

Committee Secretary
Senate Legal and Constitutional Affairs Committee



By email: legcon.sen@aph.gov.au

10 November 2023

Dear Secretary

Copyright Legislation Amendment (Fair Pay for Radio Play) Bill 2023

The Special Broadcasting Service (**SBS**) appreciates the opportunity to make a submission to the Committee's inquiry into the Copyright Legislation Amendment (Fair Pay for Radio Play) Bill 2023 (**the Bill**).

The principal function of SBS is to provide multilingual and multicultural broadcasting and digital media services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society.¹ SBS Audio, with dedicated services in more than 60 languages, is broadcast across Australia via FM, AM, digital radio, digital television, and throughout the world via the easy-to-access SBS Audio app, third party apps and online (live and catchup) through each language service's dedicated website that also offer articles, videos, and award-winning podcasts.²

Under the existing structure of the *Copyright Act 1968*, the statutory cap for radio royalties paid by broadcasters does not apply to SBS. This is because s 152(8) applies to broadcasters that hold licences issued under the *Broadcasting Services Act 1992* (**BSA**) and s 158(11) applies to the Australian Broadcasting Corporation (**ABC**) specifically. SBS operates its audio (and television) services by authorisation of its statutory Charter under the *Special Broadcasting Service Act 1991*, and does not hold licences issued under the BSA.

While SBS can be subject to orders made by the Tribunal under s 158 of the *Copyright Act 1968*, the Copyright Tribunal is not bound in relation to the amount it can determine SBS pays – in the way that it is with respect to licensed broadcasters and the ABC. We also note that comparative to many commercial radio licensees, SBS broadcasts a much smaller volume of commercial sound recordings.

SBS would, however, request the Committee note the potential implications for SBS if the statutory cap on radio royalties for commercial radio broadcasters and the ABC was removed. The removal of the cap, and the transition to an unrestricted Tribunal discretion may result in an overall increase in the amount of royalties paid. It is foreseeable that this may in turn put upward pressure on the rates able to be negotiated by SBS. This is because the Copyright Tribunal may examine comparable transactions to see if they can throw any light on price as part of its process in setting a licence fee.³

If this were to occur, SBS would be required to divert funds away from the production and delivery of public service content in order to fund any increase in royalty payments, to the detriment of SBS's audiences and our ability to fulfil our Charter.

¹ *Special Broadcasting Service Act 1991* (Cth) s 6 - SBS [Charter](#).

² SBS won Gold in the Best Publisher category at the prestigious Australian Podcast Awards in November 2022.

³ Phonographic Performance Company of Australia Limited under s 154(1) of the *Copyright Act 1968* (Cth) [2016] ACopyT 3

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Thank you again for the opportunity to contribute to the inquiry. If you require further information, please contact Clare O'Neil, Director of Corporate Affairs (clare.oneil@sbs.com.au).

Yours sincerely,

James Taylor
Managing Director