require innovative and comprehensive broadcasting services of a high standard, and to provide services that inform, educate and entertain all Australians.

Being early adopters and innovators of new technology fits within the broad aims of the national broadcasters. Even though early adopters and innovators incur the bulk of the cost of new technology, without them, technology would not advance and be commoditised into society, as the commercial networks would not be willing to incur such costs.

Additionally, as the national broadcasters are tax-payer funded, there would be an indirect benefit to the public. Once costs of implementing new technology become more affordable, commercial channels will adopt such technology, thus making it available and accessible to the general public.

**2. Part 6 - Presenting Australia to the World**

2.1 *Should consideration be given to expanding or enhancing the overseas services provided by the national broadcasters, and if so, in what form and to which countries?*

We support the view that consideration should be given to expanding or enhancing overseas services provided by the national broadcasters. An appropriate expansion should look at focusing not only on the impact that Asia has on global affairs, but also other developing areas that are thriving within the global economy as emerging markets.

In particular, the national broadcasters should review the possibility of enhancing services to the following countries: China, India, Singapore, Brazil and Russia. As emerging markets, these countries in particular will assist in forging the global economy through the economic turmoil that has engulfed the second half of 2008. However, while consideration of enhancing services is an option, the key driver must be focused on what the enhancement is intended to achieve. Is the goal to increase tourism, to demonstrate the attractiveness of Australian business or to educate and inform markets about the Australian commercial environment?

Any decision for enhancement must be informed and positioned in accordance with a clear defined set of goals. Further, it must be evident and accurately stated how the ability and information distribution of the national broadcasters can assist in this goal. Further, as such enhancement will likely be dependent upon tax revenue, there must be

a clear indication of the purported value conveyed on the social and commercial objectives of the Australian community.

Such enhancement would benefit greatly from an increase in available online content and increased sub-titled programs along with a core focus on news/market and current affairs provision in key targeted language groups.

The accessibility of online content would provide a key ability for the national broadcasters to distribute their existing catalogue of content outlining social and educational materials. However, the costs involved in establishing the necessary technical infrastructure to not only convert, but store and transmit online content, will be significant if an appropriate infrastructure does not already exist.

2.2 *What is the appropriate relationship between Australia's foreign policy objectives and the overseas broadcasting activities of the national broadcasters?*

The national broadcasters should maintain a separate and independent relationship from Australia's foreign policy objectives.

In the current environment, and given the events of the last decade and the increased ability of the Internet to provide access to information, individuals have an increased desire to ensure an objective and analytical news/content broadcaster.

The rationale behind this is that it allows individuals to ensure that dissemination of content is not constrained, altered or manipulated by the foreign policy objectives of a national government. In this case, viewers would be increasingly attracted to a content broadcaster who is reputed to maintain a policy of objective distribution.

The important role that the national broadcaster will play is to allow an educated and detailed response rather than the simple dissemination of objective reporting. It is this value-added component which is vital and can only be suitably performed if the component is allowed to operate in an environment free from external governmental influences.

2.3 *Are there ways in which the impact and use of the overseas services of the ABC and SBS can be better measured and tracked?*

Measuring the impact and use of the overseas services of the national broadcasters could prove to be difficult to ascertain. The difficulty revolves around what is the key factor in determining success? Again, this comes back to the issue of what it is that the national broadcasters are trying to achieve by providing services in national markets.

The indication is that it is intended to further Australia's cultural, commercial and social links – but how is success against this criteria managed? Is cultural success managed

by the amount of tourism revenue generated? Is commercial success measured against increase in global partnerships and other opportunities?

The broadcasters operate in an environment where other factors are just as critical to these issues. Tourism may fall due to the impact of recession in local countries and market influences may be determined due to key issues within target markets (e.g. Technology bubble). There is an increased difficulty in actually determining the extent to which the provision of content into other global areas has contributed to these goals given that they are only a small part of a larger, diverse environment that directly affects these goals.

### **3. Part 7 - Efficient delivery of services**

#### *3.1 How is the transition to a digital operating environment changing the capital requirements of the national broadcasters?*

The transition to a digital operating environment may pose a significant operational and financial cost to the national broadcasters. However, it is strongly recommended as a necessary step forward.

The BBC, while significantly larger in size than either of the national broadcasters, has invested hundreds of millions of pounds in preparing itself and establishing a digital operating environment over the last 5 or so years. Given the current financial allocations to the national broadcasters, the opportunities to invest significantly in a digital operating environment may prove extremely burdensome, especially if the majority of revenue is to be generated from tax sources.

The ideal situation would possibly be to combine property, facility and technological resources, and outsource a significant part of the design, implementation and continual management to external service providers.

By potentially outsourcing responsibility, the national broadcasters could establish a mechanism for sharing risks associated with the development of the digital operating environment. The benefits could be associated with increased cost/resource savings, quality control benefits and improved service delivery given that the outsourcer would be well placed and capable to provide the necessary infrastructure and management.

The risks associated with this however include the loss of direct managerial control over the environment, reliance on the outsourcer and the associated cost changes that may be implemented by outsourcing to deal with changing environmental conditions – which have a subsequent effect on the nature of the environment.

While this may be a way forward, the issue would still remain that the national broadcasters will still have to increase their funding through available options. Given the

current funding and associated potential cost of converting to a digital environment, additional funding would be a key requirement.

3.2 *What changes might be considered to the national broadcasters' management of property and facilities to allow them to deliver their outputs more efficiently?*

This issue may be directly related to converting to a digital operating environment. The national broadcasters need to convert to a digital environment, and it would be suitable in planning that solutions are designed with the key intention of utilizing shared property and facilities. This would have the key advantage, among others, to minimise the individual costs borne by the ABC and SBS in the evolution to utilising a digital environment.

From a purely technical point of view, cross-utilisation would be a benefit and there is no significant reason why the two broadcasters could not maintain their own entities as property and facility utilisation would hopefully be limited to purely technical and infrastructure issues rather than actual content generation.

**4. About the CET Committee of NSW Young Lawyers**

For information about NSW Young Lawyers and its membership please see

<http://www.younglawyers.com.au>

We trust your office finds this submission a useful outline reflective of the views of the NSW Young Lawyers CET Committee in reply to the Discussion Paper.

Yours faithfully

**NSW Young Lawyers**

**Communications, Entertainment and Technology Law Committee**

**Adam Flynn**

**Chair**

**Tyrilly Bolton**

**Vice Chair**

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## ABC SBS Review submission cover sheet

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