

6 April 2009

Committee Secretary  
Senate Standing Committee on Environment,  
Communications and the Arts  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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Dear Secretary

### **Inquiry into the reporting of sports news and the emergence of digital media**

Hutchison 3G Australia Pty Limited, the operator of 3 mobile, appreciates the opportunity to respond to this inquiry.

Hutchison provides a range of content to its customers via its Planet 3 service. Significantly, Hutchison has been a sponsor of the Australian test cricket team through Cricket Australia since 2002. This sponsorship gives Hutchison the exclusive right to distribute live cricket footage of games involving the Australian test cricket team, played in Australia, to its customers via a mobile device. In addition, Hutchison is able to create highlights packages of this content. Hutchison also reports on sports news to its customers through sports news programs it produces internally or secures from third parties, for example, Fox Sports News.

Hutchison is concerned at the suggestion that there be increased regulation in an area where industry players have managed to operate successfully and largely without dispute in the past. Hutchison's chief concerns are as follows.

1. Difficulties in interpretation may arise if a distinction is created between the reporting of sports news and the reporting of other news. This could lead to potential uncertainty and dispute in a number of areas, such as, defining what a "sport" is and establishing whether a particular event or occurrence is newsworthy only as sports news or whether the event or occurrence is newsworthy in itself, regardless of being about a sport. These types of delineations can only be made in the context of the event itself in all the circumstances, rather than in a fixed manner and in advance of the event occurring.
2. Similarly, an attempt to define what is newsworthy and for how long something remains newsworthy, such as through regulation or industry guidelines, would potentially necessitate the broad categorisation of events and a prescient estimation of the public's level of interest in those events. Regulation or guidelines could not be adapted quickly to take into account extraneous newsworthy events that may occur during any event, beyond the mere result of the sporting event. Sports news providers are well placed to determine whether an event is, or remains, newsworthy at the time and tailor their reporting accordingly.

Attempting to determine in advance what duration of an event or occurrence would be appropriate to use by sports news providers would also cause difficulties given the range in lengths of sporting events and given the range of occurrences that may occur during an event that may be considered newsworthy.

3. To date, the making and interpreting of copyright law has sought to proceed on a technology neutral basis. Hutchison considers that this approach should continue and that the effect of new technologies on the nature of sports news reporting should not impact the use that may be made of copyright material in the reporting of sports news. The media in which consumers may use sports material may have an impact on commercial negotiations for the use of that material, however it should not impact the use to which material may be put for the reporting of sports news.

Consumers in particular, are not aware of the nuances that could be created in relation to what may and may not be used by sports news providers in different media. The consumers' choice should be focussed on the method of viewing sports news, rather than being limited by the nature of what may be included in that news. In any event, given the range of sporting programs, news or otherwise, currently available on mobile devices, it would be a strange result to now limit or define what can be provided to consumers. As mentioned, Hutchison procures and creates a range of exclusive and non-exclusive sport content as well as sports news reporting for its customers. As a genuine participant in this market, Hutchison does not consider that the technical means for delivery should impact what is permitted to be delivered.

4. Hutchison queries whether any changes to the current law or the introduction of additional regulation or guidelines will have an impact on the perceived misuse of copyright material. Increased regulation is sure to impact on commercial negotiations for the use of material where the regulation determines duration, media type or means of delivery in relation to sports news reporting. However the impact will be on those who currently participate on a legitimate basis in this arena. Increased regulation or guidelines is likely to do little to deter those who already operate without regard to the current law.
5. If a decision were made to produce industry guidelines, Hutchison would be concerned as to how industry players are equally represented in the formation of those guidelines and how it is determined what those guidelines would include. Given the range of views that are likely to exist on the issues, Hutchison considers that any guidelines would be the result of negotiation and that the parties involved would be better served in negotiating the use of rights on a case by case basis, rather than seeking to determine those rights in advance.

Yours sincerely,



Louise Sexton

**Company Secretary & General Counsel**