SBS Commercial, Funding and External Relationships Guidelines



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1. Introduction

SBS is subject to a range of legal and regulatory requirements including those in the *Special Broadcasting Service Act 1991* (Cth) (SBS Act), which includes the SBS Charter, and the *Public Governance, Performance and Accountability Act 2013* (Cth), which sets out a range of duties for officials of Commonwealth entities including the duty to act in good faith and for a proper purpose.

The SBS Code of Practice (Code of Practice) is developed and notified to the Australian Communications and Media Authority (ACMA) by the SBS Board in accordance with the SBS Act (para 10(1)(j)). The Code of Practice sets out the principles and policies SBS uses to guide its content and is set within a framework of Trust, Transparency and Respect.

SBS also develops a range of operational policies and guidance notes relevant to the delivery of its services, including these Guidelines, that operate alongside, but separate from, the Code of Practice. These Guidelines fulfil the requirements in the SBS Act that the Board develop and publicise guidelines regarding advertisements and sponsorship announcements (sub-sections 45(4) - (6) and 45(A)(2) - (5)). The requirement in section 46 of the SBS Act that the Board develop and publicise guidelines relating to community information is satisfied by the Code of Practice.

SBS is hybrid-funded. Funds are received primarily by government appropriations. SBS can supplement its revenue through a range of commercial and external funding and assistance activities (see section 57 of the SBS Act).

These Guidelines apply to SBS's commercial and external financing activities including advertising and sponsorship, and to its external relationships, including partnerships. They set out the standards expected of everyone involved in these activities, including independent producers.

SBS's commercial and external relationships must be conducted in accordance with the principles of the SBS Charter and in conformity with the SBS Act. In particular, SBS's editorial independence and integrity must be paramount.

2. Maintaining SBS's Editorial Independence and Integrity

The following principles apply:

- SBS's editorial independence and integrity must be safeguarded;
- commercial and other external activities must not be in actual or apparent conflict with the SBS Charter and must not detract from SBS fulfilling its Charter responsibilities;
- SBS must retain editorial control of all SBS content and the SBS schedule across all SBS platforms;
- the broadcasting and publishing of content is SBS's prerogative; it is not the prerogative of any third party, regardless of how SBS sources that content; and
- SBS must be transparent about its commercial and external funding relationships.

Additional principles also apply to particular relationships and activities as set out in these Guidelines.

SBS content will always be driven by editorial decisions made in service of its Charter, not the availability of external funds or other commercial opportunities.

2.1 Upward referral

When there is doubt as to whether a particular commercial or external relationship may compromise the principles in these Guidelines, the matter must be upwardly referred to the next level of authority. Mandatory referral processes apply in certain circumstances as set out in these Guidelines.

SBS sources content in the following ways:

- SBS produces content, either in-house or with the support of contracted production services;
- SBS commissions Australian production companies independent of SBS (independent producers) to produce content, including co-productions;
- SBS co-produces content in partnership with independent producers;
- SBS acquires content at various stages of production from a variety of Australian and international sources including commercial, government and non-profit organisations (this can include free or low cost content).

SBS, its co-producers and independent producers, use a range of sources to fund and support SBS content, including:

- direct investment in content (including in the form of licence and production fees) from SBS's own funds comprising:
 - money received by SBS in its appropriation from the Australian government; and
 - money generated by SBS from commercial activities;
- relationships and arrangements between SBS and various state, territory and Australian government film and screen agencies (including through indirect tax funding mechanisms such as the Producer Offset scheme);
- accessing funds through indirect financing mechanisms including:
 - funds sourced under an official co-production treaty arrangement;
 - distributors and sales agents making advances against the commercial potential of the content;
- accepting funding from third party sources for the production of content (third party funding) and related ancillary services (such as in-language subtitles or audio description services) (see Guideline 3.2), including:
 - state, territory and Australian government departments, agencies and authorities;
 - private contributions from commercial, community, non-profit and philanthropic organisations, crowd-sourced funding entities and private investors;
- accepting (for payment or otherwise) contra and other forms of external assistance to support content production (see Guideline 3.4).

3.1 Disclosure and scrutiny

SBS requires strict scrutiny of the arrangements that underpin all external funding arrangements.

Independent producers are contractually required to disclose all funding arrangements to SBS.

3.2 Third party funding

SBS can accept or reject third party funding at its discretion.

Independent producers who are considering sourcing funds from third party sources should consult with SBS prior to seeking funds.

Where there is a proposal for advertising or sponsorship revenue to be directly linked to the overall SBS investment in content (for example where a proposed sponsorship contribution will defray actual production costs), it is treated as third party funding.

Third party funding proposals are managed and vetted through the internal SBS Content Commercialisation Steering Committee that comprises representatives from all content Divisions, SBS Media and SBS Corporate Affairs.

All proposals for the use of third party funding for the production of SBS content, by SBS or by independent producers, must be presented for approval through SBS's formal commissioning or other approvals process and approved, on a case-by-case basis, by the relevant Division Director, with upward referral to the Managing Director as necessary.

3.2.1 Safeguards

Third party funding cannot be used where the arrangement would compromise the editorial independence and integrity of SBS.

Factors to take into account include:

- the objectives and reputation of the funder;
- the nature of the funder's interest in the content;
- SBS's Charter and editorial priorities and whether, if financially able, SBS would have considered producing or commissioning the content without the funding; and
- the subject matter of the content and its genre.

Third party funding cannot be used:

- for the production of SBS-produced news;
- where the funder is seeking to have input into the content in a way that would compromise SBS's editorial independence and integrity.

Any funding arrangement must be in a written contract which states that SBS retains editorial control over the content.

3.3 Acquiring rights to content

SBS acquires rights to content from a variety of Australian and international sources including commercial, government and non-profit entities.

Whether content is suitable for SBS is determined by its subject matter, not its source.

SBS must always retain the right to edit acquired content to meet editorial requirements under the SBS Act, the Code of Practice and these Guidelines.

3.3.1 Purchasing arrangements

When acquiring rights to content and licensing rights, SBS can accept free or low cost content.

Contra deals are acceptable provided they do not compromise SBS's editorial independence and integrity. Contra deals should be considered, on a case-by-case basis, by the relevant editorial manager and they must adhere to all applicable SBS policies.

3.3.2 Exchange of airtime (broadcast or digital) for content

SBS does not generally exchange airtime (broadcast or digital) for content (for example, in lieu of rights fees). Any proposal for such an arrangement needs the approval of the Director of SBS Media and the relevant Content Director, who must ensure that the arrangement does not compromise SBS's editorial independence and integrity or jeopardise other revenue opportunities for SBS (see also Guideline 4.1.1).

3.3.3 Programs funded by third parties

SBS may acquire rights to content that is partly or wholly funded by commercial, government or other entities, such as non-profit organisations.

When acquiring rights to content, SBS must reserve the right to review all funding sources.

If there appears to be a strong link between the content and the funder or funders, or there are conditions attached, the proposal must be upwardly referred to the relevant Division Director, or their delegate, for approval.

If the acquisition proceeds, SBS should provide clear information to audiences about the source and funding of the program. In most cases this will be satisfied by the program credits.

3.4 Contra, brand integration and other forms of external assistance in content production

SBS and independent producers may accept (for payment or otherwise) offers from commercial, government and non-profit organisations of products, services and facilities for use in content productions provided that:

- the assistance is accepted on behalf of SBS and not for private use;
- there is sufficient editorial justification for the use;
- the use of the products, services or facilities is disclosed to, and approved by, the relevant SBS editorial manager and, where significant assistance is provided, the relevant Division Director;
- the products, services or facilities are not used in the content in a way that actively promotes them; and
- the assistance is disclosed or acknowledged so that the level of assistance is apparent to audiences (see Guideline 3.5).

Where payment is proposed for the use of products, services or facilities in a content production (brand integration), the guidelines for third party funding apply (see Guideline 3.2).

3.5 Disclosure

Third party funding, brand integration, contra arrangements and other external assistance must be disclosed to audiences through credits, on program websites, or by other reasonable disclosure.

Credits:

- provide an opportunity for SBS to show its appreciation for external assistance where provided; and
- make clear to audiences, where relevant, that external assistance has been provided.

The way in which SBS presents credits is solely at the discretion of SBS.

Credits will acknowledge support for content by reference to the organisation's name and other details as determined by SBS. Credits must not promote or endorse the organisation that provided external assistance.

SBS can generate revenue through the sale of advertising and sponsorship. The SBS Act sets out conditions under which SBS can broadcast or publish advertisements and sponsorship announcements and provides for the SBS Board to develop guidelines on advertising and sponsorship matters (sub-sections 45, 45A).

SBS's guidelines on advertising and sponsorship are set out in this Guideline 4 and in the Code of Practice (section 4.2).

4.1 SBS Media and contractual arrangements

SBS Media or its delegates are solely responsible for advertising and sponsorship sales. Any financial transactions that may directly or indirectly involve advertising or sponsorship must be handled by SBS Media.

Where SBS contracts a third party to be responsible for the sale, broadcast or publishing of advertising or sponsorship matter on SBS's platforms, the contractual arrangements should normally include a requirement to comply with the SBS Act, Code of Practice and these Guidelines.

4.1.1 Payment

SBS generally requires payment for advertising and sponsorship matter in cash, not contra.

Proposals to exchange commercial airtime (broadcast or digital) for content or other services must be upwardly referred to the Director of SBS Media and the relevant Division Director (see also Guideline 3.3.2).

4.2 Revenue allocation

Generally, advertising and sponsorship revenue will augment SBS's total budget and will not be allocated directly to the content connected to the revenue.

Where there is a proposal for advertising or sponsorship revenue to be directly linked to SBS's investment in content (for example where a proposed sponsorship will defray the actual production costs) the Guidelines for third party funding apply (see Guideline 3.2).

4.3 Acceptance or rejection of advertising

SBS reserves the exclusive right to determine what is broadcast or published on SBS platforms and may reject any advertising.

In principle, SBS accepts all advertising that complies with the relevant legal and regulatory requirements, with limited exceptions.

SBS may reject any advertising on the following grounds:

- where the advertising (including in relation to specific placement or scheduling requests) will compromise SBS's independence and integrity;
- where the subject matter conflicts with the SBS Charter or the Code of Practice;
- where the advertising will harm SBS's interests.

Decisions to reject advertising on these grounds must be upwardly referred to the Director of SBS Media and the Director of Corporate Affairs, with upward referral to the Managing Director as appropriate.

4.4 Political advertising

In relation to advertising for political parties (including individuals contracting on behalf of political parties) and individuals standing for election to a Parliament (election candidates), SBS will treat all advertisers in an equal manner.*

Special conditions apply to the broadcasting or publishing of such advertising in SBSproduced news content:

- Where any advertiser seeks to buy more than 50 per cent of the available inventory the matter must be referred to the Director of SBS Media and the Director of Corporate Affairs for approval.**
- Such advertising must not directly follow or precede a news item and must be preceded or followed by a stinger or other bumper when broadcast or published first or last in a break on SBS's television or radio broadcasting platforms.

* Free airtime provided to qualifying political parties under SBS's free airtime policy is not treated as advertising (section 4.3.1 Code of Practice).

** 50% of the available inventory means 50% of the total advertising inventory allocated for each program.

4.5 Sponsorship

SBS allows other organisations to sponsor SBS content and services, including channels, apps, and ancillary services. Sponsorship is a form of advertising that creates an association between the sponsor and the content or service (for example, through sponsorship billboards, naming rights, and advertising category exclusivity).

Sponsorship revenue is generally not treated as third party funding for the production of content (see Guideline 3.2). Sponsorship is usually accepted after a decision has been made to commission, acquire or produce particular content.

However, third party funding may also involve sponsorship. Where there is a proposal for sponsorship revenue to be directly linked to the overall SBS investment in particular content, the investment is treated as third party funding for the purposes of these Guidelines (see Guideline 3.2).

4.5.1 Naming rights

Naming rights may be made available as part of a sponsorship arrangement. Naming rights activations must be approved, on a case-by-case basis, by the relevant Division Director.

4.5.2 Assessment

SBS Media must consult with the relevant editorial manager on all sponsorship proposals that have the capacity to impact SBS's editorial independence and integrity.

Where the sponsorship arrangement would compromise SBS's editorial independence and integrity, the proposal must be rejected. This is a matter for consideration, on a case-by-case basis, taking into account matters including the subject matter of the content and its genre, and the nature of the sponsor's interest in the content.

4.5.3 Sponsorship of SBS news content

Generally, sponsorship of SBS-produced news content is not permitted.

Subject to the considerations below, SBS allows sponsorship of the distinct finance, sport and weather segments of SBS news properties, where there is minimal risk to SBS's editorial independence and integrity.

- SBS Media will target potential sponsors in keeping with audience expectations and the SBS brand.
- All potential sponsors will be referred to the Director of SBS Media and either the Director of News and Current Affairs or the Director of Audio and Language Content (as relevant) for approval, with upward referral to the Managing Director as appropriate.
- SBS will exercise caution in relation to brands and organisations that are regularly reported on as part of the news or that are involved in, or may be likely to engage in, a political campaign.
- The sponsorship agreement must include a provision stating that the sponsor has no editorial influence over SBS and its editorial decisions, and that SBS is free to publish critical stories in relation to the sponsor without jeopardising the sponsor relationship.
- SBS will have the ability to terminate the sponsorship agreement immediately should developments give rise to any risk that SBS could be compromised by its association with the sponsor.
- Only two out of three of the finance, sport and weather segments may be sponsored in any one news program.
- The sponsor will be identified in a sponsorship billboard directly before the sponsored segment.
- The sponsorship billboard will use the following (or similar) format: This [name of segment] brought to you by [brand/organisation name and official tagline]. Official taglines that include political or controversial matter may not be used.

Sponsorship of non-SBS-produced news content, such as SBS's WorldWatch services, is permitted (subject to licence conditions).

4.5.4 Identification of sponsors

Sponsors may be identified through sponsorship announcements, naming rights mentions (including in-program), and in promotions for SBS content such as sponsorship billboards and sponsorship bumpers.

Where sponsors are to be referred to in-program, the provisions relating to brand integration in content production apply (Guideline 3.4).

4.6 Advertising standards

SBS requires advertisers or their agents (which may include SBS) to ensure that their advertising complies with all relevant legal and regulatory requirements, including industry codes of practice (such as the Australian Association of National Advertisers (AANA) Code of Ethics).

SBS retains the right to refuse to broadcast or publish any advertising that fails to meet its quality control standards.

4.6.1 Additional requirements for SBS's television broadcasting services

SBS generally will not broadcast advertising on its television broadcasting services that has not been reviewed by ClearAds (Free TV Australia's commercials advice service) or by another advisory service approved by SBS (such as AdCheck).

This process ensures that advertising is classified for broadcast in accordance with the placement rules in the Code of Practice (section 4.2) and also provides assurance that the advertising material has been assessed against the relevant legal and regulatory standards.

Proposed exceptions to this requirement must be considered on a case-by-case basis and upwardly referred to the Director of SBS Media. Decisions to exempt advertising from this requirement will take into account the need to ensure that advertising on SBS complies with the relevant legal and regulatory standards and is classified (which may be done by SBS).

4.7 Advertising limits

The SBS Act provides that advertising must not run in total for more than 5 minutes in any hour of broadcasting on SBS's television and radio broadcasting services (para 45(2)(b)).

The duration of advertising on SBS's digital media services (which is not subject to restrictions under the SBS Act) will generally be in accordance with SBS's television and radio broadcasting services. Due to platform differences and user consumption behaviour, this will not always be achievable.

4.7.1 Exempt material

The following is not considered to be advertising for the purpose of calculating the 5 minutes per hour limit:

- an SBS network, channel or other service identification;
- promotions for SBS content (which may inform the audience of the identity of relevant sponsors);
- publicity for SBS products, services or activities (including products displaying the SBS name or logo and references to distributors of these products) for the broadcast or publication of which SBS does not receive any consideration in cash or in kind;
- community information (including free airtime for information about elections and referendums) (section 4.3 Code of Practice).

4.8 Distinction from editorial content

Advertising must be readily distinguishable from SBS content (section 4.2 Code of Practice).

Advertising should be distinguished from editorial content through the use of:

- program bumpers, service idents or other visual cues for SBS's television broadcasting services and video services on SBS's digital media platforms;
- acoustic or vocal means for SBS's radio broadcasting services and audio services on SBS's digital media platforms;
- labels, such as 'Advertisement' or 'Advertorial' and the use of clear visual boundaries for SBS's digital media platforms such as the SBS website or social media platforms.

When linking to an advertiser's platform or services (such as through hyperlinks or QR codes), the advertiser's services must be accessed through a separate browser window or other service separate from the SBS platform.

4.9 Placement

The SBS Act provides that SBS may broadcast advertising before or after programs or during natural program breaks on SBS's television and radio services (para 45(2)(a)).

SBS will generally apply the same break structure for advertising on SBS's digital media platforms. Other advertising formats may also be used (for example, advertising may be overlaid on the pause screen for video content on SBS On Demand).

SBS takes into account editorial considerations and the interests of the viewer experience when considering the placement of breaks within SBS content.

SBS will assess content to determine if and where there are natural breaks. SBS must ensure that the integrity of the program is not prejudiced, having regard to the nature and duration of the program, and where natural breaks occur.

Decisions about the placement of advertising in program breaks will have regard to program content and context and the likely viewing audience. SBS will exercise sensitivity in the placement of advertising on its platforms.

4.10 Competitions and giveaways

SBS can conduct its own or joint competitions or giveaways with external organisations to offer free (or token-priced) prizes, cash prizes or promotional discounts to SBS audiences.

Competition and giveaway announcements may be referred to in SBS content, at SBS's discretion, where editorially relevant. Care should be taken to ensure that any announcements do not compromise the editorial integrity of the program in which they appear or are adjacent to.

Information on the source and nature of the prize can be provided to audiences or users as part of the details of the competition or giveaway. This is to be determined at SBS's discretion.

Endorsement of the donor or the donor's products or services in any announcement made within SBS content is not acceptable. Endorsement includes advertising-type claims such as comparisons between products and services and recommendations.

Some limited, positive description of the prizes or giveaways may be used to inform audiences. However, this should not be presented as active encouragement of audiences to otherwise purchase or seek out the products or services that constitute the prizes or giveaways.

The Director of Marketing and other relevant Division Director must approve competitions or giveaways involving cash or high value prizes.

Advice should be sought from SBS Legal on the conduct of:

- competitions;
- high risk giveaways such as those for high value prizes or involving complex deals.

SBS's obligation to maintain its independence and integrity applies to all SBS activities – including corporate partnerships, outside broadcasts, community events, performances, staged events, marketing, distribution and publishing activities.

5.1 Value of SBS's intellectual property

SBS's logos and registered trademarks are valuable assets that SBS actively manages and protects. Any use of SBS's logos or registered trademarks that has not been expressly authorised by SBS through a licence agreement is an infringement of SBS's rights and is prohibited by law.

The licensing of SBS's logos or registered trademarks to third parties indicates that they are endorsed by SBS and, therefore, their use must be strictly controlled.

Any use of SBS's logos or registered trademarks must not compromise SBS's independence or integrity or adversely affect its reputation.

In permitting the use of any SBS logo by third parties, any benefits to SBS must be taken into consideration.

Use of SBS logos and trademarks must be approved by the Director of Marketing or delegate in consultation with relevant internal stakeholders.

Approvals to use any of SBS's logos or trademarks must be agreed in writing between SBS and the third party, the aim of which is to protect SBS's reputation and intellectual property. The agreement must include:

- appropriate quality control by SBS over the licensed goods and services;
- appropriate editorial control by SBS in respect of content, including publicity materials and packaging;
- a requirement that the licensee must do all things required by SBS, including adherence to the SBS style guides, to ensure the integrity of SBS's logos and trademarks; and
- a requirement that the use of any SBS logo or trademark in the licensee's own advertising may only occur with the prior written approval of the Director of Marketing or their delegate.

5.2 Testimonials

SBS may receive requests from suppliers of goods and services to SBS to refer to SBS as a client in their marketing material. SBS may agree to provide a reference in support of the goods or services, but this must not be in the form of an endorsement and SBS must retain control of the reference and the way in which it is used by the supplier.

In relation to third party products that are used in SBS editorial content (for payment or otherwise – see Guideline 3.4), SBS will not approve statements about the use of those products in SBS content that amount to advertising such as 'as seen on SBS'.

5.3 Supply of SBS content to third parties

SBS receives many requests for access to its content including:

- for private use;
- for commercial, non-profit or educational use;
- where the material is, or may be, subject to an official investigation or legal proceedings.

Individual SBS employees do not have the right to sell or give away SBS content.

Requests for access to SBS content are managed by the SBS Rights Management team (rights@sbs.com.au).

Requests for material that is the subject of an official investigation or legal proceedings are managed by SBS Legal.

5.3.1 Personal use

SBS does not generally provide or sell SBS content directly to individuals for private use.

Most SBS content is also available for viewing and sharing for certain periods on SBS On Demand. Some SBS content is available for purchase through DVD retailers, or digital download sites, or by contacting the relevant production company directly.

Subject to third party copyright, exceptions may be made. For example, SBS may agree to provide a personal copy of an SBS recording of a performance to the performer.

5.3.2 Commercial and non-profit use

Commercial and non-profit organisations (including government and educational organisations) may request the use of SBS content for certain purposes. Examples include requests for the use of SBS news footage in a documentary, an SBS article in a book, or using SBS content in exhibitions.

Where SBS has, or is able to obtain, the rights to grant the use of SBS content to a third party, SBS Rights Management provide a licensing service, applying the published SBS rates card (available on the SBS website) and using a standard licence agreement.

SBS Rights Management will consider the following matters:

- whether the use would compromise SBS's editorial independence and integrity if so, the request should be rejected;
- whether the use would imply SBS's endorsement of a product, service or organisation if so, the request should be rejected.

5.3.2.1 Use of SBS content in advertising

Requests for SBS content for use in broadcast, digital or print advertising are managed by SBS Rights Management.

Requests should be rejected where the use would compromise SBS's editorial independence and integrity.

Use of SBS content in political advertisements is not permitted.

Before approving a request, SBS must obtain the written consent of individuals who are identifiable in content that may be used to suggest those individuals endorse or support a particular product, service or viewpoint.

6. Glossary

Advertisement means matter, for which SBS receives consideration in cash or in kind, which draws the attention of the public, or a segment thereof, to a product, service, person, organisation or line of conduct in a manner calculated to promote or recommend, directly or indirectly, that product, service, person, organisation or line of conduct (section 4.2, Code of Practice).

Advertising includes advertorials and sponsorship announcements for the purpose of these Guidelines.

Brand integration means the inclusion of a product, service or trademark within content in return for the payment of money or other consideration.

Content means audio, video, visual and textual material.

Contra refers to the practice of exchanging goods and services for other goods and services, rather than for money.

Digital media service has the same meaning as in section 3A of the SBS Act.

Editorial manager includes: Commissioning Editor, Executive Producer, Acquisitions Manager, Channel Manager, SBS Content Director, Managing Director.

Managing Director has the same meaning as in section 3 of the SBS Act.

Parliament has the same meaning as in sub-section 70C(2) of the SBS Act.

SBS means the Special Broadcasting Service Corporation operating under the SBS Act and includes NITV.

SBS Act means the Special Broadcasting Service Act 1991 (Cth).

SBS content means content that is produced, commissioned, acquired or otherwise obtained by SBS for broadcast or publication on SBS's platforms over which SBS has editorial control and includes program-related material such as program, channel and network promotions (section 2.1, Code of Practice).

SBS Content Director includes the Director of Audio and Language Content, the Director of News and Current Affairs, the Director of Marketing, the Director of Indigenous Content, and the Director of Television and Online Content, or such equivalent positions as exist from time to time.

SBS platforms includes SBS television and radio broadcasting services, SBS digital media services and SBS accounts and services on third party platforms including social media platforms (section 2.1, Code of Practice).

Significant in-kind consideration or assistance means a benefit to SBS or an independent producer which is of consequence, or considerable, such as monetary or other economic value other than the cost saving that results from the consideration or assistance.

Sponsorship is a form of advertising which creates an association between the content being sponsored and the sponsor (Guideline 4.5). Sponsorship revenue that is directly linked to the overall SBS investment in SBS content is treated as third party funding (Guideline 3.2).

Sponsorship announcement means matter, for which SBS receives consideration in cash or in kind, which advises audiences of a sponsorship relationship with SBS and actively promotes the product, service, person, organisation or line of conduct of the sponsor in a favourable way (section 4.2 Code of Practice).

Third party funding means cash funding, or significant in-kind consideration or assistance for the production of SBS content (Guideline 3.2).

WorldWatch means the range of international news and current affairs bulletins broadcast or published by SBS as described in section 3.3.2 of the Code of Practice.