

SUBMISSION OF THE ASSOCIATED PRESS
TO THE
AUSTRALIAN SENATE STANDING COMMITTEE
ON ENVIRONMENT, COMMUNICATIONS AND THE ARTS
FOR ITS
INQUIRY ON THE REPORTING OF SPORTS NEWS AND THE EMERGENCE OF DIGITAL MEDIA

Submitted by:

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Chairman McEwen, Deputy Chairman Birmingham, and members of the Senate Standing Committee on Environment, Communications and the Arts, The Associated Press (AP) is grateful for this opportunity to present some of its views on the subject of the relationships among sports enterprises, the news organizations that cover them, and the public that both industries serve.

I am associate general counsel at AP headquarters in New York. My responsibilities include oversight of the terms and conditions under which AP journalists accept credentials and cover events. For more than 10 years, I have reviewed actual or proposed credential agreements from sports teams and leagues in the United States and many of the other 96 countries where AP maintains news bureaus, and I have overseen or directly

engaged in negotiations with event sponsors to modify terms we considered unreasonable.

AP is a member and major underwriter of the News Media Coalition, and we endorse the NMC submission to this Committee. I appreciate the chance to add these remarks on AP's own behalf.

1. Sports Events Are Matters of Public Interest

Your interest in these matters is appropriate. Sports events, especially at the highest levels, are matters of great public interest, and not only in the sense that they draw large crowds and make sensational headlines. The public interest in sports goes much deeper.

In societies where individualism reigns, sports give us a sense of ourselves as parts of a greater whole. Through sports we share emotions and aspirations with thousands, even millions of others. Sports are among the strongest drivers of collective identity and community. Everything about them concerns the public interest writ large.

On a day-to-day basis, nothing about our favorite teams that might affect their performance is beneath our scrutiny, and nothing about key players that might illuminate their fitness, lifestyles, personalities, relationships, and character is beyond our curiosity.

Sports are not just about people sitting in grandstands or in front of television sets watching games and matches. The contests by themselves would be parochial and fleeting events. It is the constant buzz of information, imagery and commentary surrounding the contests that turns each of them into a plot point in a continuously running communal narrative. This ongoing story fascinates billions of us, and even people with no favorite sport or team can't ignore it.

From a broader perspective, anything that either confirms or casts doubt on the essential good faith, fairness and integrity of the games in which so many of us invest so much emotional energy matters a great deal. The cliché that sports is a metaphor for the game of life contains a large dose of truth. Sports heroes and the games they play are, at their best, proxies for our own best ambitions. And as we watch teams and leagues going about their business, our views and expectations of the other social, economic and political institutions that help shape our lives may vary accordingly.

When teams carry our national flags into international competition, they carry more than the commercial aspirations of their owners for victorious and profitable tours. They are national and cultural ambassadors who travel with the hopes and good wishes of their countrymen, as well as the blessing and encouragement – and often, sadly, the security protection -- of their governments.

The fact that the Committee has launched this inquiry is evidence that sports leagues are not just business ventures, and that the way they conduct themselves is a proper subject of public conversations like this one.

2. The Businesses of Sports and News Are Intertwined

The business of professional sports and the business of sports news are both vast and vibrant industries. Yet neither could have become so without the other. Their relationship was symbiotic in their infancies and still is today.

AP began covering sports just after the close of the American Civil War, which ended in 1865. I commend to your attention a chapter from the recently published AP book, “Breaking News,” which sketches the history of AP sports reporting. A copy of the sports chapter, “Thrills to Last a Lifetime,” is attached to this submission as an exhibit.

The chapter includes an anecdote that describes the 1889 bare-knuckled boxing match in which John L. Sullivan beat Jake Kilrain after 75 rounds of bloody mayhem. They fought in tiny Richburg, Mississippi, 105 miles from the nearest telegraph terminal in New Orleans. AP chartered a railroad engine and two passenger cars and had the train standing by to speed its story to the wire after the fight. (When the AP correspondent found that competing writers had sneaked aboard, he ran forward and unhitched the two cars, then clambered onto the engine and left the competition behind.)

AP's enterprise, combined with an emerging communications technology, thus transformed what would have been a local barnyard brawl into the talk of the nation on the morning after. While sports, journalism and technology have all come a long way since 1889, the essential relationship hasn't changed. News coverage not only expands the audience for the events themselves but also builds excitement in advance and insight afterward.

News accounts of sports events in newspapers, broadcast news programs, and more recently on Internet and mobile publishing platforms, don't merely satisfy the appetites of established fans. They engage the attention of casual observers and often of people who have no interest in sports at all. They certify sports as significant, not just in and of themselves but within the larger context of all noteworthy events of every day.

Not incidentally, news accounts of sports events create and energize new sports fans and new consumers of news media.

3. Sports Enterprises Are Now Also Publishers

It has been suggested that the Internet has changed everything about this relationship.

Sports leagues, the argument runs, no longer need the news media to reach their fans. They can, and do, create Web sites to distribute their own facts, features and commentary, publicize their own events, and promote their own stars. Some even create

their own networks so they can do their own game-day cable programming and video webcasts.

Sports enterprises have now become major information enterprises as well. In some cases, the information arms are growing faster than the sports businesses they were created to serve. In every case, they are an important source of revenue for their owners.

The dispute between Cricket Australia and certain news organizations including AP centers on a handful of particular provisions in the CA terms and conditions for admitting journalists to cover matches. You may have seen details of these in other submissions. But as the terms of reference make clear, those disputed provisions are not the real subject of this inquiry.

The underlying cause of the news media tension with CA and other like-minded leagues is that the leagues regard news organizations as competitors of their own information businesses, especially on the Internet. They see every new visitor and every new advertising dollar lured to a news Web site as one less visitor and one less dollar for them. Since the leagues control their games and access to the venues, they can give themselves significant advantages in attracting fans and advertisers, and to a greater or lesser degree most of them try to, by building restrictions into the terms under which they grant credentials to journalists.

For example, it's not uncommon for leagues to impose strict limits on the number of still photos of a game or match that can be published online, not only while the match is in progress but even for an hour or two afterward.

Some credentials forbid any online video reporting at all about news conferences or interviews conducted at the stadium or training venue. Others strictly limit such video to a total of two or three minutes, none posted until after the game broadcast is concluded.

Many leagues try to restrict use of photos or video to the 24 or 48 hours following the game, with the aim of reserving for themselves the opportunity to serve fans with weekly image galleries or archived historic materials.

Some credential agreements attempt to carve out entire information publishing platforms as exclusive preserves of the league's own publishing arm. Books and magazines have been commonly listed as a forbidden use of news media material, as has the whole vast and growing mobile delivery medium.

Cricket leagues are among organizations that try to reserve the entire Internet as the exclusive preserve of the single-sport Web sites they either produce or license, forbidding distribution of independent coverage to all other online publishers that specialize in their sport.

From time to time, credential terms flirt with censorship through terms that purport to forbid any coverage that disparages the team or league.

In extreme cases, leagues try to require news agencies to disclose their subscriber lists so a league can blacklist any it doesn't like or views as competitors. Some leagues even try to assert an intellectual property interest in photos or other materials created by journalists who cover their events. Terms like these are unacceptable, and AP, like other agencies, sometimes finds itself barred from covering major events because it can't sign the credential agreements.

The pretext for many of these rules is the league view that editorial news coverage should mean distribution in traditional media on game day and the day after, full stop. They regard all other publication of news media material as presumptively commercial and therefore as business opportunities that rightly belong to them, not to free-riding news media who don't even pay for admission to the press box.

Some league executives have expressed the opinion that the news media and sports event owners are both in the entertainment business. In the case of sports, they argue, the leagues do all the work and the media just show up to take pictures.

This is a deeply misguided point of view for several reasons. The first is that it turns reality on its head. The media have not entered the leagues' business, which is the staging

and promotion of sports competitions. It is the leagues who have entered the media's business, which is creation and distribution of information and commentary about sports.

The second reason is that the leagues' view ignores the legitimate role of independent sports coverage by a free press as we've known it for more than a century. There is no recognition in it for the public interest or the essential role of independent media in serving it.

A third reason is that it trivializes sports events as isolated private spectacles, staged for private profit alone, with no underlying social and cultural narrative. Even the leagues themselves know better. Games are news for much longer than 48 hours. They are savored for many days, weeks, even years. The great ones long outlive the players and fans who were there.

No one can presume to be self-appointed exclusive custodian of -- and ticket taker to -- the communal memory of our shared enjoyment of sports -- not the leagues, the news media or anyone else.

Sports history -- including sports history in the making -- belongs to no one, because it belongs to everyone.

4. Media Coverage Helps Sports and Sports Owner-Publishers

AP's view is that the harshest of the leagues' media credential restrictions are not only wrong in themselves but also work against the leagues' own interests.

They are wrong because they have the effect of limiting speech about matters of great public significance. To the extent that a sports league is not a state actor by virtue of public subsidy of its stadiums or operations, it might be lawful for it to try to impose by contract some restrictions on content and use of news materials that a government could never impose by law or regulation. But it is not conscionable, and it is not in the public interest, for all the reasons suggested above.

The public interest argument may not help us much with the leagues. But we do hope to convince them that unreasonable credential restrictions hurt them as much as they hurt us.

Independent news coverage in all media builds excitement in sports, attracts new fans, elevates the status of sports in the public sphere, and lends enhanced credibility to the leagues and their events. It does all this and more without taking anything away from the leagues' own information businesses. On the contrary AP believes that independent news media and the leagues' own communications arms reinforce and complement rather than compete with each other.

Sports fans are not a closed and finite population, and their attention spans and appetites for sports events, sports trivia, sports statistics, sports images, etc. are not fixed and

capped. Passion can drive them to any height, and passion is driven by a combination of exciting events experienced through uninhibited depictions of, conversation about and commentary upon them. There is no logical upper limit on any of these things, and no persuasive evidence we've seen that this market is in danger of saturation. As with news of general interest, demand for sports information and imagery fluctuates in response to events and to *other sports information and imagery*.

News media don't regard sports enterprises as direct competitors in the sports news and information business. Our content may share the same names, places, events and topics. We may draw on the same skills and technologies. We may sometimes target the same audiences. Often we may even be content sources for each others' products and services. But our missions are fundamentally different.

Sports Web sites and cable networks exist to tell fans what a team or league wants fans to know about it, which is fine as far as it goes. Sports journalists and their employers, on the other hand, exist to disclose whatever they can find out that might enhance fans' enjoyment and understanding of sports events and of all the imagery, information, hype and commentary that surround them.

The difference between independent coverage and self-serving publicity is crucial. Sports institutions like all others, as viewed through a news media lens, are not always pretty. The narrative on some days includes tales of gambling, fixing, doping, cheating, and general ineptitude. Sports heroes, managers, executives and umpires sometimes turn out

to have feet of clay. In the short run, reputations and fan devotion may suffer from such disclosures. But in the long run, the credibility and public standing of sports are higher when scandals are rooted out and lived down, and when the public can be reasonably confident that the spectacles they care so deeply about take place on level playing fields.

Independent sports coverage, on and off the field, helps serve this watchdog function. It is a major portion of the value the news media bring to the sports industry and to the public interest.

5. Media Accept Reasonable Restrictions on Event Coverage

Of course, no one has yet suggested openly that news coverage of sports events should be quashed entirely or that journalists should be banned from the stadiums. Sports leagues say independent news reporting is welcome -- as long as it doesn't include too many pictures and isn't delivered on the new digital platforms that many fans prefer and which are the future of publishing.

But in addition to being wrong, and wrong-headed, it's unreasonable to admit journalists to cover events and then try to specify how they should do their jobs, or where, when and how they can publish their work.

League and team owners say they need the money they make from their information businesses to develop their sports, and that this justifies using their control of events and

venues to hamper their news media competitors. But even if that argument weren't erroneous, it would run both ways. For the media, news and information aren't just lucrative sidelines. They're our core business, a business currently facing grave challenges. When sports owners put their thumbs on the scales of the sports information business, they cheat themselves and thwart the public interest in vigorous, independent coverage of significant public events.

News organizations recognize the right of sports event sponsors to the benefits of exclusive live presentation of their events, through gate receipts and broadcast licenses. We also recognize their rights to exclusive use of their names and trademarks in genuinely commercial ancillary businesses such as merchandising. Credential terms that reasonably protect these areas are not a problem for the news media and never have been.

But credential terms that attempt to build artificial protective barriers around in-house league editorial enterprises are inappropriate and, at their worst, intolerable. They shrink opportunity for all, they shortchange fans, and they chip away at the promise offered by digital media for further enriching our lives and our popular culture.

These are not issues which lend themselves to resolution by government action, and we sincerely hope none is contemplated. But the Committee has made a positive contribution through its sponsorship of these proceedings.

You have provided an invaluable forum for exploring these matters before an impartial and disinterested audience. I am sure that all sides will learn a great deal from the views presented, and that the benefits will be apparent as news and sports organizations continue working to resolve our differences.

Thank you for accepting and considering these remarks.