

# Coalition of Major Professional Sports

Submission to the Senate Inquiry into the reporting of sports news and emergence of digital media

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# 1 SUMMARY OF COMPS MEMBERS' SUBMISSION

## 1.1 Introduction to COMPS members

The Coalition of Major Professional Sports (COMPS) includes the Australian Football League (AFL), the Australian Rugby Union (ARU), Cricket Australia (CA), the Football Federation Australia (FFA), the Professional Golfers Association (PGA), the National Rugby League (NRL) and the Australian Rugby League (ARL), and Tennis Australia (TA).

COMPS members are the custodians of the nation's major professional sports and are primarily not-for-profit entities. COMPS members are responsible for the development and long-term sustainability of their respective sports in Australia.

## 1.2 Why the Senate Inquiry is relevant to sport:

- Sport is entrenched in the Australian way of life and plays a major role in the economic and social health of Australian communities
- COMPS members are predominantly self-funded and are responsible for the significant financial investment needed for the ongoing development of their sports at the grassroots and elite levels
- Media rights represent the single largest source of funding for COMPS member sports to support this required investment. This funding relies upon the sports' ability to provide exclusivity over their content to broadcasters
- The 'traditional' media environment (i.e. print, radio and television) supported the news reporting principle of 'fair dealing'. In this environment, accreditation agreements and other informal arrangements provided sufficient protection of sports' intellectual property, and ensured the exclusivity of their content
- The distinction between sports news content and commercial sports content is becoming increasingly blurred in the 'new' digital media environment. News and media organisations are beginning to expand their business models to aggregate and distribute sports content across multiple platforms
- The ability of COMPS members to benefit from their content and rights in this new digital environment is being undermined, with diminished exclusivity. As a result, their ability to both protect traditional media rights and realise new opportunities from digital media rights is being eroded
- The erosion of these critical sources of revenue compromises the sports' self-funding business models and their ability to provide the Australian public with world class sporting events and coverage
- Without greater protection of their intellectual property, COMPS members' ability to raise revenue will diminish and professional sports will become reliant on greater financial support from Government to ensure their continued viability
- This Inquiry presents Government with an opportunity to clarify the fair dealing boundaries on the use of sports content for news reporting



### 1.3 Role of COMPS members in the Australian community, culture and economy

COMPS members provide a wide range of public benefits through a self-funding business model. The vast majority of COMPS members' revenue is devoted to enhancing, promoting and developing sport for all Australians. A key benefit enjoyed by the public is free access to news reporting of sport and commentary on sport.

Sport is entrenched in the Australian way of life and plays a major role in the economic and social health of the Australian community [*Refer 3.1 & 3.2*]. Examples of the contribution of sports to Australian society include:

- The promotion of healthy lifestyles and active participation, with each COMPS sport attracting between 125,000 and 950,000+ participants
- COMPS members are significant contributors and participants in their local communities, whether it be fundraising for the Victorian bushfires, Queensland floods, the tsunami appeal or supporting health organisations such as the McGrath Foundation or Breast Cancer Foundation of WA
- A contribution of over \$8.8 billion to Australian GDP and employment of over 110,000 people in the sports industry
- Cumulative viewership of over 380 million matches per annum for COMPS sports broadcasts
- Nearly half of all Australians attending at least one sporting event each year, with 16 million tickets distributed for COMPS members' events

COMPS members are principally not-for-profit, reinvesting their revenues back into the development of their sports, both at the national and 'grassroots' level. Examples of this reinvestment include:

- Community investment - supporting indigenous outreach programs, investing in community facilities and funding junior leagues, clinics and tournaments
- Administration of elite leagues and talent - funding national teams (including women's competitions that receive little media support or interest but which are critical to sport's commitment to provide for all Australians), national leagues and tournaments, distributing funds to state associations and member clubs, investing in stadiums and facilities, and retaining top talent
- Talent development - sustaining coach, umpire/referee and athlete development and promoting and maintaining community development programs



## 1.4 Public reporting and commentary on sport

COMPS members endorse the right of news and media organisations to access sports information for the purpose of news reporting and commentary, regardless of technology, platform or channel.

News reporting on relevant and current sports events is critical for debate and public interest in the events promoted by COMPS members. This reporting and commentary generates exposure for major sports to all Australians.

In particular, COMPS members:

- Support free public access to information for reporting current news
- Encourage commentary, debate and analysis on sports news
- Recognise the diversity and alternative sources of sports news and commentary that are now available via digital media

## 1.5 Sources of funding of COMPS sports

The vast majority of COMPS members' revenue is generated by the commercialisation of their intellectual property in connection with sporting events conducted under their auspices.

The sale of media rights is a key source of funding for all COMPS members; for some it comprises 70 to 80 per cent of annual revenues. This revenue source is based on the intellectual property rights that COMPS members have in the sports they organise, develop and promote. In turn, COMPS members reinvest that revenue back into their sports, including development of the spectacle, the game at the grass roots level, the community and facility development.

Sports news reporting and commentary, within the principles that underlie fair dealing, are complimentary to the legitimate commercialisation of COMPS members' intellectual property.

## 1.6 The changing Australian media landscape and challenges presented by new digital media

The use of digital media by news and media organisations has blurred the distinction between the rights of COMPS members to generate revenue from their intellectual property rights and the legitimate rights of others to report current news events under the principle of fair dealing.

The traditional media environment, by its linear nature, lent itself to the principles of fair dealing and allowed sports to protect the exclusivity of their intellectual property while also allowing media operators to report and comment on sport. Traditional media platforms (television, radio and print) limited sports news content in terms of the volume, frequency, duration, context and access to content, for example:

- Typically limited to specific timeslots (i.e. as part of general news shows)
- Restricted in terms of duration (i.e. only relatively short clips used)
- Intrinsicly linked to the context of the report and a broader package of sports news

By their very nature, digital media offerings facilitate the blurring of the distinction between fair reporting of current events and the commercial exploitation of these events under the guise of news reporting [*Refer 3.3 & 3.7*]. For example:

- News and media organisations are now able to offer large unlimited volumes of content with 'on demand' and near-live delivery to consumers of text, photos and video highlights of sports content





- Archived data from news reports is aggregated and / or linked to provide sports product to consumers rather than news
- Digital media provides no technology boundaries to frequency of access, or limitations over the longevity of archived information. As a result news excerpts become historical or biographical entertainment, and highlights can form niche sporting products (e.g. archived video clips)
- Organisations have developed unofficial online sports ‘portals’ (i.e. specialised websites) offering sporting images and video

The shift from the reporting of news to the exploitation of sports content in digital media is fragmenting audiences. There is a proliferation of digital sites that are not owned or licensed by COMPS members, yet the sites use intellectual property of the COMPS members [*Refer 3.7*]. This will undermine revenue generated by COMPS members from the legitimate sale and licensing of their intellectual property rights with respect to sporting events. This will affect the future self funding nature of these sports.

A variety of new business models are also emerging in the digital media environment (e.g. social networking sites and ‘blogs’). These models are beginning to leverage sports content to help drive consumers to their sites. Leveraging intellectual property that belongs to others for commercial gain does not fall within the principles of fair dealing. The transition to digital media has not, in the first instance, changed the nature of news reports and commentary, although it provides immediacy and widespread distribution.

In effect, the revenue generated from sports’ intellectual properties is being shifted from the creators and owners of the rights to the news reporting organisations that capture and archive sports content and make this available for purposes other than the reporting of news and current events. The owners’ ability to generate revenue from offering exclusivity of content will be increasingly eroded as this information is reconstructed from news reports and made available on digital media platforms.



## 1.7 Desired outcomes

COMPS members believe that the *Copyright Act* and fair dealing exception for reporting of sports news should continue to be platform neutral (i.e. the same across TV, radio, mobile, online and other digital channels) and that the principles behind the current legislation and regulation should remain the same regardless of media platform, namely:

- COMPS members, as the creators and holders of intellectual property rights relating to sporting events, must retain exclusivity over those rights
- Those rights can remain subject to the fair dealing exception for the reporting of current news events

Whilst these principles should be maintained, the nature of the intellectual property rights in sport and the expression 'reporting of news' should be better defined to prevent the blurring of the boundaries between the two principles in the new digital media environment.

The principle of fair dealing for the purpose of reporting news can be given boundaries that would add specificity (as noted below). These boundaries are necessary to clarify the distinction between the sport's right to raise revenue from the sport's intellectual property on the one hand, and fair reporting of current events on the other hand. These boundaries include:

- Limits to ensure that the reporting is contemporaneous and relates to current sports news events
- Restrictions on:
  - frequency of content updates and refreshes;
  - size and nature of archive material (such as clip length and size of image galleries) which can be subsequently accessed, or aggregated or linked; and
  - use of technology which permits news information to be used for other commercial purposes.

COMPS members seek to maintain their ability to adopt sport specific agreements, accreditation arrangements and/or codes of practice for their particular sport or event that may contain quantitative limits.

COMPS members are united in the need for mechanisms to support their rights. COMPS members would encourage Government consultation on this issue. It is yet to be collectively determined as to the best mechanism going forward, either being through codes of practice or regulatory/legislative change.

Whilst outside the current terms of reference of this inquiry, COMPS members believe that sporting organisations should be granted ownership of copyright in the key elements of the performance of the major events promoted by those sports organisations. This requires an enhancement of their intellectual property rights at law, although those rights will remain subject to fair dealing for the purpose of reporting current sports news.



## 1.8 Insights from other markets

There is generally a much greater level of protection afforded to sports content and intellectual property in overseas markets [*Refer 3.8*]. The accreditation terms implemented by other major international sporting bodies are typically more stringent than those in Australia, where sports have been subject to legal disputes under ‘fair dealing’ claims.

Furthermore, custodians of major global sporting events, such as FIFA for the Football World Cup, the IOC for the Olympic Games, the IRB for the Rugby World Cup, and the ICC for the Cricket World Cup, demand that host nations comply with strict requirements regarding the use of their intellectual property and content. If Australia is to continue to host such events, it will need to demonstrate that it has the capacity and regulatory frameworks to support these requirements and to ensure that the sport’s intellectual property is protected whilst enabling sports news reporting.

For example, the Football Federation Australia (FFA) is currently bidding to host the 2015 AFC Asian Cup and the 2018/22 FIFA World Cup (with the support of the Federal Government). It will be an essential requirement of compliant bids that FFA can demonstrate that exclusivity of media rights will be strictly protected in the Australian environment including by specific legislation to ensure appropriate enforcement mechanisms. The bids, including the exclusivity of media rights (across all platforms) must be supported by Government Guarantees.

The prospects of the Australian bids will be significantly enhanced if the bids point to the legislative measures already in place and operating effectively within a general ‘culture of compliance’.

A summary of select provisions applying to the conduct of the 2014 FIFA World Cup and the 2013 Confederations Cup (to be held in Brazil) give a clear indication of the likely minimum bid requirements that will apply to the 2018/2022 competitions. The mandatory Government Guarantees include, inter alia, the requirement that the national government guarantee and “*ensure, that the following measures will be implemented and operative, by specific special legislation, if required, at least (a period being approximately 2 years before the competition)*”:

- The establishment of a national Rights Protection Programme committee, no later than 5 years before the competitions, consisting of government representatives to review and implement improvements and initiatives to protect FIFA’s intellectual property and commercial rights and FIFA’s rights protection programme;
- The establishment of regional Rights Protection Programme Committees for each host city;
- Establishment of offences at law, grant of special law enforcement powers and allocation of law enforcement resources (relating to prescribed breaches including the unauthorised use of any FIFA intellectual property);
- Unconditional and irrevocable acknowledgement of FIFA’s legal and beneficial, unrestricted and exclusive ownership of all Media Rights (broadly defined) and other intellectual property rights of FIFA;
- The passage of, to the extent necessary, special laws designed to ensure protection of FIFA’s ownership of all Media Rights and provide the support of officers of relevant authorities, to assist in the protection of Media Rights.





## 2 RESPONSE TO TERMS OF REFERENCE

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

#### Situation:

- COMPS members support the unfettered reporting of news within the principles of fair dealing and the Copyright Act
  - Exposure and debate promoted by appropriate news reporting is key to generating interest in sport and plays a critical role in its ongoing development
  - COMPS members provide the public free access to news content through their proprietary internet properties
  - COMPS members provide the media extensive access to players, coaches and grounds, and host the news media at sporting events; COMPS members provide a finite amount of working space and in some cases connectivity during events
- The public interest and COMPS members' commercial interests are aligned
  - Independent commentary and reporting of sport from a wide variety of sources is a fundamental tenet of a democratic society and enhances the reputation of and public interest in COMPS sports
  - The public benefits from COMPS members' self-funded business models, through increased quality of product and minimal taxpayer burden
  - COMPS members are self-funded sports that reinvest the vast majority of revenue back into the overall development of their sport. For example:
    - Retention of major events in Australia
    - Community investment
      - supporting indigenous outreach programs, investing in community facilities and funding junior leagues, clinics and tournaments
    - Administration of elite leagues and talent
      - retaining top talent, funding national leagues and tournaments, distributing funds to state associations and member clubs and investing in stadiums and facilities
    - Talent development
      - sustaining coach and athlete development and promoting and maintaining community development programs

#### Issues:

- The principles that underpin fair dealing are not currently being applied in the execution of sports news reporting via digital media
- Digital media allows content to be aggregated, archived and delivered on demand during or after the event. This changes the nature of sports news content and the corresponding application of fair dealing principles



- Media organisations are leveraging repackaged content to generate a commercial return from the intellectual property rights in the sports event, bypassing the holders of these rights
- There are a number of examples of sports news reporting organisations seeking protection under dealing provisions that COMPS members contend are beyond the principles of fair dealing
  - Detailed video and image archives - In some cases media websites are providing archives of over 50 images from one event
  - Unofficial sports portals - Web-based sports ‘portals’ have been established by media organisations in competition with COMPS members’ official sites. These websites include news, image galleries, expert opinions, ladders, fixtures, tipping, and can include a page dedicated to each club
  - Syndication of sports news content - Media websites allow sports content to be embedded in third party websites. This syndication represents a form of commercialisation of sports’ intellectual property
  - Direct monetisation of sports content - Mobile operators distribute highlights clips as a direct form of commercialisation, sold on a subscription or ‘per clip’ basis
- It is in the public’s interest to ensure the continued viability and development of COMPS sports due to the importance of sport in Australia

### **Response:**

- COMPS members strongly support open and unfettered access for the public to bona-fide reporting of news (in the nature of current events), regardless of media platform
- The principles of fair dealing for the reporting of sports news need to be applied consistently across all media platforms
- The unauthorised exploitation of intellectual property rights undermines the ability of COMPS members to generate revenue and is not in the interest of either the sporting bodies or the Australian public



## 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

### Situation:

- The traditional media environment, in respect of print, radio and television was compatible with the principles of fair dealing
  - On these platforms content is ‘linear’, scheduled and not available for archiving and aggregation without proper authority
- In this traditional media environment, the fair dealing principles were implemented via accreditation and informal agreements. These provided sufficient regulation of, and distinction between, legitimate sports news reporting and commercial use of sports’ intellectual property
- The media landscape is rapidly evolving from this ‘traditional’ environment to one based on multiple digital platforms
- This has a number of fundamental implications for the way that content may be managed and delivered. In particular content may now be:
  - Aggregated
  - Archived (with open access) and compiled
  - Delivered on demand
  - Linked with other ‘news’ content
  - Available in near real-time
  - Linked to non-sponsor advertising
- The transition to ‘digital media’ has not changed the question of what is newsworthy, however it has opened up an almost boundless space for news reporting organisations to leverage content outside legitimate news reporting
- The business models of news organisations have begun to change. Aggregation of ‘audience generating’ content has become increasingly important in the online space
- News organisations have begun to provide increasing volumes of sports content via digital channels. This has taken the form of video clips, live match scores, image galleries and archives that may extend beyond the accredited terms



### Issues:

- In the evolving media environment the existing methods of applying the fair dealing provisions no longer provide adequate protection for sports' intellectual property
- The proliferation of sports content and the unauthorised commercial exploitation of sports' intellectual property represent a significant threat to the value of sports media rights:
  - Exclusivity of content is increasingly difficult to generate
  - Audiences are fragmented across channels offering competing content
- There are a number of examples of sport content that COMPS members contend go beyond the principles of fair dealing, and constitute a breach of intellectual property rights

### Response:

- The regulation of fair dealing should continue to restrict the ability of news and media organisations from commercially exploiting sports content in the digital environment



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

### Situation:

- The principles of fair dealing and the Copyright Act were enacted to regulate (amongst a range of issues) the fair reporting of news, but those principles are not consistently applied across all media platforms
- COMPS members have intellectual property rights over the images and video of events that are protected by the Copyright Act, subject to the fair dealing principles
- COMPS members are predominantly self-funded and not-for-profit, with the majority of revenues being reinvested into the development of their sports and community involvement
- Media rights represent up to 80% of COMPS members' revenues and are therefore critical to their self-funding model
  - Media rights revenues are founded upon the ability of sports to offer exclusive rights to broadcast or publish specific content
  - It is essential that sports are able to 'carve out' and guarantee access to certain content on an exclusive basis in order to make a commercial return on this content
  - This approach still provides for media to freely access and report news to the Australian public
- The role of digital platforms in delivery of both commercial sport content (i.e. live streaming of matches) and in the delivery of sports news reporting is clearly becoming increasingly important in the rapidly evolving media landscape

### Issues:

- Media rights, the primary revenue source for COMPS sports are being eroded. As a result, members' ability to self-fund and invest in the sport and community is at serious risk
- Without greater protection over their intellectual property rights, COMPS members' ability to raise revenue will diminish and professional sports will become reliant on greater financial support from Government and taxpayers
- The current environment creates a number of key issues for COMPS members:

#### *Erosion of media rights value*

- The value of digital media rights, and traditional media rights, is being eroded by the increasing quantities of sport content being offered by non-right holders outside legitimate news reporting
- The current exploitation of content by non-rights holders (e.g. sale of video clips) represents a lost revenue opportunity for COMPS members and/or rights holders
- Similarly, the syndication of sports content by news organisations is a form of commercial exploitation which detracts from the COMPS members' ability to monetise their intellectual property
- The value of sports' sponsorship rights is also being eroded by unofficial sites using conflicting marketing or advertising alongside sports content (e.g. advertising a competing brand to the sponsor alongside a sports highlight clip)





### ***Fragmenting audience away from COMPS member websites and/or exclusive rights holders***

- News organisations are currently able to offer large volumes of current or archived sports content. This allows these organisations to build scale for their online properties (e.g. websites), undermining the value and relevance of COMPS members' official websites

### ***Threatens ability to host major international events***

- Australia and Australian sports aspire to be at the epicentre of international events and continue to bid to host events such as the FIFA World Cup and the ICC World Cup
- Custodians of major global sporting events, such as FIFA, the IOC and the ICC, demand that host nations comply with strict requirements regarding the protection of their intellectual property and media rights
- These events are subject to increasingly stringent accreditation agreements with host countries required to guarantee that the intellectual property of these international bodies will be protected
- The current regulation in Australia is proving increasingly inadequate in terms of being able to provide such guarantees and Australia is therefore at risk of losing and/or not acquiring hosting privileges of major events, which has an enormous boost to economic activity

### **Response:**

- The principle of respecting the rights of the holders of the sports' intellectual property, subject to fair dealing for reporting news, must be applied across all media types and draw a clear distinction between genuine sport news content and sport intellectual property rights
- Rights to sport content must remain the intellectual property of sporting bodies and they must be able to commercialise those rights irrespective of the media environment, in order to support the viability of their sports
- COMPS members' view is that regulation should:
  - Be platform neutral. This is particularly important given the pace of media evolution and the uncertainty in terms of future content delivery models
  - Support a continuation of fair dealing principles as observed under the 'traditional' media environment
  - Be supportive of news reporting but also provide clear boundaries as to what content may be legitimately offered as news
  - Be mandatory in its application
- COMPS members seek reforms:
  - to limit the expression 'reporting of news' for the purposes of the fair dealing exception
  - to give force to sport specific accreditation arrangements and codes of practice for sports news reporting and parameters to that reporting
- Details of suggested reforms are contained in response to Terms of Reference Section (i)



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

### Situation:

- COMPS members' commercial interests reflect a need to fund the ongoing development of their sports and community involvement at a 'grassroots' level
- COMPS members are predominantly self-funded and reinvest the vast majority of their revenues into the overall development of their sports
- COMPS members are responsible for developing their sports and have intellectual property rights over content directly relating to their sporting events
- News organisations are typically commercial, profit making institutions that have dual goals of generating returns for shareholders and investors while serving the public interest in delivering the news
- The evolving media environment is changing the business model for news and media organisations. As a result, the aggregation of popular content, such as sport, is becoming increasingly important in terms of being able to guarantee commercial returns
- The purpose of the fair dealing exception is to protect the reporting of news and freedom of information and not to protect the media organisations' ability to make a return on content

### Issues:

- Media organisations are rapidly expanding their content offering in an attempt to gain scale in the digital space
- As part of this, these organisations have significantly expanded the boundaries in terms of the quantity of sports content available as 'news'

### Response:

- COMPS members support the principles of fair dealing, and the appropriate translation of these into the new digital environment
- An appropriate balance must be struck which:
  - Protects the ability of sports to commercialise their content
  - Enables and encourages legitimate sports news reporting
  - Allows news organisations to continue to make a fair commercial return on their overall content
  - Limits the ability of news organisations to directly monetise sport intellectual property rights under the guise of news reporting



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

**Situation:**

- It is in the interest of COMPS members to ensure that all sporting events are widely covered by a number of reporting organisations
- Existing regulation does not provide a sufficiently well defined framework for sports to regulate usage of their intellectual property
- Access to events and content publication is managed on an ‘ad-hoc’ basis through accreditation agreements and informal arrangements

**Issues:**

- Lack of clarity and poorly defined boundaries on reporting of sports news have been the catalyst for a number of recent disputes
- This lack of regulatory clarity is resulting in differing interpretations of fair dealing for the reporting of news

**Response:**

- Regulation must support diversity in media and ensure unfettered reporting of sports news
- COMPS members wish to ensure that organisations which have access to sporting events use the content gathered only for legitimate news reporting. i.e. for the delivery of relevant and current information on sporting events to the public
- COMPS members would propose that any reforms of fair dealing should ensure that regulation is universally applicable across all reporting organisations and media platforms
- The reforms should support sport specific codes of practice and accreditation arrangements which govern detailed terms of access to the sports’ intellectual property, for the purpose of news reporting and commentary



**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**

**Situation:**

- The public has access to legitimate sports news across all relevant digital technologies
- As custodians of the nation's leading professional sports, COMPS members are recognised by the major media and sporting organisations as the owners of the intellectual property rights in the competition and events organised by the member
- Media rights are founded upon the ability of sports to offer exclusive rights to broadcast or publish specific content
- COMPS members have the right to commercialise their intellectual property through media rights and exclusivity whilst continuing to provide access for news reporting
- News and media organisations are beginning to offer increasing quantities of sports content. For example, a number of news and media organisations offer (under the guise of news reporting, or without authorisation):
  - Video and image archives of sports content
  - Video highlights clips providing extensive coverage of sporting events
  - Websites focussed on specific sports including large quantities of sports content
  - Highlights on a 'pay per download' basis

**Issues:**

- The proliferation of sports content by news and media organisations extends beyond the principles of fair dealing in terms of the public's right to access current and relevant news information
- In many instances this content is neither current nor relevant to recent events (e.g. archived footage)
- In addition, media organisations have begun to directly leverage sports content in order to generate commercial returns (e.g. highlights clips)
- This use of content by non-rights holding organisations is increasingly undermining the ability of sporting bodies to make a fair commercial return on their intellectual property



## Response:

- COMPS members would identify a number of forms of content to be ‘ring-fenced’ to enable sporting organisations to make a fair commercial return:
  - First-run television broadcast coverage of an event (live or on delay)
  - First-run radio broadcast coverage of an event (live or on delay)
  - First-run digital / online coverage of an event (live or on delay)
  - Highlights footage
  - Archive content (video / audio / photographic)
- These forms of content extend beyond what would generally be defined as ‘news’
- There are a number of areas where greater clarity is required, particularly with respect to the use of ‘highlights’ for news broadcasts. This will need to be addressed as part of any regulatory reform





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

### Situation:

- In the traditional media environment, the available content platforms (television, radio and print) inherently limited sports news content in terms of the volume, frequency, duration, context and access to content. For example, sports news was:
  - typically limited to specific timeslots (i.e. as part of general news shows)
  - restricted in terms of duration (i.e. only relatively short clips may viably be used)
  - intrinsically linked to the context of the report and a broader package of sports news
- Media organisations developed informal agreements that limited the frequency of sports highlights on television without the involvement of sporting organisations
- In the new digital media environment, the use and availability of content is almost boundless
- Content may now be aggregated and delivered on-demand via multiple platforms (e.g. online, mobile, pay TV etc)

### Issues:

- The evolving media environment introduces significant potential changes in terms of the format and accessibility of sports news content
- The ability for news reporting organisations to aggregate and distribute sports content without restriction or regard to sports' intellectual property rights represents a material threat to sports' media rights
- Prior disputes have focussed on the boundaries between news and commercial content in terms of the length and volume of video clips and archive material
- The proliferation of digital media outlets will severely curtail the effectiveness of informal or negotiated contractual arrangements



## Response:

- Regulation should seek to protect sports intellectual property rights but also continue to support genuine news reporting
- In order to provide sufficient protection, reasonable limitations as to the use of sports content for news reporting must be put in place
- There are a number of dimensions in addition to frequency that need to be considered, including:
  - Clip duration
  - Total quantity of coverage (including size of image galleries)
  - Frequency of content updates
  - Delay
  - Longevity (i.e. ability to archive)
  - Context
  - Distribution format
  - Method of commercialisation
- Many of these dimensions are sport or event specific. This lends itself to sport specific regulation, however, that regulation must be enforceable at law, but capable of appeal or arbitration by an independent body in the event that such regulation is deemed unreasonable



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

### Situation:

- Accreditation agreements are used by sporting bodies as a means to ensure that without clear regulation or other guidelines the intellectual property of sport is protected and content is appropriately used in line with fair dealing principles
- In other markets, large sporting bodies (IOC, NFL, MLB) have successfully implemented much tighter accreditation controls
- Australian news reporting organisations frequently sign up to more stringent restrictions for coverage of international sporting events such as the Olympic Games and Football World Cups. These same organisations are often unwilling for sports in Australia to implement similar controls

### Issues:

- As the media environment evolves, existing regulation is proving to be increasingly inadequate in supporting accreditation agreements and their enforcement
  - The proliferation of media organisations and digital platforms for reporting of news has made it increasingly difficult for COMPS members to protect their intellectual property
  - COMPS members have little recourse short of litigation to protect the unlicensed use of intellectual property rights
- In their current form the fair dealing exceptions offer little support to the sporting bodies in enforcing the required level of accreditation controls

### Response:

- Media accreditation should not be used to discriminate between news organisations
- The principles of fair dealing for the reporting of sports news need to be applied consistently across all media platforms
- The implementation of a regulatory framework which supports sports in their negotiation of accreditation terms, and which offers sports protection over their intellectual property and content is required
- Media accreditation agreements will be required regardless of which regulations or guidelines are put in place in order to handle the unique characteristics of each sport/event
  - However, with greater clarity with respect to fair dealing, conflicts should be minimised



## **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**

### **Situation:**

- The boundaries between legitimate sports news content and commercial sports content are becoming increasingly unclear
  - Sports bodies are often unable to reach satisfactory agreements in commercial negotiation with news and media organisations in respect of accreditation and protection of the intellectual property of sport

### **Issues:**

- Negotiated agreements between sports and media will likely need Government support to be successful and consistent across sports
- This proliferation of content is beginning to undermine the value of sports media rights and therefore represents a significant threat to the self-funding model of COMPS members

### **Response:**

- The principle of fair dealing for the purpose of reporting news can be given boundaries that would add specificity (as noted below). These boundaries are necessary to clarify the distinction between the sport's right to raise revenue from the sport's intellectual property rights on the one hand, and fair reporting of current events on the other hand. These boundaries include:
  - Limits to ensure that the reporting is contemporaneous and relates to current sports news events
  - Restrictions on:
    - frequency of content updates and refreshes;
    - size and nature of archive material (such as clip length and size of image galleries) which can be subsequently accessed, or aggregated or linked; and
    - use of technology which permits news information to be used for other commercial purposes
- The principle of 'fair dealing' has been given much consideration by the courts. They have rightfully recognised the intent or nature of the use and the quality of the segment when compared to the primary copyright work, rather than establishing quantitative metrics such as duration or percentages
- COMPS members seek to maintain their ability to adopt sport specific agreements, accreditation arrangements and/or codes of practice for their particular sport or event that may contain quantitative limits
- COMPS members are united in the need for mechanisms to support their rights. COMPS members would encourage Government consultation on this issue. It is yet to be collectively determined as to the best mechanism going forward, either being through codes of practice or regulatory/legislative change



- Whilst outside the current terms of reference of this inquiry, COMPS members believe that sporting organisations should be granted ownership of copyright in the key elements of the performance of the major events promoted by those sports organisations. This requires an enhancement of their intellectual property rights at law, although those rights will remain subject to fair dealing for the purpose of reporting current sports news





### 3 APPENDICES AND KEY EXHIBITS

#### 3.1 Sports are a major part of Australian society & culture

Australia's engagement with COMPS sports	
COMPS Cumulative Viewership p.a.	~380m games viewed
COMPS Total Attendance p.a.	~16m ticket sales
COMPS Participation:	
AFL	>690,000
Rugby Union	>125,000
Cricket	>770,000
Football	>930,000
NRL	>450,000
Golf	>900,000
Tennis	>950,000

Source: ERASS; COMPS members

"... So, if you ask what's the government's overall approach to sports funding, it's to ensure that both these areas of sporting activity, both from the general community and at the elite level, are properly supported in the long-term future. I think all Australians like to see Australia do well, just as all Australians like to see the idea and the reality of this country having large scale community participation in sport..."

Kevin Rudd, Australian Prime Minister, 'Rudd praises Australia's Olympians' AAP, August 25 2008

"... Sport is powerful, it inspires, it transforms lives, it entertains. It has a major impact on lives. The Australian Government wants to harness the power of sport. The Australian Government is committed to act now..."

Minister for Sport, Kate Ellis, October 9 2008

#### 3.2 Sports are an important part of Australia's economy

Direct benefits	
Sport direct contribution to GDP:	\$8.8 b p.a.*
Total COMPS Revenue:	~\$900 m p.a.
Total Persons Employed in Sport:	112,000 *

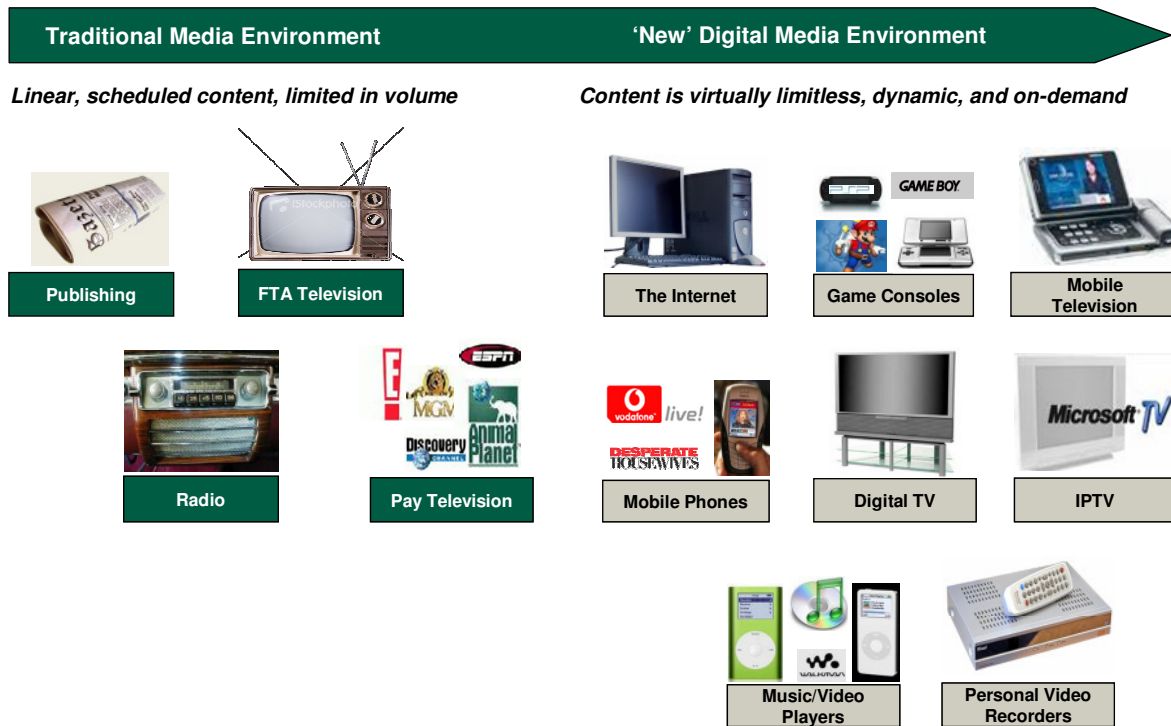
Note: \* 2004/05

Source: COMPS Financial Reports; Tennis Australia Annual Report; ABS; Government of Western Australia, Department of Sport and Recreation

Example of indirect benefits	
The Australian Open has a significant impact on the local economy and helps drive international tourism**	
Tourism	
Economic benefit to VIC	~\$200m
Visitors to VIC	>100,000
International visitors	>7,500
Global TV	
Countries	157
Global Reach (households)	425m

\*\* estimate for 2008

### 3.3 The media environment is evolving rapidly with the emergence of new digital platforms

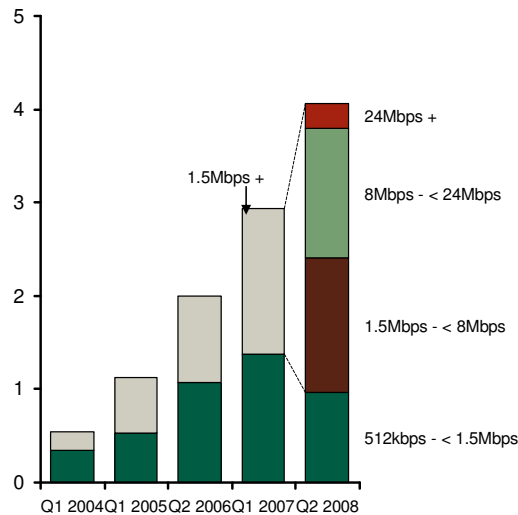


### 3.4 This evolution is evident in the uptake of broadband internet and data-enabled mobile devices

**Australian broadband subscribers**

(512kb+)

Millions of subscribers

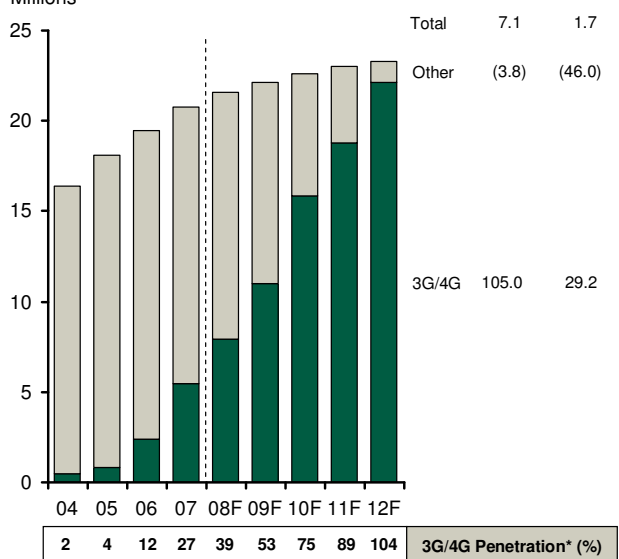


Note: \*Number of subscribers as a percentage of total population  
 Source: BuddeComm, EIU, ABS

**Mobile Subscribers**

(1998 – 2012F)

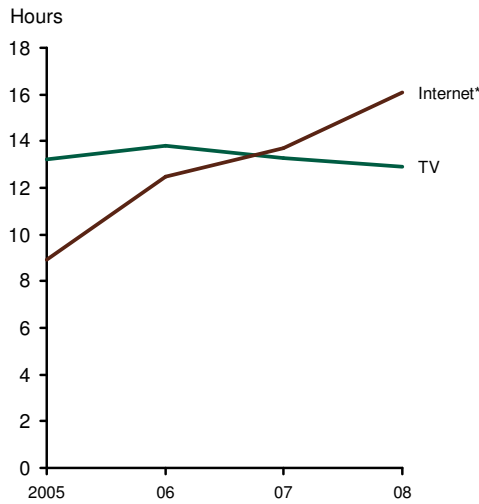
Millions



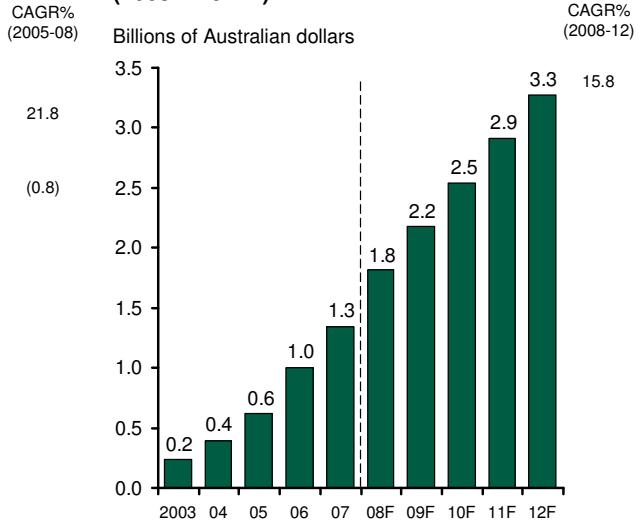


### 3.5 These new platforms are attracting increasing audiences and as a result advertising revenues

**Hours per week spent on TV and Internet, as reported by web users^ (2005-08)**



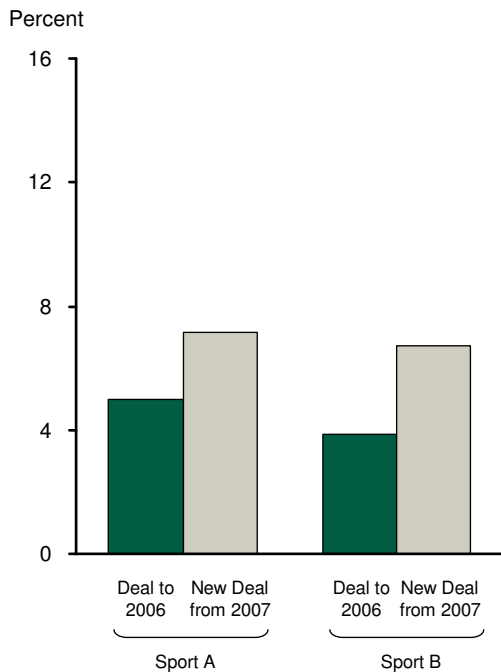
**Internet advertising spend Australia (2003 – 2012F)**



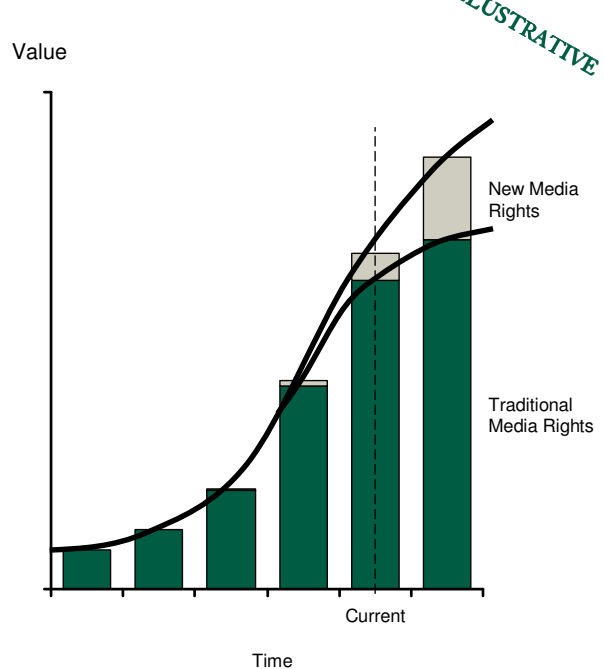
Note: ^The survey was conducted online; \*Defined as users who use the internet at least 8 times per week  
Source: Outlook - Australian Entertainment & Media 2008-2012, PriceWaterhouseCoopers; AC Nielsen (2007 and 2009)

### 3.6 Digital media will become an increasingly important source of funding for sports

**Examples of new media rights deals as % of total media contract**



**Evolution of sports media rights**



Source: Press Reports; Factiva; Company Announcements



### 3.7 The distinction between news content and commercial sports content is becoming increasingly blurred

Example	Description	Issue for COMPS
a) Detailed video and image archives	Media websites are providing archives of sporting events, which may include, for example, up to 50 photos from a cricket test match, or highlight packages for each day's play	Both the volume of coverage and the duration of availability extend beyond a traditional concept of news reporting
b) Unofficial sports portals	Media organisations have created websites dedicated to particular sports. These websites include news, image galleries, expert opinions, ladders, fixtures, tipping, and can include a page dedicated to each club	These portals divert traffic from official COMPS websites. This dilutes the value of official content
c) Syndication of sports content	Media websites that display video footage allow the footage to be embedded in third party websites	Unofficial video is propagated across third party websites reducing the value of the official website for web users. News organisations are directly leveraging sports content for their own commercial purposes
d) Direct monetisation of sports content	Mobile operators distribute highlights clips, provided as 'news coverage', sold on a subscription or 'per clip' basis	Erodes the value of COMPS sports' mobile rights. News organisations are directly leveraging sports content for their own commercial purposes

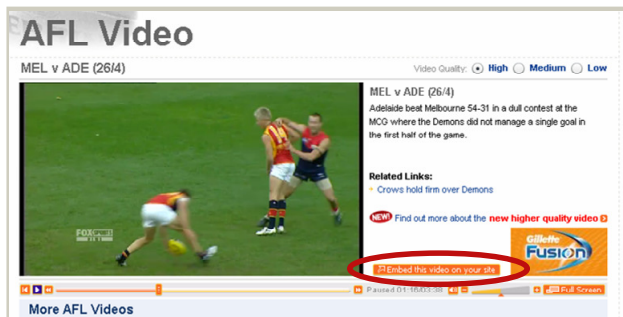
Example: a) Detailed video and image archives



Example: b) Unofficial sports portals



Example: c) Syndication of sports content



Example: d) Direct monetisation of sports content





### 3.8 The regulation of sports content in other markets is significantly more stringent

		Limits for online content
Global	International Olympic Committee	Olympic coverage shown on the internet must be geographically limited to the region of the particular rights owner News sites not affiliated with official broadcasters may not carry any competition video at all
	Rugby World Cup	Tournament material may only be used in regularly scheduled bona fide news programming, and not for any "on-demand" news whether on the internet or elsewhere Transmission of tournament material comprising moving pictures/footage to any mobile telephony device or service is not permitted
USA	National Football League	No video highlights are allowed on unlicensed websites Unlicensed websites may show up to 45 seconds of pre-game footage from inside the team facilities Text stories and photos are unrestricted
	Major League Baseball	No game highlight content on any website not licensed by MLB Media websites cannot have more than two minutes of audio or video recorded within league facilities News sites cannot post more than seven photos from a game
Europe	PGA European Tour	Non-rights holding television and internet broadcasters cannot provide content from the course. They have access to official press conferences after play and more lenient regulations on non-tournament days when video may not exceed 20 minutes continuously It is permissible to publish stand-alone detailed scores and leaderboards after an embargo of 15 minutes but this must not be represented as 'live scoring'
	Wimbledon	No audio or video in any form may be reproduced on any website, whether live or recorded No live point by point scores may be transmitted over the Internet except through the official Wimbledon website No accreditation is granted for journalists writing solely for the internet, and accredited media may only contribute to the website of an accredited publication

Source: Media Accreditation Contracts; News Access Regulations; Media Guides; Press



## 4 PROFILES OF COMPS MEMBERS



- The AFL has responsibility for development of the sport, including clubs, players, AFL community and AFL competition. Its members are persons appointed by each Club competing in the Australian Football competitions conducted by the AFL throughout Australia. Clubs competing in the AFL competition do so under licence from the AFL and are regulated by a series of rules and regulations promulgated by the AFL
- The major competition is the Toyota AFL Premiership Season comprising 16 teams based around Australia
- In 2008 there were 714 registered players on AFL club lists
- In each state / territory of Australia there are also state based competitions that are semi-professional and a source of talent for the AFL competition
- The AFL runs a number of community interest programs including NAB AFL Auskick, AFL Kickstart, AFL Club Community Camps, Multicultural Football Schools Program, and the AFL National Schools Program
- Participation of AFL is approximately 690,000 people
- Direct workforce of approximately 175 employees
- CEO is Andrew Demetriou



- The ARU encourages growth and development of Australian rugby, provides leadership and governance for the game, and manages commercial aspects. The ARU's member unions encompass each state and territory in Australia
- Each state / territory also has state based competitions, many of which are semi-professional
- The major competition is the Investec Super 14, comprising 14 teams across Australia, New Zealand and South Africa. Australia has 4 teams, which are based in NSW, Queensland, Western Australia and the Australian Capital Territory
- The national team is the Qantas Wallabies, which competes in the Rugby World Cup, Tri-Nations, Bledisloe Cup, and against other international teams
- Contributions to the greater community include EdRugby (the ARU's national education program for schools), TryRugby, and Indigenous Rugby Programs
- Participation of rugby union in Australia is approximately 125,000 people
- Direct workforce of 99 employees
- CEO is John O'Neill



- Cricket Australia (CA) is a not for profit organisation limited by guarantee. Its owners are the six state cricket associations. CA is responsible for the overall governance and growth of the game of cricket in Australia. CA also exclusively controls the sale of media rights for matches involving the Australian cricket team played in Australia
- The Australian Cricket Team plays in Australia in the 3 Mobile Test Series, the Commonwealth Bank One Day Series, and the KFC Twenty20
- The major domestic competitions are the Weetbix Sheffield Shield, the Ford Ranger Cup, the KFC Twenty20 Big Bash and the Women's National Cricket League
- There are 6 domestic state teams based around Australia and in each state / territory there are also men's and women's district cricket competitions of leading players
- Cricket Australia contracts 25 men and 19 women players for national duties while the state teams contract approximately 150 players in total
- Cricket contributes to the community through programs such as MILO in2 CRICKET, Disability Action Plan, and CricKids Playing in Harmony
- Participation of cricket in Australia is approximately 770,000 people
- Direct workforce of 84 employees
- CEO is James Sutherland



- FFA is the governing body for football in Australia. It is a member association of the Federation Internationale de Football Association within the Asian Football Confederation. The membership of FFA includes representatives of state/territory governing bodies. Each of these governing bodies has a commitment to comply with the FFA constitution, applicable statutes, by-laws and regulations and is responsible for the game within their respective geographic regions. FFA's mission statement is to be one of the top football nations, both on and off the field, within the Asia-Pacific region
- The major domestic men's competition is the Hyundai A-League which is growing from 8 to 10 teams in 2009/10. There will be 9 teams based in Australia and one in Wellington. The Westfield Women's League is a broadcast national women's competition involving 8 teams in 2009/10
- The senior men's national team is the Qantas Socceroos which competes in the FIFA World Cup and the AFC Asian Cup and the senior women's national team is the Matildas. In total FFA runs 13 national teams which compete across Asia and the world in AFC and FIFA tournaments
- Football is fostered in Australia through programs such as the Optus Small Sided Football, the Indigenous Football Festival, and Talented Player Development Programs
- Participation of football in Australia is approximately 930,000 people
- Direct workforce of ~70 employees
- CEO is Ben Buckley



- The NRL, in conjunction with the Australian Rugby League and ARL Development, are responsible for the general administration and propagation of Rugby League. In this capacity it is responsible for the provision of funding for the maintenance and continued development of the game of Rugby League in Australia at both the senior and junior level. The NRL funds both the ARL & ARL Development all of which are not for profit organisations
- The major competition is the Telstra Premiership comprising 16 teams. 15 teams are based in Australia throughout Queensland and NSW and in Melbourne and there is one team based in Auckland
- The national team is the Australian Kangaroos which competes in the Rugby League World Cup and against other nations in test matches
- There are over 400 professional players in Australia
- Some of the NRL's community contributions include Rugby League's One Community, the Indigenous Development Program, Kids to Kangaroos, LeagueFun, and Legends of League
- Participation of rugby league in Australia is approximately 450,000 people
- Direct workforce of ~55 employees
- NRL CEO is David Gallop





- The PGA of Australia is a not for profit membership-based organisation of 2,500 golf professionals which has as a primary objective to grow the game of golf by developing programs and initiatives involving PGA members to promote and encourage the game
- As the National Professional Sporting Organisation for golf and representing members across tournament play and vocational roles, the PGA conducts operations in training & education, careers services & recruitment, tournaments (in excess of 400 per year), mass participation events, industry analysis, marketing & commercial partnerships and media & promotion
- The PGA is the body recognised for sanctioning of professional tournament golf in Australasia by the International Federation of PGA Tours and currently has 11 members in the Top 100 of the Official World Golf Rankings
- The PGA contributes to grassroots golf through the PGA Foundation and programs such as the Holden Young Lions, involving PGA members undertaking clinics across the nation
- Participation of golf in Australia is approximately 900,000 people
- Direct workforce of 55 employees
- CEO is Max Garske



- Tennis Australia is the governing body of tennis within Australia. Tennis Australia's 8 member associations are state/territory based governing bodies responsible for implementing Tennis Australia initiatives
- Tennis Australia responsibilities include promoting and facilitating participation in tennis at all levels, staging tennis events, developing future stars, growing business revenues and honouring the sport's heritage
- The major tournament is the Australian Open, one of the World's four annual grand slam tournaments. Lead up tournaments include the Brisbane International, Moorilla Hobart International and the Medibank Sydney International
- Australian teams compete internationally at the Davis Cup, Fed Cup, Summer Olympics and Commonwealth Games (as of 2010)
- At April 2009, there were 5 Australians in the top 100 internationally and an additional 8 players within the top 250
- Participation of tennis in Australia is approximately 950,000 people
- Direct workforce of 150 employees
- CEO is Steve Wood

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