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The Secretary
Senate Standing Committee on Environment, Communications and the Arts
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Inquiry into the reporting of sports news and the emergence of digital media

Premier Media Group

Premier Media Group Pty Limited (**PMG**) is an Australian company engaged in the sports, entertainment, production and news sectors. We acquire sports rights from sporting organisations, we produce sports content in the form of video, audio, text and data and we distribute that content across a multitude of media platforms. We are also a news organisation that produces a 24 hour a day sports news channel for television and mobile, distributes sports news content to third parties, and publishes Australia's leading sports and sports news website - www.foxsports.com.au.

As a result of these activities, we are keenly interested in the inquiry established by the Senate Standing Committee on Environment, Communications and the Arts (**Committee**). To assist the Committee, we set out below a brief description of the PMG business and the various ways it is involved in the reporting of sports news and sports coverage and then outline our views in relation to the terms of reference for the inquiry.

Television

PMG is the owner and operator of six dedicated sports television channels (FOX SPORTS 1, FOX SPORTS 2, FOX SPORTS 3, FOX SPORTS HD, Fuel TV and FOX SPORTS NEWS). As part of these services we also offer an interactive text based application whereby viewers can access text based news stories produced by our editorial journalists by pressing the red button on their remote. Additionally, during our coverage of certain sports on the FOX SPORTS channels (for example, cricket) we provide our viewers with comprehensive live and historical sports statistics as part of the FOX SPORTS ACTIVE service which can also be accessed via the red button.

These channels and applications are available on the FOXTEL, AUSTAR and Optus subscription television platforms which (on currently available numbers) have a combined total of approximately 2.2 million subscribers or almost 7 million potential viewers throughout Australia. These channels are also distributed to almost 4,000 commercial premises such as pubs and clubs throughout Australia.

As part of our television operations, PMG acquires more video based sports rights and content from sporting organisations than any other Australian television channel or broadcaster and invests hundreds of millions of dollars per annum in the acquisition and production of such content for our television channels and other media platforms. We are a major contributor to the financial well being of the Australian sports and sports production industry and the growth and popularity of Australia's major sporting codes.

Online

PMG is the owner and publisher of the FOX SPORTS Website (www.foxsports.com.au) which is Australia's most popular sports website. We provide a full array of text, video, audio, images and statistical services to users as part of the website. We also sub-license certain content and our brand to other websites as part of our online services. One example of this is the provision of English Premier League games which can be streamed live or downloaded 'on demand' by users as part of the iiNet portal as well as through the FOX SPORTS Website.

Mobile

PMG has been producing sports content for mobile distribution for a number of years and currently produces two dedicated full time mobile TV channels and other audiovisual, text and statistical based sports content which it provides to all of the major mobile telecommunication companies, namely Hutchison, Optus, Vodafone and Telstra for distribution on their mobile networks. This content includes 'magazine' or highlight video clips or long form coverage of sports content for which either PMG or the mobile operator has acquired the mobile rights as well as audio-visual or text based sports news reports, sports statistics (including live score updates) and images. PMG has also launched a mobile version M-Site of the FOX SPORTS Website, which provides consumers with text stories and live score updates and has been part of several DVB-H trials.

Some comments on the general issues at stake

Any analysis by the Committee or anyone else on the reporting of sports news needs to first consider whether sporting events are, or sport in general is, newsworthy. Based on the general view of the importance of sport to Australians and the public interest in sports events and those participating in sport we are of firm view that sport is not only newsworthy but that over time it is increasing its important role in our society.

As such, we believe that the public policy of allowing publishers and media organisations to report on those events should continue to hold sway. If an organisation or the government wants to assert that the policy should be overturned or limited then they must clearly demonstrate the reasons for limiting that entitlement and why it would be in the public interest to do so.

The existing news reporting regime which has been operating in Australia for a considerable period of time based on the fundamental principles of the public's right to information and fair dealing in copyright as well as media industry practice (**News Reporting Regime**) adequately ensures an appropriate balance between commercial and public interests exists across both "old" and "new" media distribution platforms. We are strongly of the view that any ongoing analysis and discussion in relation to sports news reporting and the distribution of such content should occur on a technology neutral basis. One unavoidable fact is that technological developments have inexorably changed the way news is disseminated, distributed and communicated during the past 10 years. In this environment, it would be a mistake to differentiate between different forms of media distribution by asserting that different rules should apply to each. Furthermore, it would be a mistake to single out sports news for differential treatment to that of other news content.

Based on our extensive experience in this area as not only the rightsholder of a number of sporting events but also as a sports news producer and provider, we believe there has been some “old media” thinking applied by some stakeholders in trying to frame different rules for sports news reporting via new media and that is where some of the problems have arisen. We believe that such an approach is flawed and will fail. Technology used for television and digital media transmission is continually evolving and will continue to do so without having any adverse effect on the revenues available to sports bodies. It is better to continue to have general principles apply than to attempt to prescribe different rules for each type of media delivery.

Put simply, it is PMG’s view that the existing News Reporting Regime should remain as it is and continue to be applied universally across all media. There should be no artificial limits or attempts to codify how sports news is produced and reported for one form of media but not another.

Our Specific Views in relation to the Terms of Reference

a) The balance of commercial and public interests in the reporting and broadcasting of sports news

- 1) It is essential that an appropriate balance is maintained between the commercial and public interests in the reporting of sports news. It is important that media organisations wishing to legitimately publish or report on a particular sporting event are able to do so, and that those who have made a considerable investment in acquiring the exclusive broadcast and/or other media rights and producing coverage of that event are not “ambushed” by non rights holders. In PMG’s view, this balance currently exists via the well established News Reporting Regime.
- 2) In our view it is neither sensible nor appropriate to attempt to subvert the well established News Reporting Regime with restrictive regulation or accreditation terms targeted at limiting the dissemination of sports news via specific forms of media and not others. This would undermine the public interest principles underpinning the regime.
- 3) When PMG purchases the exclusive right to cover sporting events via any form of media, PMG is aware that its exclusivity is subject to the ability of other media organisations to produce and disseminate sports news in relation to that event under the existing News Reporting Regime. Sports bodies selling sports rights are also fully aware of the regime as are all other rights acquirers. As a corollary, where we do not hold the relevant rights for a particular event we and all other non rights holders are able to publish and report on that event because of the News Reporting Regime and the public policy principles it embodies.

b) The nature of sports news reporting in the digital age, and the effect of new technologies (including video streaming on the Internet, archived photo galleries and mobile devices) on the nature of sports news reporting

- 4) New technologies have obviously changed the way all news is reported, not just sports news. Consumers now want to view the news when they want and how they want, rather than having a limited opportunity through the old set 6pm news bulletin or tomorrow’s newspaper. These effects have been positive, as consumers now have additional sources of news available to them sooner, increasing their choice.
- 5) PMG is excited about the emergence of digital media and the opportunities they represent for Australian consumers and Australian society generally. Digital media also provides new opportunities for sporting

bodies to engage with the public and to grow interest in their sports in different and more interactive ways compared to the past. New media distribution methods mean coverage of sporting events can be transmitted, and news reports provided, in real time no matter where people are located and no matter what device they use to access those reports or coverage. These technologies have provided sports organisations with increased opportunities to engage the public and they have done so across the board, in many cases by opening up new revenue opportunities for the sporting organisations in the process.

- 6) Some sporting organisations have been and are still grappling with how to manage the effect of these technologies on news reporting of their sport. In many cases some sports organisations' approaches are still evolving as they come to terms with these new technologies. By way of example, for the 2008 Beijing Olympic Games, for the first time there was in principle recognition by the IOC of the role of the internet in reporting the Games. While this was a welcome step, the IOC's approach still attempted to impose restrictions preventing the dissemination of any news coverage of the Games via mobile technologies and prescribed a specific limit on the amount of online coverage that could be made available by any media organisation that had agreed to the news access rules (and thereby gained accreditation). This meant that those media organisations that were prepared to invest in sending their news teams to Beijing to cover the Games were subject to specific restrictions that ironically did not apply to organisations that had decided not to obtain accreditation.

Rather than embracing these technologies and providing increased consumer choice, these types of attempts to limit consumer choice will ultimately fail. Technology is moving much faster than people imagine. A vast number of mobile devices are now able to access the internet directly as well as using mobile wireless spectrum which demonstrates that there is little utility in trying to differentiate between different types of technologies in imposing rules of accreditation or principles relating to the News Reporting Regime.

- 7) A further area that also needs to be closely considered in this debate is the emergence of social media and networking services and user generated content. Consumers themselves are now able to create their own video, audio or text services of sporting events or provide live commentary on such events by watching the event on television and then making such content available via their own blog or through utilities such as Twitter. These services may be provided independently of and in some cases in competition with media organisations that are reporting news on sporting events.

c) Whether and why sporting organisations want digital reporting of sports regulated, and what should be protected by such regulation

- 8) It is not evident whether all sports organisations want digital reporting of sports regulated and based on our experience in this area, we believe that not all sports organisations have the same view. Based on our domestic and international dealings with sports bodies, we also perceive that there are some different approaches being taken internationally.
- 9) Many sports organisations take the view that they should facilitate as much media discussion and news coverage of their sport as possible as this will create a broader pool of people who are interested in and engage in their sport as well as far greater exposure for their sponsors who have invested heavily in their sport. Most sporting organisations adopt a common sense approach because they recognise the role that the media play in promoting and developing their sport.

Occasionally we have seen sports organisations take the view that any media organisation accessing their venues must agree to a much wider range of restrictions on what they can and cannot do both within and outside of the venue. Whilst this approach has not generally been successful, we are aware that many news agencies have expressed concerns about this development. If those agencies decide not to be accredited and reduce their coverage then ultimately the Australian public generally and the sport that seeks to impose such rules will be poorer as it will mean less diversity of coverage, less independent coverage and potentially less exposure of that sport.

10) In a democratic pluralistic society it is crucial to have a vibrant open media and maintain journalistic integrity in the reporting of newsworthy events. Any regulation permitting a sporting organisation or any other party to determine what is newsworthy or how and when the public can access their news is dangerous and fundamentally goes against the overall public policy tenet of the public's right to information and freedom of the press which underpins the News Reporting Regime. If this occurred, one undesirable effect would be potential increased censorship of sporting events resulting in a number of outcomes which would be undemocratic and contrary to the public interest. For example, if a sporting organisation was entitled by regulation to control the type and number of images available to media organisations that sporting body would be able to effectively prevent a media organisation from using an image or video clip simply because it may not show the sporting organisation or its players in a positive light.

11) PMG's strong view is that additional regulation is not required in the area of sports news reporting as the existing News Reporting Regime adequately operates and applies on a media neutral basis. While there have been a few recent instances of sports bodies adjusting to the new environment by attempting to over-regulate through restricting accreditation, we believe this is a temporary state of affairs and the market will evolve to deliver the right balance. The acquirers of exclusive rights to sporting events such as PMG are aware that their exclusive rights are subject to other media organisations utilising the News Reporting Regime to provide news reports of those events. Similarly entities who are not rights holders are aware that if they overstep what is acceptable under the News Reporting Regime they run the risk of being sued by the exclusive rights holder or the sporting body. It is notable that no major case has been launched by a sports organisation in this country in this area which, together with the fact that there has been no demonstrable reduction in their media rights or sponsorship revenues, demonstrates that the existing News Reporting Regime is working adequately and does strike the right balance.

12) In any event, regulation is very unlikely to be able to practically combat or deter those consumer activities referred to in paragraph 7 above nor would it be able to realistically monitor or control the many services and websites which are available in Australia but which originate or are otherwise hosted outside of Australia.

d) The appropriate balance between sporting and media organisations' respective commercial interests in the issue

13) PMG agrees that it is important for an appropriate balance to exist between the sporting and media organisations respective commercial interests, and is of the view that these interests are currently balanced. Sporting organisations are making and will continue to make a large financial gain on the sale of sports rights to media organisations that provide exclusive coverage of their events. Sports organisations and their sponsors also benefit profoundly from and critically rely on public interest in their sports and the sports they sponsor. Public interest is generated in a large part by media organisations

and other entities providing regular and ongoing analysis and reporting of those sports. Media entities who are licensed rightsholders occupy a special place in this framework. Equally though, non-rightsholders providing news coverage and analysis of those sporting events in a limited manner under the News Reporting Regime are an important element to be recognised in this framework.

e) The appropriate balance between regulation and commercial negotiation in ensuring that competing organisations get fair access to sporting events for reporting purposes

14) PMG agrees that competing organisations should continue to be entitled to fair access to sporting events for news reporting purposes but does not see how further regulation would play a part in facilitating or improving such fair access. The existing News Reporting Regime, which includes the underlying fair dealing entitlements enshrined in the Copyright Act and recent case law, has operated and continues to apply to adequately ensure that media organisations have fair access to sports events. Most sporting organisations in fact acknowledge either at the outset or during commercial negotiation that any accreditation terms are subject to the News Reporting Regime.

f) The appropriate balance between the public's right to access alternative sources of information using new types of digital media, and the rights of sporting organisations to control or limit access to ensure a fair commercial return or for other reasons

g) Should sporting organisations be able to apply frequency limitations to news reports in the digital media

15) We will deal with the above terms of reference together due to the similar nature of the issues raised.

16) In PMG's view, sporting organisations should not be able to control or limit the way the public accesses sports news, or apply frequency limitations to the dissemination of news reports via digital media nor should it seek to restrict a media organisation's right to access a venue to produce such sports news coverage. If a sports organisation feels aggrieved about the way a third party is utilising coverage of the event, the sports body has ample ability to quickly and effectively take remedial action directly against that party.

17) Artificially imposed limits raise a number of issues.

- a) Firstly, imposing such conditions will place media organisations wishing to attend the sporting event at a disadvantage against organisations that do not attend the sporting event as those that do not attend the event will not be subject to any limitations included in news access accreditation terms as such organisations can access a television or internet feed of the event and reproduce extracts of the feed in their news coverage.
- b) Secondly, as mentioned above, sporting organisations should not be able to censor what information leaves the sporting event if they decide (by way of example) that a certain photo should not be distributed to the public as it may not show the sporting organisation or one of its players in a positive light.
- c) Thirdly, limits on some services such as statistical information will not work in a social media context. For example, if a text based limit update was imposed for a cricket match, it would not prevent someone doing tweets on a Twitter type service without regard to the limits imposed by the sports body.
- d) Fourthly, limits would not be able to be imposed on organisations located outside Australia which would mean that Australian sourced information could be inferior to that produced outside Australia.

h) The current accreditation processes for journalists and media representatives at sporting events, and the use of accreditation for controlling reporting on events

- 18) As we have already mentioned, in PMG's experience, news access accreditation processes vary depending on the sporting event and the sporting body. In most cases, news accreditation terms and conditions imposed by most sporting organisations strike an appropriate balance between the interests of the sports body and the media.
- 19) Occasionally, sporting organisations attempt to limit what a third party can do with information or material created by that third party at a sporting venue. For instance, some accreditation terms attempt to limit the way in which statistical information about a sporting event can be distributed to the public. In our view, statistics such as the fact that a player has scored a try or scored a boundary should be in the public domain and media and news organisations should be free to distribute this information. Placing artificial or "number" limits on organisations who attend sporting events to cover them place those organisations at a disadvantage against organisations that do not apply for news accreditation and are free to distribute such statistical information without limitation.
- 20) In our view, accreditation terms and conditions should be as they were originally intended and primarily centred on addressing the designated areas within a venue which may be accessed by rightsholders and/or non-rights holding media organisations and associated OHS issues such as clarifying where liability rests if any loss or damage is incurred by the media organisation within those designated areas of the venue. They should not address other extraneous issues.
- 21) We believe that the market will ultimately resolve any issues arising in this area and those sports organisations who do attempt to impose frequency limits or unduly restrict access to the media through the accreditation process will ultimately realise that they will be unable to effectively do so.

i) Options other than regulation or commercial negotiation (such as industry guidelines for sports and news agencies in sports reporting, dispute resolution mechanisms and codes of practice) to manage sports news to balance commercial interests and public interests

- 22) As stated throughout this submission, PMG is of the view that no further regulation is required in this area as an appropriate balance exists between the relevant commercial and public interests. The way the News Reporting Regime currently operates ensures that the exclusive rights of a media organisation are protected while maintaining the entitlement of news organisations and non-rights holding media to freely report on sports events. Any disputes that have arisen recently have been primarily between the sporting organisations and news agencies and in our view are best resolved through commercial negotiation between the relevant parties having regard to the existing law and principles of fairness which underpin the well established News Reporting Regime.

We would be happy to discuss any element of this submission with the Committee.