



**AUSTRALIAN ASSOCIATED PRESS PTY LIMITED'S SUBMISSION TO
THE SENATE STANDING COMMITTEE ON ENVIRONMENT,
COMMUNICATIONS AND THE ARTS INQUIRY INTO THE REPORTING OF
SPORTS NEWS AND THE EMERGENCE OF DIGITAL MEDIA**

1. EXECUTIVE SUMMARY

Australian Associated Press (AAP), the national news agency, provides all Australian media with balanced, accurate, fair and independent news coverage of all events that shape, enthral and inform Australia.

Established by competing news organisations 75 years ago, AAP sits as a pillar of independence, free of political agenda or commercial bias. Beholden to no-one it provides the Australian media and private and public sectors with an unbiased, reliable, comprehensive news and information resource.

With impartiality at its core, AAP performs a unique and critical function in informing the public by providing text, audio, video, photographs and graphics as a means of story-telling. This news content is delivered primarily on a subscription basis 24 hours a day, seven days per week in real time for use in print, on radio, television, websites and mobile platforms.

In recent years, AAP's ability to provide news independently and freely has been challenged, even severely limited, by professional sports governing bodies who have sought to control when and where news of their events is used. They have sold radio and television broadcast rights and have moved, by tightly controlling the terms and conditions of accreditations, to protect the interests of sponsors by restricting the depth and frequency of news.

The sporting bodies have now identified digital media platforms as a new revenue source and seek to sell exclusive access to the highest bidder.

AAP does not see digital media platforms as a new form of news reporting. Digital media platforms are simply modes of delivery that have eventuated from technological developments.

News is news, regardless of how it is delivered.

The specific role of AAP, as the national news agency performing a critical public function in the dissemination of news and information, is not accommodated within the existing Australian sports media accreditation process.

AAP's coverage of events has been restricted, and in some cases blocked, which is a serious blow to press freedom and the public's entitlement to fair and independent coverage. While heavily used by metropolitan media, AAP is the sole provider of national and international news to regional news entities. The impact of these restrictions is therefore profound.

AAP believes unfettered news reporting must have pre-eminence when considering the balance between the commercial interest of sports organisations and the overall public interest.

AAP believes the commercial interests of the professional sporting governing bodies and AAP's mandate to provide fair and independent scrutiny of news events can be served simultaneously and harmoniously.

AAP would prefer that sporting bodies and the media resolve these matters between themselves. But in our experience the balance of power has fallen on the side of the sporting bodies to such an extent that we are often forced to negotiate media accreditations under duress.

AAP believes that the most effective way to protect the public interest in receiving news about sporting and related events is to have a legislated provision for right of access for news media.

2. OVERVIEW OF AUSTRALIAN ASSOCIATED PRESS

During sports accreditation negotiations, it's quite common for sports media managers to be unsure how to treat or categorise AAP. As a news agency, do they lump us in with newspapers, websites, radio or television broadcasters?

Without exception they understand our reach, see that our presence can help with the promotion of their sport, and that we act responsibly and with integrity.

However the current accreditation process does not accommodate the role we play. This is due the fact that the terms and conditions of accreditation for most sporting events allow applicants to gain accreditation on a publication or broadcast specific basis. Such a process does not take into account the role of a news agency whose central and impartial role is to provide content to subscribers for use in their publications and broadcasts. Invariably, if AAP is granted access it has been through a separate negotiation documented via a side letter of agreement. This in turn contributes to an overall lack of transparency.

The History

AAP has been an integral part of the Australian media landscape for 75 years, providing the foundation of news content for newspapers, radio news and talkback programs, television news bulletins and more recently the digital incarnations of all of the above.

The mode of delivery has changed during this time but our principles at inception remain at our core today.

AAP's mission statement sums it up: *To provide the Australian media, private and public sector with a cost-effective, unbiased, reliable, comprehensive news and information resource.*

But to truly understand AAP and our unique place in Australian media is to understand our history and our charter.

AAP was established in 1935 by 12 of the country's leading newspapers as a means of gathering news and information that could be shared between them. To reduce editorial costs within these operations, fierce competitors united to create an independent resource they could trust to get the news right and deliver it efficiently, without political bias or vested interest

AAP was always intended to be a precious central news resource.

This remains true in 2009, however the media landscape has changed dramatically. Those founding newspapers are still AAP owners but they are in turn owned by diverse media companies.

The news from AAP remains independent, accurate, balanced and completely free of political agendas and it finds its way to all media platforms. It's been a natural evolution.

When print delivery extended to radio and to television the world simply became a smaller place. News travelled faster and more often. We have been watching the same natural progression taking place as free, accurate and independent news from AAP finds its way to the websites and to mobile platforms of the country's media entities.

News from AAP comes in the form of words, images, sound and video.

How We Work

There is a high cost to covering news. AAP operates squarely within Australian copyright laws and does not pass off the work and endeavour of others as its own.

To cover Australian news, journalists must generally be on location and we employ hundreds of journalists and photographers. They are stationed around the country and at key international locations.

The news is offered to Australian media on a subscription basis. All Australian media entities are subscribers to the service.

There are no detailed subject or volume specifications to the news service – there is simply an expectation that AAP will provide a comprehensive and accurate menu of the news of the day. We cover everything of broad public interest across general news, politics, finance and sport.

Media entities do not pay per item. They get a smorgasbord of information delivered in real time and they get to choose the news that might best suit their needs – currently a choice of approximately 1200 stories, 3000 images and 30 video and audio clips every day.

Producing the news in the places we report from costs tens of millions of dollars annually and while cost-efficient AAP's newsroom is not a profitable centre – at best, operating at break even. However AAP remains doing what it does because:

- (a) it performs a critical function in informing the public; and
- (b) the option of not having AAP would impose an impossible burden on media organisations that would have to otherwise do the work themselves.

AAP's news operation is distinct from its Agency Enterprise division which runs separate press release distribution and media monitoring businesses. It is these that deliver profit for AAP and support the news operation so that it does not become a burden on its shareholders.

The Relationship with Media

AAP has nothing if it does not have its accuracy, balance and independence in news. We are beholden to no-one. We report without fear or favour (even on the activities of our shareholders) and we have no agenda. But we do take a conservative line. We never sensationalise or overstate the issues.

This is about trust. Subscribers know that when they receive an AAP story, the subject matter has been treated fairly and the situation has been represented faithfully.

So with that comes a unique symbiotic relationship. AAP is as much of a part of subscribers' news operations as their own journalists, sub-editors, photographers. AAP is seen as an extension of their own newsrooms rather than a distant supplier.

Physically, the AAP news feeds are piped directly into subscribers' editorial systems and reside with content their own staff have generated.

Metropolitan media are significant users of AAP content – even more so these days as their resources are cutback.

Critically AAP is a national and international news lifeline – mostly the sole source – to Australia's regional media.

The Relationship with Newsmakers

People who make the news – the politicians, community leaders, business people, sports administrators, athletes and the general public – openly recognise AAP's vital public function.

They know they will get a fair go when they come in contact with AAP and they know they will get unrivalled audience reach.

In illustrating the importance of the role we play, we refer to a conversation between the AFL's media manager Patrick Keane and AAP's editor-in-chief Tony Gillies in which Mr Keane said he constantly advises coaches to speak to AAP reporters because they are always fair and their message gets out there.

Cricket Australia's CEO James Sutherland and media manager Peter Young told Mr Gillies they are extremely grateful for the role AAP plays in promoting the sport and has done over many years. They acknowledge that it is AAP who covers the lesser events – at all levels – not just the Test cricket. They recognise AAP's commitment goes over and above other media outlets and that this has been critical to the well-being and growth of the sport.

3. TERMS OF REFERENCE

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

Sporting events have long been a popular source of content for AAP and other news organisations, which generally have worked in harmony with sports administrators for mutual and public benefit.

This relationship has deteriorated for AAP where so-called media rights have become a commodity for sale by events. AAP seeks to continue to inform the public by providing text, audio, video, photographs and graphics as a means of story-telling but is encountering resistance from sporting bodies who appear to want monopoly control to maximise profit.

A more sinister outcome from monopoly control is the ability to censor and coerce co-operation.

Intellectual property rights of sports results and sporting events as a whole can exist, but not to the extent that they interfere with the freedom of the press if the public interest is to be served. Whilst AAP recognises that it is important to encourage the development of sport through protecting the legitimate exploitation of rights through the licensing of audio-visual rights – it remains an important Australian social and cultural activity and all Australians are entitled to receive information on sporting activities whether of textual or visual nature.

There is a need for a balance between the interests of the sports organisations and AAP in reporting on sporting events. Tipping that balance in favour of sporting event organisers ultimately would be to the detriment of the public's right to understand and be informed about their sports and to have access to a diversity of opinion. If a balance is required, the overall public interest requires that unfettered news reporting be given pre-eminence.

Events of importance to the public should be able to be reported to the public with no interference; they are a cultural service before they are an economic one. Failing to give news reporting pre-eminence is handing over control of what information is given to the public to private endeavours whose interests are increasingly divergent from the public interest as they become more commercialised.

Sporting events are news events and restrictions placed on the right of access to journalists and photographers, particularly through exclusive agreements, threaten the ability of AAP to report news freely.

It is even more important to the public interest for proper scrutiny of organisations and events where gambling may be involved or where government support or other taxpayer-funded benefits have been provided. Where the competing news media are unable ultimately to attend - this function is diminished.

The rights relating to commercial communications, trademarks and official images, names, broadcast media rights and any other sanctioned spin-offs from the sporting events are acknowledged to the extent they do not put at risk the balance between a sporting organisation's legitimate concerns and the ability of the public to be informed.

Sport continues as an instrument of social inclusion and integration at its grassroots and it is acknowledged that sporting bodies use profits from their pursuits to help their sports at that level. AAP also plays a part in promoting sports through its distribution of various forms of news content for wide public consumption. Until recent years this has been acceptable to sports organisations, which have in the main benefited without charge from AAP's news service making news, audio and images of their sports publicly available.

Preventing AAP from having free and reasonable access to sports events for the public benefit by turning sport into a purely economic activity debases the importance and contribution of sport to everyday life.

The Australian Government Cultural and Recreation Portal notes: *“Sport has been a central part of the Australian experience since the country was first colonised. Press reports of the endeavours of sportsmen and sportswomen played a fundamental role in the way that the developing country viewed and understood itself, and the influence of the sporting media continues to this day.”*

Just how important sport is in Australian society already is illustrated by government legislation to keep certain events, such as the Olympic Games, the Australian Open Tennis and the Masters golf on free to air television.

3.2 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

Fourteen years is a very long time in sport. It's about the length of a professional sports career.

But fourteen years is an eternity in the world of media. In 1995 nearly all news came from hourly radio bulletins between 6am and 6pm; twice-daily television news bulletins and the morning newspaper.

In that year the World Wide Web – the beginning of the digital age – came to Australia.

Today the deluge of news comes is a 24/7 cycle on many platforms, many of which were not even considered possible in the mid-nineties.

In any minute of any day, consumers can get a news update via an SMS alert or on Twitter; blog an analysis; or see the story on a website – read the words, hear the commentary; watch the video highlights; or see an essay of amazing images. They can get the latest from the LCD screens in the lift at work; from screens in the tables at the shopping centre food hall; from the TV panels in bank foyers; and from the headlines in the screen in the dash of their car (depending what they drive). There are half-hourly radio updates around the clock; bulletins every 15 minutes on pay TV; about 16 bulletins per day on most commercial free-to-air TV channels; and there's still the morning paper.

Lifestyles have changed dramatically. Professional time and leisure time are no longer bordered by daytime and nighttime or weekdays and weekends. What people can do and when they can do it is diverse.

Professional sport gets in front of more people. The Victorian Football League is now the Australian Football League. Rugby League is no longer a Sydney suburban war ... it's national and the same goes for rugby and soccer.

Because the points of access are so much more diverse, the public's interest is heightened, their hunger for news has grown, particularly as society loves to bet on professional sport.

The glare of public scrutiny has never been brighter; the need for fair and independent scrutiny even more important.

Whether it's general news or sports news, every movement, every development, every detail comes into focus. This explosion in access has made big news bigger, ordinary people famous, and sports stars have become superstars.

Fourteen years into this digital age, the mode of news delivery has become a vastly different proposition but the news itself is just the same; produced by the same news professionals; with the same journalistic rigour.

The audience is sophisticated and their demands much higher. In an age where the public can see or hear events unfold anywhere via a live broadcast on numerous media platforms, it is a reasonable demand that they will be able to collect the news associated with those events, with the same degree of flexibility and freedom.

News reporting is now not only a game of speed and delivery points, there is also an expectation that news will be told in a more compelling, entertaining and comprehensive way.

Readers in print, online and on mobile are not just satisfied with the bare facts, they demand analysis, perspective and investigative journalism.

While 30 years ago readers might have been satisfied with a single grainy, black and white image in the newspaper 16 hours after the event, they now demand a photo essay of sharp, colour images within minutes of the action. This audience demands, and should be entitled, to view archived photo-galleries when relevant to past and current news events.

Audiences are no longer satisfied with the glimpse of action seen just once in a nightly television bulletin that is pushed to them at a prescribed time. If it is news, they want to see the highlights whenever and wherever it strikes their fancy.

If someone has something meaningful to say, audiences want to hear it and absorb it over and over again; not just for a few seconds in a radio bulletin that is pushed to them at a prescribed time.

News reporters, photographers, cameramen and crews have had to be as agile as ever as they no longer live by a single deadline or feed their work to a single media platform. They are multi-skilled professionals filing words, pictures, sound and video around the clock.

At one point society had just newspapers as a means to access news. Radio and then television came along to enrich the lives and experience of a public thirsty for knowledge. The digital age is simple evolution and it is to be embraced.

The issue for AAP and other media organisations is that sporting bodies have seized upon these new windows of delivery as a means of controlling the flow of information or attempting to put their own commercial stamp on the output by enforcing a veto over where and when material can be used.

They see new technology as their domain and their opportunity to turn an extra dollar regardless of impact.

AAP is not arguing that sporting bodies should not exploit revenue opportunities so they can further development their sport but it defies all democratic principles to block the free flow of bona fide news in the process.

By placing venue access restrictions via a media accreditation they are in effect determining where and when news is allowed to surface.

The balance between sports news reporting by news agencies and commercial exploitation by sporting bodies is maintained by the development of new technologies, not disrupted by it.

3.3 Whether and why sporting organisations want digital reporting regulated, and what should be protected by such regulation

The issue of whether digital reporting requires specific regulation begs the preliminary question as to whether digital reporting is such a unique and novel form of reporting that it stands outside of existing legislative or common law protections and requires a new customised legal regime.

AAP believes that the dissemination of news via a digital platform does not represent a novel or unique form of news reporting. The dissemination via a digital platform is simply a technological improvement that enables news to be disseminated to the public in a faster manner than traditional forms of news delivery.

AAP does not differentiate between digital reporting and hard copy print reporting – reporting the news is reporting the news. Indeed AAP sees digital reporting as simply a delivery platform that may enable a more efficient timely supply of news and greater ability of the general public to access the news. AAP believes that digital news reporting is not a category of news reporting that requires specific legislation directed at curtailing its use.

The suggestion by sporting organisations that digital reporting should be the subject of special regulation is an attempt to mischaracterise the nature of the technological developments involved in digital media platforms. As referred to above, as digital environments provide new platforms for dissemination of news, those same environments also give rise to new opportunities for exploitation and commercialisation of sporting content.

In terms of what interests of sporting organisations should be protected in this context, it is the ability to legitimately exploit their activities. This legitimate exploitation should occur through the exercise by sporting organisations of currently recognised legal rights. Legitimate exploitation does not and should not extend to preventing or controlling the independent reporting of newsworthy events within sports or the creation of new intellectual property rights merely for this purpose.

Appropriate legislative regimes and mechanisms already exist. These include the *Copyright Act 1968* (Cth), which permits sporting bodies to own and control audiovisual material, the *Trade Mark Act 1995* (Cth) which enables sporting organisations to control use of names and logos as badges of origin and the *Trade Practices Act 1974* (Cth) which prohibits misleading or deceptive representations of affiliation, association or sponsorship. There are also additional legislative regimes at state levels which relate to ambush marketing such as the *Major Facilities Act 2001* (QLD) which give additional protection to sporting organisations against unfair "free riding" on sporting events.

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

As the national news agency, AAP enjoys a unique position within the Australian media. AAP is one of the primary sources in Australia of unfiltered and independent news information for print, web, mobile, radio and television.

For large media organisations AAP's significance is amplified as they rely more heavily than ever on our output. Without it, their costs go up and their financial capacity to deliver high quality and diverse news is diminished.

For regional entities with even more modest newsroom resource, AAP plays a critical function in news delivery. For many of these organisations AAP is the sole provider of national and international news.

In its creation of the AAP news wire, AAP fulfils a vital function in serving the public interest in receiving information about newsworthy and important social and cultural events such as sport.

Whilst AAP recognises the right of sporting organisations to generate revenue from events through the licensing of certain media rights, AAP believes that its key public function is being jeopardised by the proposition that it is necessary to highly regulate the delivery of news reports in the digital environment.

For AAP, the issue is not one of balancing AAP's commercial interest against those of the sporting organisations. The issue is really one of editorial integrity and service of the public interest.

In AAP's view, subject to the comments below regarding venue access, the appropriate balance between the respective commercial interests is already achieved by the existing regulatory framework.

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

While there has been in the past, at present there is no such balance. The use of venue access controls by the sporting organisations against AAP demonstrates that "fair" access is not a current feature of sports news reporting in many environments.

AAP believes that the absence of a legislated provision for access to sporting events has meant that sporting organisations enjoy a significant advantage when it comes to the negotiation of arrangements for access to sporting events.

In AAP's experience, sporting organisations are increasingly using the process of "commercial negotiation" of the terms of accreditation to tightly control the access to venues and restrict the use that can be made of any reporting of events. However such negotiations are not being conducted on a level playing field.

The accreditation process is often manipulated by sporting organisations who release the terms and conditions of accreditation without sufficient time to enable proper negotiation prior to the start date of an event. This often results in media organisations having to negotiate under duress and accept less than desirable terms in order to gain access to the event. The unfair procedural advantage has meant that on occasions, AAP has only been granted access on the start day of the event itself. Where accreditation has only been granted at a very late stage, AAP has not been in a position to confirm to subscribers that it will in fact be able to provide coverage of the event. As a result, regional news entities and their audiences, who rely on AAP's coverage, are at a severe and unacceptable disadvantage.

Sporting organisations use the terms and conditions of accreditation to restrict not only content (e.g. text, data and photographs) that has been sourced or captured by AAP from within the venue, but also to control the use of content that AAP may otherwise legitimately source and create from outside the venue pursuant to the fair dealing provisions of the Copyright Act 1968 (Cth) (**Copyright Act**).

By requiring media organisations like AAP to effectively contract out of the Copyright Act, sporting organisations have been able to substantially undermine the fair dealing exception enshrined in that Act and thereby substantially undermining the balance of competing public and commercial interests which underlie those exceptions.

Current access arrangements via “commercial negotiation”

AAP has also found that year-on-year, the access arrangements under the terms themselves are becoming increasingly draconian and unfair. For example, the Cricket Australia Media Accreditation Terms and Conditions 2008 – 09 (**CA Media Terms 2008 - 9**) provide that Cricket Australia can grant or reject a request for accreditation in its “*absolute discretion*” and could impose “*further terms and conditions in its absolute discretion*” (see **Attachment 1 – CA Media Terms 2008 - 9 - clause 1.4(b)**). The clause continues to state that “[o]nce granted, CA may revoke the accreditation at any time in its absolute discretion without providing reasons” (see **Attachment 1 - clause 1.4(b)**). Similarly, the AFL Terms and Conditions of 2009 Media Accreditation (**AFL Media Terms 2009**) state that “[t]he AFL reserves the right to revoke accreditation at any time in its absolute discretion” (see **Attachment 2 – AFL Media Terms 2009 - clause 1.5**).

Clauses of this nature provide sporting organisations with an unfettered discretion to remove the media for any reason without any regard for the public interest associated with allowing the general public to receive information about significant cultural and social events from a variety of sources. The ability to eject the media at will seriously compromises the public's fundamental right to independent news reporting.

Use of lock outs

A recent development that demonstrates that AAP has been and continues to be unable to obtain fair physical access to sporting events for reporting purposes under the current “commercial negotiation” arrangements has been the use of the “lock out” trump card by the AFL in respect of AAP's photographic reportage. This development threatens the dissemination of unbiased, uncensored information to the public and, in AAP's view, indicates a decreasing regard within sporting organisations for serving the true public interest.

The AFL Terms and Conditions for 2008 Media Accreditation provided that photographs taken within a venue may only be transmitted for bona fide editorial reporting purposes in printed newspapers or sports related magazines or on websites (being the “official on-line website version of a printed newspaper or sports related magazine or any other AFL approved website operated by the Applicant’s employer or any of its related bodies corporate”) (see **Attachment 3 - AFL Terms and Conditions for 2008 Media Accreditation**). As AAP is a news agency and provides content to subscribers for use in their hard copy and online publications, AAP requested the AFL accept AAP’s entitlement to supply photographs that it took from within a venue. These photographs would be used in subscribers’ hard copy print publications and websites and to online news customers for use in bona fide news-based websites.

AAP’s request was denied with the result that AAP was only able to achieve limited accreditation for the reporting of text and data. AAP was not entitled to send its own photographers to AFL matches. AAP was advised that the only way it could supply its subscribers (including rural subscribers) with photographs of AFL matches was to purchase images that had been captured by the AFL (through Geoff Slattery Publishing) for a fee.

In implementing these arrangements, the AFL denied AAP the ability to undertake impartial pictorial news coverage of AFL matches. The decision to lock AAP out of the 2008 season not only represented a serious erosion into press freedom but also significantly constrained AAP in the discharge of its key function to serve the public interest in providing information about important cultural and social events. AAP wrote to the AFL expressing its grave concerns about being excluded from the 2008 season for pictorial news coverage. AAP advised the AFL that as the national news agency, AAP had a fundamental mandate to preserve and protect its editorial integrity (see **Attachment 4 - letter from AAP to AFL dated 7 August 2008**).

The AFL policy had a significant impact on the public’s ability to receive pictorial news of the 2008 season. It affected those members of the public who chose to receive their news in the form of a hard copy print publication. As reported in *The Australian* on 27 March 2008:

“The AFL’s decision to lock out photographers from AAP effectively isolates readers of 14 regional newspapers in Queensland and two papers in Victoria. Queensland’s APN papers, along with independents in Shepparton and Mildura, are not covered by Australia’s two leading media groups, News Limited (publisher of The Australian) and Fairfax, which have reached photo agreements with the AFL...” (see **Attachment 5 - “Footy fans out of the picture”, The Australian, 27 March 2008**).

As well, it affected those members of the public who elect to receive their news via digital platforms as AAP was unable to supply AAP pictorial coverage to any of its online subscribers.

AAP has been locked out in respect of pictorial coverage of the AFL 2009 season. It is clear that this is a continuing tactic by the AFL.

Restrictions on the use of content sourced from venues

As referred to above, it is AAP’s experience that sporting organisations have become highly prescriptive about the use that media organisations can make of content sourced from within the venue.

In the CA Media Terms 2008-09, Cricket Australia sought to tightly control dissemination of text, photographs, data and audio visual content via digital platforms. Cricket Australia achieved this by:

- (a) imposing unreasonable frequency limits on transmissions of text, data and photographs via websites (before negotiation, the CA Media Terms 2008-09 imposed a limit of no more than six updates per hour during play on any one day of a match).

- (b) tightly controlling the definition of website such that it was limited to “an official on-line website version of a printed newspaper or sport-related magazine or any other CA-approved website” (see **Attachment 1 - clause 3**). Clearly this definition excluded whole categories of online news publishers whose sites are not linked to hard copy publications unless those online publishers were expressly “approved” by Cricket Australia. While AAP managed to negotiate a limited list of approved websites in 2008-09, the future of the list is at the discretion of Cricket Australia and there is no guarantee that those websites who were approved in 2008-09 will be approved for future seasons.

- (c) stating that applicants could not record or transmit any audio or video from within the venue without the express prior written consent of CA (**see Attachment 1 - clauses 2.5 and 2.6**);

- (d) stating that applicants could not sell or distribute photographs to members of the public on any condition without the express written consent of Cricket Australia (**see Attachment 1 - clause 2.4**). Again this is in stark contrast to the CA Media Terms 2005-06 and the CA Media Terms 2006-07 where media organisations were permitted to provide copies of photographs to members of the public on the condition that they undertook not to use the photograph for any commercial purpose (see **Attachment 6 - clause 2.3 (f) and Attachment 7 - clause 2.3 (f)**);

- (e) limiting the right to archive text, data and photographs to the applicant only with the result that if left unamended, the CA Media Terms 2008-09 would not have enabled AAP to allow its subscribers to display any archival news stories. Again the limitation on archiving is a new development – there was no restriction on archiving in the CA Media Terms 2005-06 or in the CA Terms 2006-07.

From the nature of these restrictions it is apparent that they are imposed purely for the purpose of protecting the commercial interests of the sporting bodies at the expense of public interest considerations relating to reporting of news.

Mirror clauses

Increasingly AAP is faced with mirror clauses appearing in the terms of accreditation of various sporting bodies. The similarities are now so apparent that certain key restrictions are approaching a form of standardisation. Some examples of these standardised restrictions are as follows:

- (a) no display on mobile telephones: Cricket Australia, AFL.
- (b) a limited definition of what constitutes a “website” – namely an official online website version of a printed newspaper or sports-related magazine, or any other “approved website”: Cricket Australia, AFL;
- (c) no ability to record or transmit any audio or video from a venue: Cricket Australia and AFL.

3.6 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

As we have already identified in our comments in paragraphs 3.3 and 3.4 above, AAP believes that the public’s use of digital technology simply represents another method of accessing news content. News is news no matter what the delivery platform. The public interest in receiving news content via a variety of methods (hard copy, online etc) has to take priority over any desire by a sporting organisation to control digital coverage to protect their commercial interests. The desire for commercial return by sporting organisations should not be used to block or limit the public’s access to a number of news sources.

At the same time as sports have become more professional, the appetite of fans for greater variety, quantity and faster delivery of information has increased.

Newspapers, magazines radio and television have been joined as providers of news by a variety of new media, service providers and devices for an increasingly technologically savvy public.

Internet services have evolved from basic text sites into rich sources of photographs, audio, video and graphics. For many, they have replaced newspapers as the primary source of news.

The increasing sophistication of mobile devices has further expanded the opportunity to provide easily accessible and fast news.

New players in these markets have included the sports organisations themselves.

While sporting organisations have a legitimate commercial interest to entertain and inform the public and promote their sporting events, this commercial interest should not take priority over the public’s right to access fair and independent news coverage of those events via a variety of sources.

The right of AAP multi-media reporters to attend and report on organised sporting events of interest to the public should not be subject to conditions not also observed by the sporting organisations themselves in the context of general reporting opportunities.

There is a need to protect the right to information and to ensure wide access by the public to coverage of sporting events. Allowing sporting bodies to be able to restrict news or images on any media platform undermines the public's right to be informed.

Assuming that the encouragement of technological innovation remains a central tenant of government policy, it is necessary to ensure that the content creators are encouraged to be innovative in the content process. It is also necessary to ensure that the public is encouraged to seek content on digital devices and to take up new technologies as they arise. There are overwhelming public interests in a society which places value on a digital economy.

Implementing a restrictive regulatory structure in terms of sports news reporting is likely, in AAP's view, to hinder the kinds of creative processes necessary to encourage innovative technologies. Sports news and sports content generally are likely to be significant drivers in the take-up of digital technologies, as was the case for subscription television when it was introduced.

Apart from the technological innovations, imposing a regulatory structure on sports news which discriminates against digital technologies will discourage consumers and protect current forms of media. AAP wishes to, and believes that it should be entitled to, supply sporting news content to all new digital technologies.

AAP submits that it is not necessary to impose a discriminatory regulatory regime on digital media to protect the fair commercial returns achievable by sporting organisations as those same technologies will permit greater returns to be achieved through the generation of fees for the licensing of content to those new platforms.

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

Allowing sporting organisations to apply frequency limitations allows them to define the news – they control what can be told and when it can be told to the public.

From AAP's experiences with Cricket Australia, for example, these sorts of limitations are aimed at preventing continuous ball-by-ball descriptions from a cricket match or an essay of still images.

There will be occasions in a match when the run of news coincides with every ball of a lively over. This news judgement could not be reasonably extended to every ball in a day's play.

Equally, there will be occasions when a series of still images best captures the news, for example to break down a bowlers' action to check that it is legal.

Again, this news judgement could not be reasonably extended to every delivery in a day's play.

By limiting the frequency of news reports at a sports event, organisations are arbitrarily determining when news can happen (ie. restrictions like six stories an hour imposed by Cricket Australia can limit the ability to report news, as and when it happens).

With the advent of digital media, news consumption has changed to become a 24-hours-a-day activity. AAP's role as a real-time news agency is to get news to news consumers when it happens. We can't be beholden to an arbitrary limit on providing news, such as at cricket, a game where events are unpredictable minute by minute.

News professionals should be left to decide what constitutes news and when it happens, rather than sporting organisations, their officials or their lawyers via restrictive frequency limitations.

There should be no limits on the frequency of news reports for editorial use, which is a basic principal of the free press.

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

Where sporting organisations control accreditation for media, they control who can cover events and who can attend "news conferences" involving players and officials before and after games. This puts into the hands of the rights holders and organisations the ability to control to a large extent what news emanates from games and their surrounding events. It can minimise scrutiny and the exposure of some issues that organisers and rights holders might not consider to be in the best interests of the sport, but which may well be deemed of great interest by the media and general public. Similarly some events prevent reporting of material which can bring a game into disrepute.

As we have previously outlined at paragraph 3.5 above, the current accreditation process for journalists and media representatives is in danger of creating a culture of censorship to protect the vested interests of the sporting organisations and their sponsors. This is of particular concern in the case of a sporting event in which the final outcome or other outcomes during the game may involve wagering, especially where wagering operators are sponsors. It is vital to the public interest in ensuring the integrity of sports betting at events, that accreditation is not used by sports governing bodies to control or stifle fair and independent reporting.

The growth of a climate of censorship by accreditation can be clearly illustrated by the recent treatment of AAP by the AFL. As set out in paragraph 3.5 above, the AFL has refused and is continuing to refuse to allow AAP photographers to be accredited for matches and press conferences. As a result, some AAP subscribers are forced to use the AFL's official photographic supplier. This situation has created a lack of independence in visual news coverage of AFL events. By controlling the selection of images available for use, the AFL:

- (a) can control the public's perception of their events, the organisation itself and its sponsors; and
- (b) is denying news decision makers such as news editors and picture editors the right to make independent decisions about pictorial news coverage.

Images released "under control" may not include pictures deemed newsworthy by the public because the organising body or its official photographic supplier does not believe they are in the interest of the sport or sponsors (eg a player punching or stomping another player would be newsworthy to fans but may not be in the commercial interest of the AFL or its sponsors).

Another issue is the timing of the release of images. News-based websites are in position to use images as soon as a newsworthy event has occurred if AAP can provide the image in a speedy manner. However, the timeliness becomes another "controlled factor" if news providers have to wait for official photographs to be released.

Images released "under control" may also be favourable to sponsors, featuring logos etc, which would not even come into consideration for a purely news-based photographer.

Introduction of a text news service with similar controls would lead to complaints of news manipulation and unfair restrictions on information that should be freely available.

Media organisations expect a fair accreditation process that ensures legitimate media can attend and fully cover sports events, but not one that controls what news they can provide from such events.

3.9 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

In a perfect world self-regulation would be the ideal outcome but AAP does not believe that this is practical with so many conflicts of interest.

AAP believes that the most effective way to protect the public interest in receiving independent and unbiased information about significant social and cultural events is to:

- (a) create a legislative provision for a right of access for news media to sporting and related events for general news reporting and editorial purposes including the taking of pictures. The provision must provide that terms and conditions of accreditation cannot include “revoke at will” arrangements and which do not impose restrictions on the frequency and manner of legitimate news reporting; and
- (b) provide expressly that sporting bodies can not “contract out” of and media organisations cannot be required to sign away the benefit of the fair dealing exception under the Copyright Act.

However, AAP does not support the development of a legislative definition of “news” as part of a legislated provision for right of access. What constitutes “news” in any moment is a subjective assessment based on numerous factors including, without limitation, journalistic experience, current events and public interest. It would be impossible and entirely inappropriate to create a finite definition. Moreover the fair dealing provisions of the Copyright Act and current case law give sufficient characterisation to the concept of “news”.

The trend of sporting organisations to use their terms of accreditation to limit the protections that media organisations would otherwise enjoy under the Copyright Act and the common law does not augur well for reliance on any form of non-binding or aspirational arrangement (e.g. a Code of Practice). AAP considers that sporting organisations will continue to use the accreditation process and the weapon of news access to further commercial consideration at the expense of legitimate news reporting.

4. OTHER CONSIDERATIONS

Professional sporting bodies and the media must work together. All parties want viable and interesting sports available to all Australians. Sporting bodies want to entertain the public. The media wants to inform it.

The pursuit of common ground has been fraught with frustration and at times mistrust. It may be a result of poor communication or not completely understanding the respective roles of the parties involved, but relationships have been tested during negotiations of accreditation terms.

It appears some professional sporting bodies are working together on media accreditations. As seasons and events unfold, new and more restrictive rules are imposed to help governing bodies deal with their commercial objectives.

Confusion and at times ill feeling reigns.

While AAP would prefer that sporting bodies and the media resolve these matters between themselves, we believe the balance of power has shifted to the advantage of the sporting bodies.

One reason AAP supports this Senate Inquiry and why we believe self-regulation is not practical can be demonstrated by the actions of the AFL.

We have been covering the AFL year-round for many years at a conservative estimate of approximately \$1 million annually.

The AFL has told AAP that it appreciates our fair coverage and support and the reach we provide, adding to the profile of the sport. Up until 2008, AAP had been taking match photographs to illustrate our stories. Until 2007, Getty Images was the official AFL photographer in a commercial agreement that appeared to exist without conflict with any other news media.

In 2007, Getty Images was displaced by local commercial photographer Geoff Slattery Publishing (GSP). International news agencies were denied photographic access that year and AAP was put on notice that our access would be reviewed in 2008 because it was inhibiting the commercial activity of GSP.

In 2008, AAP was blocked from taking photographs at AFL matches and AFL press conferences.

While taking AAP right through the accreditation process, our access was denied the day before the season's opening match.

Attached are the accreditation letters and exchanges.

In responding to a plea by the Australian Press Council to grant AAP photographic access on the grounds of press freedoms (see **Attachment 8, letter from the Australian Press Council to AFL dated 8 August 2008**), the AFL claimed AAP chose not to accept accreditations (see **Attachment 9 – letter from AFL to Press Council dated 6 June 2008**).

This was not true (see **Attachment 4 - letter from AAP to AFL dated 7 August 2008**).

The AFL denied AAP's application for accreditation in 2009.

5. CONCLUSION

The party most affected by the outcome of this inquiry – the sporting public – is likely to have little awareness of the conflict between sports administrations trying to lock up all so-called media rights and media organisations such as AAP trying to maintain the free flow of news across all available platforms.

Similarly, sports fans probably will remain unaware of what they are not being allowed to read, see or hear while sports organisations can continue to control or limit what can be reported and how it can be done.

AAP believes it should be able to deliver to these fans what it currently is being prevented from delivering – comprehensive, free and fair news in all forms.

We believe the only effective way to do this is to have a legislated provision for a right of access for news media to sporting and related events.

AAP would welcome the opportunity to appear before the committee to expand on our submission and to answer questions from committee members.

ATTACHMENTS

Attachment 1 – CA Media Terms 2008-09

Attachment 2 – AFL Media Terms 2009

Attachment 3 – AFL Terms & Conditions for 2008 Media Accreditation

Attachment 4 – letter from AAP to AFL dated 7 August 2008

Attachment 5 – “Footy fans out of the picture”, the Australian 27 March 2008

Attachment 6 – CA Media Terms 2005-06

Attachment 7 – CA Media Terms 2006-07

Attachment 8 – letter from the Australian Press Council to AFL dated 7 August 2008

Attachment 9 – letter from AFL to Press Council dated 6 June 2008