

8 April 2009

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

Sent by email: [eca.sen@aph.gov.au](mailto:eca.sen@aph.gov.au)

Dear Committee Secretary

**Re: Senate inquiry into the reporting of news and the emergence of digital media**

Cricket Australia (CA) appreciates the opportunity to contribute to the Senate Inquiry into the reporting of news and the emergence of digital media.

CA has also made a formal submission as a member of the Coalition of Major Professional Sports (COMPS) and recommends that this submission be read in line with the COMPS submission.

The subject matter to be considered in this Inquiry is highly complex and can be deeply emotive. This Senate Committee should be commended for its leadership in seeking to start meaningful discussion and we hope this is the beginning of a process which can lead all parties – sporting bodies and media organisations – to greater clarity and acceptance of each other's roles and responsibilities.

Without question, CA values and respects the role that the media plays in helping to promote public interest and engagement with cricket. Media publicity is important for the continued growth and health of our national game. And a healthy national game, developed and funded by CA and our member bodies with the help of the media's promotion, contributes to national health and wellbeing, creates national pride, and drives significant economic activity for Australia.

Technology has irrevocably changed the sport and media landscape as we have traditionally known it. The distinction between sports news content and commercial sports content is becoming increasingly blurred in the 'new' digital media environment.

New opportunities have emerged and the competition to gain the attention, interest and patronage of customers through content use has created some disagreement between sports rights holders and media organisations.

While all parties have a right to share and participate in the new opportunities created by the digital landscape, it is important not to lose sight of the roles and responsibilities of each party. Sports bodies, such as CA, exist to manage and develop their sports on behalf of the Australian public and hold major community-level development obligations.

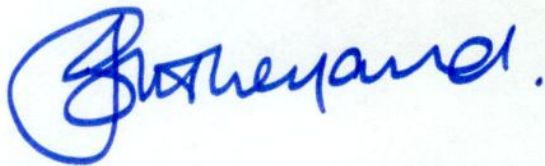
Media organisations also have obligations to the public - to report news. Profits are made and shareholder value is created by reporting news, including sports news, of public interest to the Australian public.

The public interest is central to both sport and media. But changing technology affecting how news is produced and distributed has created a debate, both here and overseas, about how this public interest is best served.

This matter is one of great complexity. There are many areas that require exploration, understanding and a refining of definition. CA welcomes the Committee's initiative to consider a wide range of viewpoints through the Inquiry and further welcomes the opportunity to make a personal representation at a Senate hearing, as required, to answer any queries and respond to its submission.

CA would be pleased to work with the Committee on any outcomes from this Inquiry. Should you need any further information please contact our Government and Community Relations Manager, Michael Christo, on 03 9653 9973 or email [Michael.christo@cricket.com.au](mailto:Michael.christo@cricket.com.au)

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J Sutherland', with a large, stylized initial 'J'.

**JAMES SUTHERLAND**  
CHIEF EXECUTIVE OFFICER

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## 1. ABOUT CRICKET AUSTRALIA

Cricket Australia (CA) is a not-for-profit national governing body for cricket in Australia, responsible for international and interstate cricket and national coaching and development programs. It is owned by its membership, made up of six state associations, each of whom has representatives on the CA Board.

CA connects to the local and state levels of cricket through the six state cricket associations and the two territory associations. Together, these organisations seek to work in the best interests of Australian cricket to keep it strong and healthy at all levels on and off the field.

Our vision is for cricket to be **Australia's favorite sport**. We want cricket to be the most played, most watched, and most enjoyed sport in the country. We want to grow interest, viewers, participation and attendance each year, and we have set performance measures in these and other areas for the period 2005 to 2009 under the '**From Backyard to Baggy Green**' strategic plan.

Our five strategic priorities that help guide us in achieving our vision are:

- Reinforce and celebrate cricket's place in the Australian community
- Thrive at the elite level
- Substantially increase sustainable participation in cricket
- Grow the financial resources available to invest in the game
- Work efficiently in our federal administrative system

As a values-based organisation, we are very aware of the role that cricket has in the community. We acknowledge that we have a responsibility to invest back into the community from which we rely and draw upon to help administer the game on behalf of the Australian public.

CA gains most of its income from broadcasting rights. This is supplemented by monies from sponsorship, gate attendance and other revenue streams such as merchandise and licensing. After meeting operational costs, CA distributes its operating surplus to its members (the state cricket associations) for the purposes of developing the game of cricket, which includes development and running grassroots programs in clubs and schools, organising high performance cricket and improving venues and facilities for all cricketers in Australia.

Under the Memorandum of Understanding with the Australian Cricketers' Association all income generated by CA and the state and territory associations is combined to make up what is called, *Australian Cricket Revenue*.

CA operates a four-year budgetary cycle based on international cricket's *Future Tours Program*, to which we are a signatory and which schedules when and where international teams, including Australia, will play and tour each year. Our revenue varies from season to season predominantly depending on the popularity of the visiting teams touring Australia. This subsequently affects the value derived from the sale of our media rights for any particular season.

Australian Cricket Revenue is overwhelmingly derived through the sale of our media rights, which accounts for between **65% and 80% of our total revenue** depending on the four-year cycle outlined above.

CA exclusively controls the sale of media rights for matches involving the Australian cricket team played in Australia. When the Australian cricket team tours overseas other host countries control the sale of media rights.

In the 2008-09 budget, CA distributions to state associations for the purposes described above totaled around \$28.5 million.

CA reviews its participation numbers every year through the Australia Cricket Census to better understand the impact the sport is having throughout Australia. At last count there were **approximately 770,000 participants** in Australian cricket.

While these figures account for all organised cricket participants either at school or in the community, hundreds of thousands more Australians pick up the bat and ball during the year to play in the backyard, on the beach or in the street.

However, the impact of cricket cannot simply be judged on the number of people who play the sport, important as this is to the health and social wellbeing of communities. The sport attracts many more umpires, coaches, administrators and supporters each and every year. Most are people volunteering their time and expertise to see their community continue to grow through the sport of cricket.

Sport, like no other industry, also has the ability to bring communities together at a time of need. The enormous response from the sporting community in helping to raise funds and awareness during the recent Victorian Bushfires and Queensland floods was unprecedented. Cricket, in particular, was able to help raise over \$20 million for the Victorian Bushfire appeal and also moved the iconic Sheffield Shield final from the MCG, at the request of the Victorian government, to make way for the 'Sound Relief' concert to help raise funding for the appeal. Similarly, cricket's ability to help bring the community together helped raise \$650,000 for community breast cancer support during the last Sydney Test Match.

Much of CA's ability to assist the Australian community in this way falls within its 'Corporate Social Responsibility' program. Our partners within this program include the McGrath Foundation and the Movember Foundation and prior to these current partners CA worked closely with the Royal Flying Doctor Service.

Among our development responsibilities, CA:

- Distributes significant revenue to each of its six members annually for reinvestment into the game and community;
- Invests heavily into junior development;
- Manages or supports a myriad of community based initiatives, which include:
  - School curriculum programs, 'S'Cool Cricket';
  - Grassroots development programs, 'In2Cricket';
  - Cricket Cares (our partner and player charity initiative);
  - The National Participation Strategy;
  - Our Females in Cricket Strategy;
  - The AIS partnership;
  - The continued funding of the Cricket Centre of Excellence;
  - Our Global Development Program;
  - Our Culturally and Linguistically Diverse programs;
  - Indigenous Cricket;
  - MyCricket; and,
  - Supporting the build and maintenance of community cricket facilities

## 2. WHY IS THIS INQUIRY IMPORTANT TO CRICKET AUSTRALIA?

***“[Cricket has] been part and parcel of the fabric in this country for more than 100 years...everyone gets behind this game across the country.”*** (Prime Minister, Kevin Rudd, ABC Radio 27 December 2008).

- Sport is entrenched in the Australian way of life and plays a major role in the social and economic health of Australian communities. Cricket, in particular, is part of the fabric of Australian community.
- CA is a not-for-profit organisation that manages the game of cricket in Australia on behalf of all Australians.
- After operating costs, 100% of CA income is returned to our members (the state cricket associations) and reinvested into the community – through junior, indigenous, female, culturally and linguistically diverse, school and facility programs, and in fielding the Australian men’s and women’s cricket teams from under -17 to the national level.
- CA is principally reliant on the sale of media rights to support this investment and media rights represent up to 80% of our total revenue.
- The value of the rights is built on offering exclusive transmission rights to media partners (whilst also offering free access to non-rights holders for the purpose of reporting news).
- CA and its media rights partners share copyright in the event broadcast.

Advances in technology are creating tremendous opportunities, but at the same time blurring the lines that have been reasonably agreed and followed in the traditional media landscape in the reporting of news and the use of fair dealing.

- The digital landscape by its very nature is enabling (some) media organisations to stretch the boundaries of fair use, exploiting CA copyright material under the guise of news reporting by displaying large volumes of content for unlimited amounts of time.
- This stretching of fair use provisions is significantly eroding the value of CA’s media rights.
- If left unregulated or without any guiding parameters, the content sales effort will be severely damaged; CA’s primary income stream will be threatened and so will the investment that CA can make into the community on behalf of the community.
- This will require CA to seek alternative sources of revenue, including an increased reliance on government funding, to continue to operate and provide the same level of community investment in programs that it undertakes today, and to ensure that Australian cricket teams continue to represent the Australian people with pride and success.

### **3. CRICKET AUSTRALIA AND OUR RELATIONSHIP WITH THE MEDIA**

Cricket Australia (CA) has over a long period of time forged healthy working relationships with its media rights and non-rights holders. Our two long-term partners, Channel Nine and ABC radio, have been partners of cricket for more than 30 and 60 years respectively.

During this time CA and its state associations have employed a team of dedicated staff who work tirelessly to aid and support both rights holders and non-rights holders to perform their role of reporting cricket news (Refer to Term of Reference 'e').

The emergence of the digital media has not altered the remit of CA. It continues to exist as the custodian of cricket for the Australian public and, as a predominately self-funded not-for-profit organisation, is responsible for the growth and development of cricket at the grass roots, club and community level through to developing and fielding the Australian men's and women's elite cricket teams.

CA derives the funding for its investment into community through the sale of its media rights which represents up to 80 per cent of its income in certain years. The value of the media rights is based on the exclusivity provided to media organisations to transmit the event from a venue.

At the same time, CA has and continues to provide non rights media free access to venues, players and private events to be able to report news of the events we stage in a full, frank and fearless manner, without restriction. We believe we go out of our way to assist media to perform its role and pride ourselves on the level of service we provide.

However, the lines of what has traditionally been regarded as news reporting have been clouded and blurred by new media developments. By its very nature, the new digital media provides for greater depth, greater scope, greater frequency, longer duration and greater commercialisation of content: the definition of what is news - where it starts and where it stops - has been completely turned on its head. CA is not seeking to define what constitutes "news" and the Australian public does not expect that this is the role of a national sporting organisation.

However, as media companies compete for customers in the digital space, popular sport content is increasingly used as the vehicle to attract customers to various media shop-front platforms. On the one hand, this is a positive for cricket: we actively encourage discussion, debate and analysis of the game.

On the other hand, in the digital media, there are endless opportunities and natural scope to push boundaries of what is news and to exploit copyright material, owned by others, under the guise of "fair use". Media companies, enabled by technology, are offering a new breadth and depth of content, predominately online, with the aim of attracting eyeballs and then monetising that content through display advertising, text ads and sponsorships.

Having news and information of interest reported to the public is critical. But in the quest to develop better content and attract more viewers and subscribers, and thereby attracting the associated revenue, boundaries are pushed to attract greater consumption.

Media organisations are facing competition not only amongst themselves for a share of the customer's time, but from other entities who are also riding on the technology wave. Content aggregators, bloggers, new start-up companies – today, anyone can be a producer and distributor of "news" with relative ease.

Traditional frameworks as agreed by traditional broadcasters (such as the 3 x 3 x 3 television protocol) are no longer workable for sporting bodies or for media organisations in a non traditional world as the increasing creep and stretch of news reporting boundaries offers no regulatory framework, no limits on what can be done and no guidance to resolve disputes.



CA has been involved in two recent public disputes and in each case, selectively reported in the media in our view, CA has had no recourse and no equitable forum to voice its view or rationale.

The value of sporting rights are susceptible to being significantly eroded and damaged if the digital space is left unregulated and undefined as the volume of copyright material published, the timing of the publishing and the virtual endless lifespan of digital content and platforms means sports are facing the very real threat that their major source of income is about to be compromised.

The spiralling impact of such an outcome and the effect it will have on an Australian population that thrives on the cultural and social value of sport, is the very reason why this inquiry is critical and of absolute importance to CA and all sports.

Guidance, reform and legislative intervention is needed to assist sports and media organisations to return to the symbiotic relationship that has existed in the traditional media landscape and can exist in the new media environment so that each party can continue to perform its roles and responsibilities to the public.

#### **4. WHAT IS CRICKET AUSTRALIA'S PREFERRED OUTCOME FROM THE INQUIRY?**

The emergence of digital media and digital delivery platforms has transformed the way content can be offered and distributed business-to-business and to the consumer.

This transformation has caused confusion about what is news in the digital media; how bona fide news content can be used on digital media platforms and what is a bona fide news organisation. Sport and media both argue an erosion by the other of their respective commercial rights in the digital environment.

This confusion and tension between sport and media has largely centred on sports' media accreditation terms, which attempt to address the ambiguity in the application of the *Copyright Act's* fair use exception for news reporting in the digital media space by providing duration, frequency, volume, context, archiving and dissemination protections for sports rights content owners where no other adequate protections currently exist. Of course accreditation is necessary for many other reasons (refer Terms of Reference 'h') which are accepted by all parties, however without any other means or avenues (short of a costly, timely and potentially unresolvable course of litigation), accreditation is also used to provide sporting bodies with protection of its core asset.

The existing fair dealing exception for news reporting in the *Copyright Act* (it should be noted that fair use is a defence, not a right) has served media and sport in the traditional landscape. It does not, however, consider the new digital environment where there are no rules or agreements.

The principles of fair use must continue to exist across all platforms; they should be platform neutral; they should be refined for the veracity of the digital era but above all, they should be applied to digital platforms in the same way that they have applied on traditional platforms to encourage news reporting but to absolutely protect copyright owners.

CA encourages Committee members to consider the following areas that, if clarified, would allow sport and media to return to the symbiotic relationship that is needed for both to exist harmoniously and for mutual benefit in the new media environment.



Without offering an endless list, some areas that require clarification are:

- A better understanding of what is “news reporting” (not what is “news” as this is not CA’s role) and what constitutes bona fide reporting of information against what constitutes the provision of a significant depth and breadth of coverage that is created to draw eyeballs and to monetise content.
- The appropriate use of news; what is editorial use and what is commercial use?
- How long should copyright material remain accessible as “news” and continue to be monetised without any recognition or benefit to the copyright owner?
- Who are bona fide news organisations?
- Are content aggregators bona fide news organisations?

**Specifically, CA requests that:**

- **The fair use exceptions under the *Copyright Act* be given greater clarity and definition to accommodate the expansion from traditional to digital mediums.**
- **As an alternative, a code of conduct be established that provides guidelines addressing duration, frequency, volume, context, archiving and dissemination of news content to complement a sports organisation’s right to enjoy the benefit of its copyright .**

Any prescriptive regime must apply to all media covering sporting events in Australia, particularly if Australia is to continue to seek hosting rights for major sporting events, such as the FIFA World Cup which requires a higher level of rights protection for event organisers than is currently offered under Australian law. It is noted that most international media organisations are already accustomed to the guidelines prescribed in connection with such international events.

CA recommends that a working party comprising media organisations (different platforms), sporting representatives from COMPS, government and independent members is formed to further discuss and collaborate on how a set of fair dealing guidelines could apply in the digital environment.

## **5. RESPONSE TO THE TERMS OF REFERENCE**

- a) **The balance of commercial and public interests in the reporting and broadcasting of sports news.**
- d) **The appropriate balance between sporting and media organisations' respective commercial interests in the issue;**
- 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.**

CA endorses the rights of news and media organisations to sports information for the purpose of bona fide news reporting, 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 CA. This reporting and commentary generates exposure for cricket and all major sports to all Australians.

Cricket fans deserve access to timely, visual, dynamic and interactive content whenever and wherever the fan chooses to access that content and it would be self-defeating for CA to even attempt to deny cricket fans the opportunity to be engaged in the game either through being able to access “news” or being able to access the sport via any available platform chosen by cricket fans.

Both CA and media groups have an interest in ensuring news is created and reported. Without “news”, the media have nothing to report on and CA would not be achieving its vision for cricket to be Australia’s favourite sport.

Without question, the public has a right to receive information about cricket.

News organisations typically provide this as the independent source of information – from reporting results of cricket matches, to analysis of player and team performance, to offering praise or criticism and debate. The cricket fan should be able to receive this “news” and discussion in many forms – text, audio and visual.

This is the role of news organisations; to deliver independent news to the public, and this is not disputed.

At its most basic level, news is, of itself, a commercial model. News organisations exist in either creating content and selling it to others to publish (a news agency) or publishing news and generating commercial return through advertising and circulation.

There is a cost to producing news and this is acknowledged, but the business model of media organisations are, as predominately privately-owned entities, to earn revenue to fund the business and to return gain for shareholders.

CA also adopts a commercial approach to operating.

However, as a not-for-profit organisation, all of its revenue (after operating costs) is returned to members (also not-for-profit groups) and reinvested back into the community to continue to fund what is a sport that continues to engage the Australian population.

CA’s commercial model – built on the sale of media rights – does not prevent the general public from accessing information.

It is through partnerships developed by CA and its media rights partners that cricket fans are able to enjoy the game in as many ways possible, with significant investment made by media partners to deliver exceptional viewing experiences for fans over and above the delivery of “news”.

As audiovisual / broadcast content has become the premium form of content (copyright material owned by CA and its media partners), news organisations seek to use more and more (for commercial gain) and repackaged and repurposed, it still remains the copyright of Cricket Australia.

CA works with media partners to ensure as many and as much of a cricket event is available as possible for fans to enjoy. This occurs, without restriction on:

- Free-To-Air Television (Channel Nine)
- Free-To-Air Radio (ABC Radio)
- Internet (CA’s official website [www.cricket.com.au](http://www.cricket.com.au))
- Social Networking platforms (You Tube, facebook, Twitter)
- Australian Cricket Family newsletters

**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.**

The traditional media environment (newspaper, radio, television) inherently supported the principles of fair dealing because the nature of the traditional mediums naturally limited cricket content in terms of the volume, frequency, duration, context and access to content for reporting of news and commentary. The national news aired on television in the morning, as a flash update during the day and at 6pm that night. Newspapers were printed daily with a second and later editions added.

This enabled traditional media business models to exist, and allowed sporting organisations the right and ability to protect their intellectual property by selling media rights based on exclusivity.

Both commercial models co-existed. The digital age has changed this relationship.

The new digital media now provides for exciting new characteristics in the way the public can access and consume content:

- Digital media is available 24 hours, seven days per week
- Platforms and applications are constantly evolving
- New technologies are being developed every day
- Time offers no bounds
- It provides for unlimited geographical reach and unlimited storage capacity
- The public can access with ease
- Updating of material is possible at any time and as often as desired
- Aggregation of material is easy and possible by anyone, not just “news” organisations
- It provides for new revenue opportunities for both media and other industries

These are all fabulous opportunities and all parties have a right to share in the benefits created by living in a modern age.

What has not changed in the digital media is CA’s reason for existence – our vision for cricket to be Australia’s favourite sport and commitment to fund all levels of the game and continue to reinvest in the community.

Cricket can reach new fans in new ways and part of that is through embracing the delivery of content, including the provision of news to fans in the many new and old forms the fan chooses to consume.

It is not up to cricket or media organisations to dictate how information is to be received or consumed. This is the fans’ choice.

What has also not changed in the new digital media is the media’s role to report “news” and who owns the rights to events and intellectual property rights in broadcasts of these events.

What has changed, however, is:

- The scope and depth through which “news” can now be offered – in an unlimited volume, in a widespread fashion, aggregated, archived for extended periods of time, repurposed and without recognition of copyright ownership; and
- The number of companies that claim to be “news” organisations, otherwise regarded as content aggregators whose primary business is not the reporting of news, but who aggregate news content (particularly sport content) as a strategy to draw customers to their shop windows where they can then seek to drive their other commercial and primary business offerings under the guise of being a “news” organisation.

Broadcasting content (audio visual) is now seen as the key driver of the news model by media publishers and news agencies in attracting customers in an increasingly fragmented market where consumers have more choice.

Traditional newspapers and traditional radio groups have diversified their business and acquired audio visual assets and other commercial businesses and become production houses and syndicators of content.

This bodes well for ensuring fans have access to “news” and more choice, but does not bode well for CA as the value of our exclusive offering is becoming diminished as the principles of fair dealing do not stand up in the digital era, simply because the characteristics of the digital age have no bounds or limitations.

Self-regulated cross broadcasting agreements in the UK are an example of where fair dealing principles can apply in the digital space and which enable the concepts of fair use to be applied consistency in traditional and new platforms. Under these agreements, “news” provides that clips will last for a set time period, they can only appear in news programmes and not specialised sports programmes, they can be shown for 24 hours, they cannot be archived and re-used outside of the 24 hours. The nature of this agreement therefore suggests that “news” is something which is immediate (up to 24 hours) and the nature of only appearing in general news programme reinforces the clip as part of general news not specialised news.

There are agreements and accepted practices that occur among sporting and media organisations beyond Australia. The above example reinforces the need to have some, rather than no guidelines or agreed practice to manage an environment where news organisations can report “news” in a way that does not threaten the existence of sporting organisations.

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

In recent years, CA has been involved in public disputes over what the media has depicted as CA imposing undue restrictions on its ability to gather and report news.

CA categorically rejects any suggestion of this accusation outright.

The process of commercial negotiation has not at any stage prevented the print media or other news organisations from being able to perform its task of reporting news.

Nor has CA ever sought to deny “media freedom” – a term conveniently bandied around by certain news organisations without any factual evidence or demonstration that CA has, in any way, actually prevented media to freely operate or freely access the event and event information for news reporting.

CA would be pleased to discuss in greater detail with the Senate Committee inaccurate claims we note have been made by some media organisations about freedom of the media and access to sports venues.

We also note that CA and other sporting organisations are disadvantaged in the public debate – the media reporting tends to promote the media side when there are occasional public arguments between sport and the media on these issues.

The following lists the areas through which CA actively works to assist and support media organisations to have access to CA events for reporting purposes:

- Dedicated media staff of 12 (includes state cricket association and venue media relations staff) who answer all media queries and facilitate media requests seven days a week
- Pre match interviews
- Full access at venue media conferences – no restrictions on filming
- Free access to film at training at venues
- Distribution of regular media releases to a regularly updated media distribution list
- Open training sessions
- Post match interviews
- Open media days
- No discrimination on platforms: interviews are requested and accepted by CA and its players across radio, print, internet and television for news and for extended discussion and debate
- Free website content
- Free video on CATV
- Newsletters, annual reports and other publications

In addition, at its cost, CA provides the following services to enable media to perform its task of gathering and reporting news AT THE EVENT:

- Provision of comfortable work environment, including, from time to time, closure of spectators seating to accommodate media requests for extra seating
- Facilities including working desk, score updates
- Best seats in the house for prime viewing
- Free food and catering
- Free wireless access
- No accreditation and/or venue entry charge
- Flexible on late applications (no late fees even though it costs CA to prepare passes)
- Photographers get best seats in house – no restrictions on where they need to sit or where they can move around the venue as appropriate in the course of a match
- No restrictions on media providing fair, independent and open journalistic comment and criticism
- No restrictions on media representatives who choose to cover the match away from the event (e.g., by watching television and reporting what they see from the TV)
- No demands on media to acknowledge naming rights partners or to include CA's sponsor's logos in images (invariably, media organisations do not seek to actively include our sponsors in any photographs or audiovisual manner)
- No demands or rules for media on how photos can and cannot appear for bona fide news reporting
- No discrimination on any sector of the bona fide news media community

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

The existing fair dealing provisions of the *Copyright Act* do not hold up in the digital era.

The principles of fair dealing must apply in the digital era to ensure consistency of application across any platform.

The reality is the digital media has changed the way fans consume information and the manner in which media organisations must deliver the information. This is widely acknowledged and should be embraced, not restricted or impeded.

However the principles of why news organisations and sports organisations exist should not be lost in trying to find fair and equitable outcomes.

Media organisations exist to report “news” and there is a commercial model associated with this approach.

CA exists to manage the game of cricket on behalf of the Australian public and requires a commercial model that allows it to deliver and invest in the sport in the current format so that cricket continues to be part of the Australian way of life and so that the game can be supported from grassroots to the elite level.

Specifically, CA and all sports must be afforded the same protections that the *Copyright Act* provided in the traditional landscape, in the digital landscape.

Without any regulation or guidance, CA has no opportunity or recourse (short of costly litigation that are not helpful for sport, media or public investment) to protect itself from the creep of boundary that media organisations employ in the digital environment.

Such protection would not impede Australia’s embrace of the digital age, nor would it compromise genuine media organisations from developing consumer-driven new media services.

The basis of regulation should form part of a Code of Practice, Code of Conduct or industry guideline that addresses:

- specificity and context (the nuances of different sport formats and their varying duration);
- duration of video ‘clips’
- total quantity of coverage
- frequency of updates and type of updates
- delays
- longevity (ability to archive)
- distribution format
- method of commercialisation

CA recommends that a working party comprising media organisations (different platforms), sporting representatives from COMPS, government and independent members is formed to further discuss and collaborate on how a set of fair dealing guidelines could apply in the digital environment.



There are two aspects that must be considered in this framework:

- what occurs DURING the live event
- what occurs AFTER the match has ended

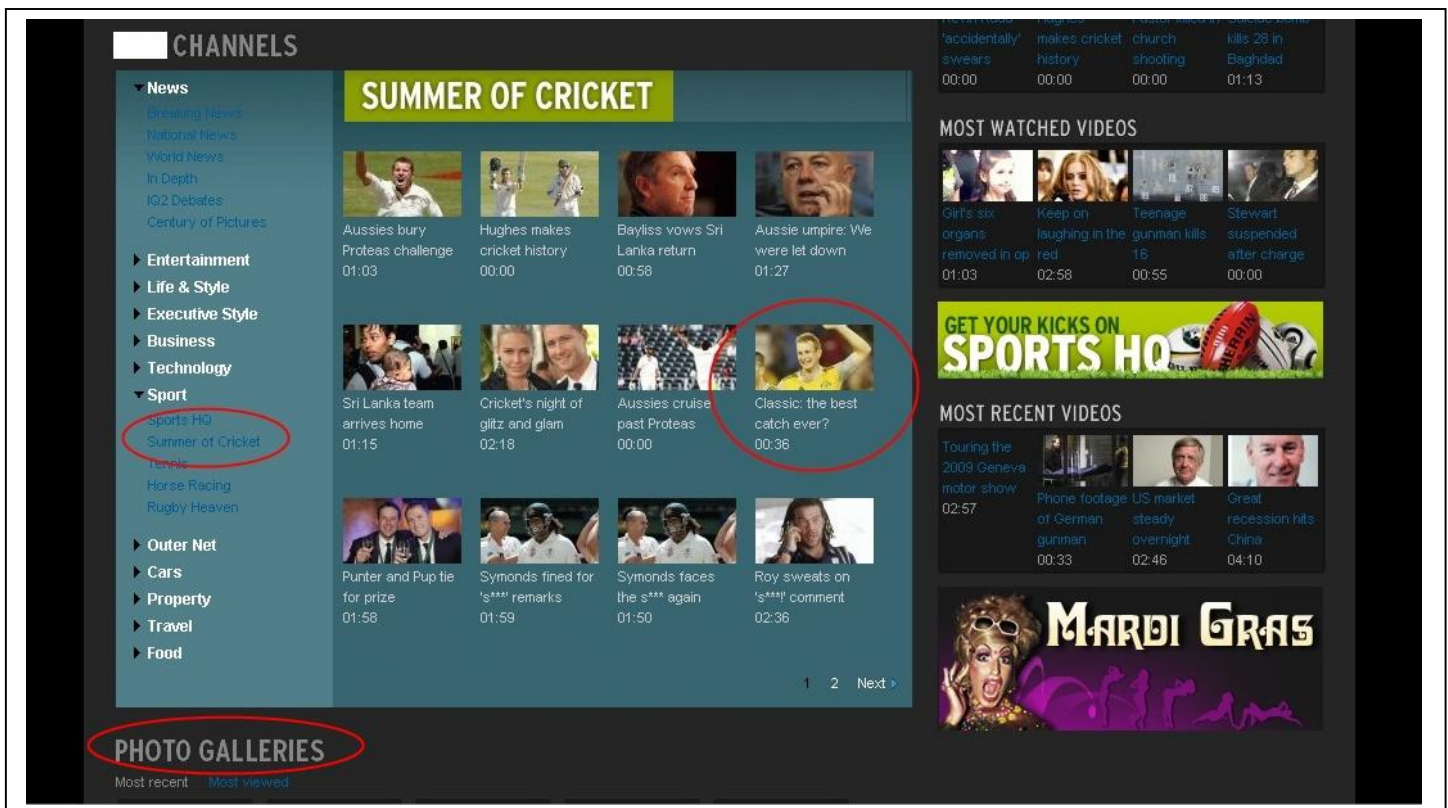
Examples of the expanding of the boundaries in sports news reporting in the digital media environment include the following:

- Online updates from within a venue during the live window of play:

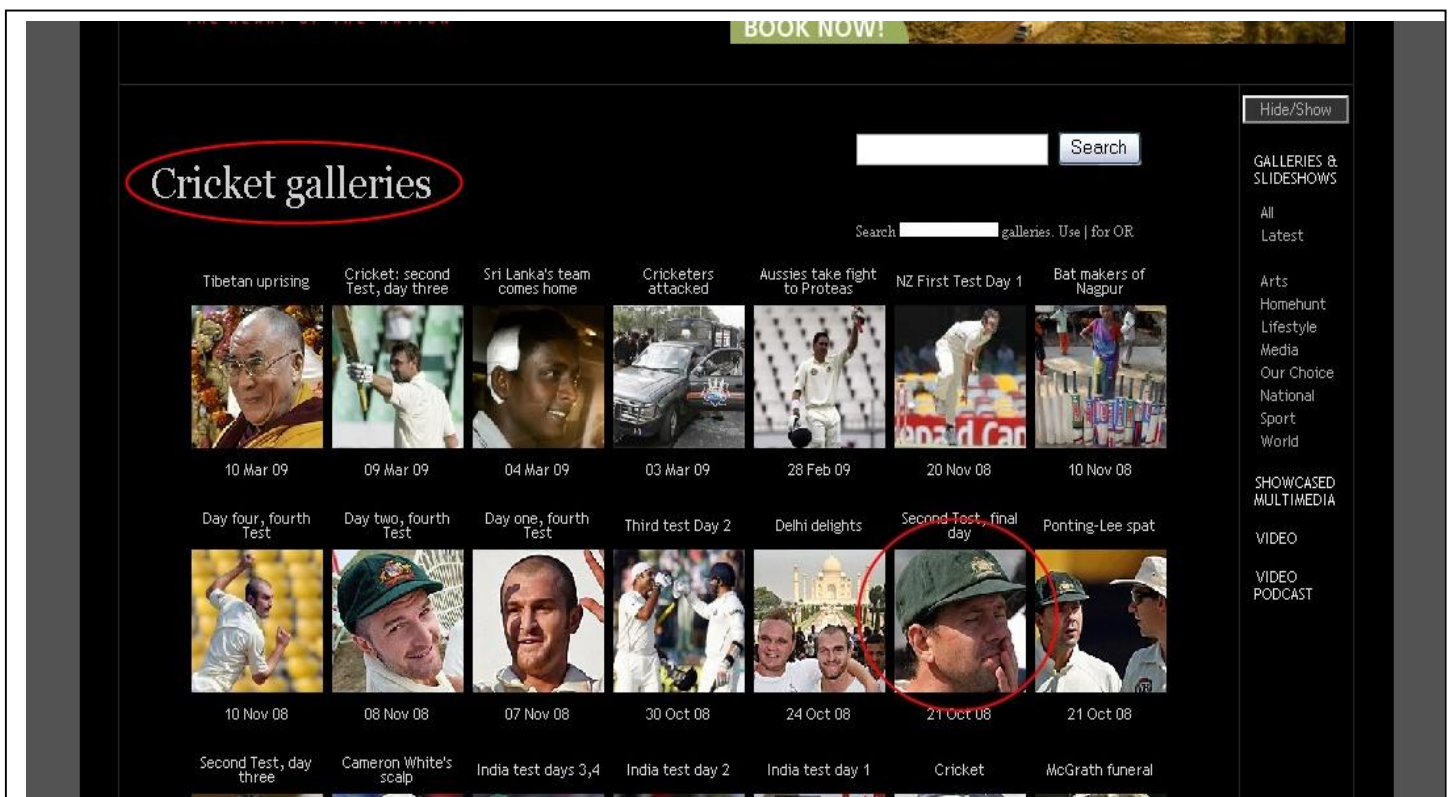




- Sport specific portals containing video and extensive photo archives:



- Photo galleries, some with imagery from three to six months old:



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

As noted above, CA was involved in recent media accreditation disputes that centred on suggestions that CA was seeking to restrict media organisations' ability to report "news".

This is simply not accurate or fair.

It is important to consider the environment in which CA is operating in trying to self-protect its entire business model:

- CA has a duty to continue to protect its media rights agreements – this is the primary source of our income
- CA has a duty to provide access to the event for media to gather and report "news"
- The digital landscape is enabling media to aggregate, to archive, to show in full, to show on delay, to show on demand, to commercialise against, to build cricket-specific portals etc
- Fair dealing exemptions no longer apply adequately in the unlimited, unrestricted capability of the digital world where there are no rules or natural limitations such as time
- CA's only recourse is litigation – a timely, costly process that is unlikely to offer any resolution

CA has therefore outlined in its accreditation terms that no website shall be updated with data, text or photographs sourced from within the venue more than six times per hour. Most websites do not update at rates anywhere nearly as frequently as this.

Importantly, this does not restrict the transmission of data, text or photographs to websites that are accessible by mobile devices solely as a result of being available on the internet.

This effectively allows media organisations, sourcing content directly from inside the venue, to provide a "news" update on the status of the match every 10 minutes.

This frequency specifically relates to the cricket match itself and is what CA regards as more than reasonable to enable "reporting of news".

It does not limit any media organisation to rely on the fair dealing exception under the *Copyright Act* to report any other news that may occur from the event that does not involve the match per se. For example, media are free to report and update their websites as many times as they chose with non-match-play news that may occur during an event.

What does affect the value of CA's primary income source is where media organisations go beyond news reporting of the match / event to host a depth and breadth of coverage that is not news reporting of a match: such as where copyright audiovisual material remains on websites for months after the event without any reference or acknowledgement to the copyright owner; or where galleries of up to 50 images are displayed long after the event has ended.

In the digital era, it is more possible than ever before to include content that goes beyond bona fide news reporting. Organisations do this for competitive gain; websites are built with more and more content (and sporting content is proven to be one of the most popular forms of content) to draw viewing numbers which increases traffic and increases commercial return to media organisations.

What media organisations fail to recognise is that transmitting even a small proportion of CA's copyright material beyond "news reporting" has a significant impact on the copyright owner.

A solution to this specific issue online would be to agree guidelines on volume, duration and longevity of copyright material that can exist as "news", after which time the copyright owners of

the material should be the sole hosts of the material online. Rather than display the copyright material, if it is still regarded as news, media organisations can provide a link from their websites to the official websites of CA and its media partners where the content would be housed indefinitely. Under this scenario, media organisations can choose to discuss the content as news, but the benefit of web traffic and the ability to monetise the material returns to the rightful owner.

While some media organisations chose not to attend or cover international cricket matches during the 2008-09 season partly because of these perceived “restrictions”, CA did not find the level of reporting was affected during that summer. The public was not disadvantaged by this boycott by some media. In the past two years there have been no instances of breaches by media during the events and no indications to CA that the frequency limitations have caused any problems for media in being able to carry out their roles.

Importantly, the frequencies are intended for media publishers; a news agency that collects and sells information to others to publish is not necessarily restricted by any frequencies – they are free to provide information, data, a range of photographs etc to media publishers who can choose what to publish. Wherein these news agencies have direct relationships to the fan, the frequencies would apply.

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

CA has developed over time a set of media terms and conditions that apply to all media representatives who wish to enter venues we have hired or which we manage and at which we stage games and report on cricket events arranged under the auspices of CA.

As previously mentioned, upon signing these terms and conditions, media representatives then gain free access to the venue and are free to report on news as they see fit. Accreditation, designed to protect the rights currently sold to telecasters such as Channel 9 in Australia, only relates to the terms and conditions of entry to venues on match days and does not affect reporting that media are free to undertake from outside venues, such as via their own monitoring of the telecast.

CA invites bona fide media organisations to apply for accreditation. There is no charge and as noted above, CA provides a high level of service and facilities to enable media to perform its task.

Developing and managing an accreditation system is a financial expense to CA. CA maintains an extremely flexible approach to media accreditation, offering generous timelines to apply and operating a system that accounts for late applications, including on-the-spot daily accreditation.

Accreditation is a standard tool implemented by sports bodies globally as a means to cover all matters of legal obligation, risk and indemnity and protocol in respect of hosting an event.

Many major overseas sports accreditation terms and conditions, to which media agree, offer their sports more protection than is enjoyed by Australian cricket. CA can provide examples to the Senate as required which highlight significantly more stringent terms adopted by global sporting bodies which equally do not attempt to prevent access for news reporting.

For CA, media accreditation is also the means through which CA outlines its obligations to media rights holders and clarifies the standards, expectations and guidelines to support media reporting of CA events.