



Tennis Australia

Submission

to the

Senate Inquiry into the Reporting of
Sports News & the Emergence of Digital
Media

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Introduction

Tennis Australia derives a significant amount of income from the sale of media rights. Through deals negotiated with Australian and international broadcasters for FTA, PTV, radio, internet and mobile rights, Tennis Australia generates funds to support a range of community focused initiatives such as the National Court Rebate Scheme, and programs specifically for juniors, seniors, people with a physical or mental disability, Indigenous people and women. Any dilution of Tennis Australia's ability to leverage these rights to generate income does not just affect Tennis Australia as an entity, it affects our ability to promote active engagement in sport at the grass-roots levels.

Maintaining a balance between the commercial and public interest in the reporting and broadcasting of news is vital for the ongoing viability and development of tennis at all levels. In what is a symbiotic relationship, Tennis fully supports the appropriate reporting of its events via news broadcasts, regardless of the media platform through which such news is disseminated. The dissemination of information through news and other reporting stimulates public interest in the sport, which in turn drives up the commercial value of the sport.

The issue however arises when, under the guise of reporting for news purposes, significant portions of an event are aired via non-rights holders. In these instances the actual value of the media rights for an event like the Australian Open, can be negatively impacted as the commercial investor feels quite rightly that their exclusive access rights are likely to be infringed upon.

It is essential that the value of our media rights are protected to ensure Tennis Australia, as the sports' governing body, can generate the income required to invest back into the game at all levels. Striking an appropriate balance demands changes to the current legislation around fair dealing and copyright which in its current form no longer adequately protect important intellectual property rights in the more complex digital media reporting environment experienced today.

Tennis Australia is pleased to present this submission to the Senate Inquiry on behalf of our sport. As a contributor to the joint submission made by the Coalition of Major Professional Sports (COMPS), Tennis Australia also strongly supports the statements and recommendations put forward in the COMPS submission.

Tennis Australia is pleased to meet with the ECITA Committee to further elaborate on the information contained within this document at a time convenient to the Committee.

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

Tennis Australia understands and fully supports an appropriate balance between the commercial interests of the sport, and the need for widespread news reporting. Whilst the commercial income derived from media rights makes a significant contribution to Tennis Australia's ability to provide support for tennis development at all levels as well as host one of four grand slam events in the world (thereby contributing significantly to the State's revenue), we understand that it is the public's interest in our sport that drives up the commercial value of our product.

As detailed in the COMPS submission, Tennis Australia supports the unfettered reporting of news, provided that any such reporting is done within appropriately revised fair dealing regulations and new intellectual property rights to be set out in the Copyright Act.

The emergence of digital technology and the diverse range of new transmission technologies digital access brings with it has resulted in the blurring of the boundaries of what were once a discrete range of reporting markets. Where access to information was once limited to television, print and radio reporting, with the emergence of the internet and digital media, people can now access the same information over the internet, via personal computers and even via mobile telephones.

The rapid emergence of new transmission technologies means that the current regulatory frameworks governing the industry, which primarily focused on the traditional media markets, has failed to keep pace with the new technological market place in which we find ourselves. The ability to distribute unauthorised coverage of sports events means content can be accessed without compensation to the sports who own the rights which are thereby being infringed.

As part of this review, particular attention must be paid to revision of the current regulatory regime with a view to establishing a new framework that includes policy and legal regulations that can appropriately deal with current requirements, and more importantly, are flexible enough to cope with rapid changes that will undoubtedly continue to affect the sector.

As detailed in the COMPS submission, Tennis Australia agrees that the principles of fair dealing are not currently being applied in the treatment of sports data in the digital media. Due to the ease with which digital content can be aggregated, archived and delivered on demand, media organisations are readily able to repackage content to generate a commercial return from the intellectual property rights in the sports event. In effect, these organisations are making a profit from an event to which they make no investment via a rights fee.

Although Tennis Australia agrees that the public should have open and unfettered access to genuine reporting of news (in the nature of current events) regardless of media platform, we also believe the intellectual property rights generated by our sport events must be appropriately and fairly recognised under the Copyright Act. Tennis Australia believes the sporting organisation that promotes and organises the sport and the major event should be granted copyright in the key elements of the performance of those sporting events

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 the sports news reporting

The fair dealing regulations must be revised to ensure they continue to provide sport with the ability to protect their intellectual property rights so that they can generate appropriate commercial returns for their events.

Piracy of digital media content is a matter of great concern to sport organisations as well as television and other media broadcasters who pay for the right to exclusively televise and report these sporting events. The growth in digital technology, and the changing patterns of consumers means that all manner of information, including news, weather, sport, entertainment and personal information, can be accessed from a range of "new media" sources. Internet-based web sites, web based "blogs", mobile "blogs", instant messaging, podcasts, P2P sites and the like all lend themselves to unofficial broadcasting of content.

As the quality of encoding improves, high speed internet servicing grows, and increased bandwidth access is made available to more consumers, the rate of illegal broadcast of sporting events via news reporting, or, in more extreme cases the illegal streaming of live sport coverage in full, will rapidly increase. Although the advent of digital media platforms has not in effect changed what is considered to be "newsworthy" content, it has opened up limitless opportunities for such content to be collated and distributed in a range of ways previously unaccounted for. The broadening of the digital space means that the existing legislative guidelines around fair dealing, although they may have been appropriate in the pre-digital era, are no longer adequate to protect sports' intellectual property, or indeed in many cases, to protect the broadcasters who pay for the media rights to an event.

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

A clear regulatory framework for sport that adequately protects intellectual property and legitimate broadcast rights, whilst at the same time ensuring appropriate news reporting of events is available to all media outlets enforced through appropriate legislative action is absolutely necessary.

Tennis Australia is becoming increasingly concerned about the relative lack of protection the current Copyright Act provides. As a result of failing to keep pace with the rapidly changing digital environment, the current Act does not have the capacity required to inhibit third parties who do not make a contribution to the sport by paying for media rights, from utilising alternate media options, such as internet broadcasting, to provide significant coverage of sporting events under the guise of news reporting.

Tennis Australia is solely responsible for the development and delivery of its events and as such the intellectual property of these events belongs solely to Tennis Australia. As noted above, a clear regulatory framework that provides strong and definitive regulations is essential.

As noted in the COMPS submission, Tennis Australia agrees that new regulations must:

- Support a continuation of fair dealing principles as observed under the ‘traditional’ media environment across all media platforms
- Be supportive of news reporting but also provide clear boundaries as to what content may be legitimately offered as news
- Be a regulatory reform, not a contractual based reform (as reform required will not be attainable through contractual means)
- Be mandatory in its application

These regulatory reforms are essential to clarify the rights of the sport in the events they promote and organise and to give force to sport specific accreditation arrangements and codes of practice for sports news reporting and parameters to that reporting.

At a minimum, detailed regulatory reform must include guidelines around clip duration, total quantity of coverage, frequency of content updates, live delay televising requirements, longevity and archiving time and content, specificity and use of technology which permits news information to be used for other commercial purposes.

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

As noted previously, Tennis Australia values and supports news reporting of its events across all mediums, so long as such news is reported within the guidelines that define the appropriate use of such content. Tennis Australia does not support the unauthorised reporting of content that impinges on its ability to commercialise these media rights for the overall benefit of the sport.

As a result of there being a lack of appropriate guidelines for the newly expanded digital media space, some media organisations have started to unreasonably push the boundaries around appropriate reporting of content and have framed this reporting as “news” in the absence of clear and equitable guidelines.

As detailed in the COMPS submission, an appropriate balance whereby:

- legitimate reporting of news is encouraged and allowed,
- news organisations are allowed to make a fair commercial return for their product
- the rights of sport to commercialise their product and intellectual property are protected, and limits
- the ability of media organisations to directly profit from utilising sports' intellectual property rights under the guise of news reporting is restricted;

are urgently required.

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

Tennis Australia fully supports the widespread reporting of appropriate content by news agencies at all Tennis Australia events. At the Australian Open alone, Tennis Australia accredits over 1600 national and international media personnel. Tennis Australia does not seek to gain any direct commercial benefit from accessing information for genuine news reporting purposes, such as charging journalists for access to the venue. In fact, such is the importance Tennis Australia places on news reporting it provides support and services for accredited media at significant expense to its own organisation.

Tennis Australia values very highly fair access to all competing organisations for genuine news reporting. The absence of clearly defined regulations around what is the appropriate use of content for news reporting has unfortunately however, given rise to some disputes over what appropriate news reporting is.

Clearly defining news content, and protecting the intellectual property rights of sports over their events via regulation, will provide significant assistance in ensuring all competing organisations are afforded equal access to sporting events for the purposes of genuine news reporting.

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

Tennis Australia agrees the public should have a right to access alternative sources of information using new types of digital media so long as the reporting of such information is contained within appropriate newly defined reporting guidelines.

Currently the regulations around fair dealing do not provide adequate protection in the digital media space. This impinges on the sport's ability to leverage media rights from its own intellectual property, whilst at the same time actually allowing media organisations, or worse still organisations who blatantly pirate content, to profit from the use of sporting content toward which they make no financial contribution.

As a minimum, enforceable regulation must be introduced to protect a sports' right to control first run television, radio, digital or online coverage of a event, both live or delayed, to maintain control over the intellectual property of any archived video, audio or photographic content, and the right to control any comprehensive highlights footage.

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

Using frequency limitations as a means of limiting reporting of content to that considered appropriate for news reporting, although it may have worked in the traditional media environment where the timeslots available for reporting actually acted as its own self-limiting mechanism, in the new media space, where massive volumes of content can be delivered across a much broader time-frame, the application of frequency limitations is simply no longer an adequate method of control. In the new media space for example, in effect a series of frequency limited clips could be easily gathered from the internet and strung together to create a virtual live coverage of an event.

New regulations, which go beyond the limiting of frequency alone, must be introduced in order to protect the commercial and intellectual property rights of sports, whilst at the same time supporting bona fide news reporting.

To effectively achieve a balanced outcome, in addition to frequency, dimensions which must be incorporated in regulations include:

- *Clip duration*
- *Total quantity of coverage (including size of image galleries)*
- *Frequency of content updates*
- *Delay*

- *Longevity, including the ability to archive*
- *Specificity and relevance of the content to a particular sport*
- *Context*
- *Distribution format*
- *Method of commercialisation*

It must be noted that the requirements around each of these parameters will vary between sports. By way of example, where tennis may support a clip duration timeframe of 90 seconds given a single match may go for four hours, this may not be appropriate for cricket or football as a 90 second clip package could easily highlight every wicket or goal, and therefore undermine the value of that sport's media rights.

Tennis Australia recommends that specific and reasonable guidelines around these parameters are developed by each sport based on the needs of that sport's specific requirements.

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

Given the relatively non-prescriptive regulations around sports reporting, particularly in the broader digital media space, accreditation is one of the few means a sport has available to them to protect the intellectual property and protect access for rights holders, whilst at the same time allowing non-rights holders to adequately access content for appropriate reporting purposes.

Although accreditation may be effective method for controlling access to content, it must be noted it plays no role in controlling the reporting of such content. As such it is essential that appropriate accreditation regulations are in place to support sport and media organisations access events. Such accreditation processes will only be useful if they are able to be enforced with appropriate guidelines regulating intellectual property rights and fair dealing.

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

Currently the onus is on the sport organisation or the broadcaster to monitor and attempt to control sites that infringe on their rights, often at significant costs to themselves in both time and resources. As a case in point in 2007 the English Premier League initiated a class action law suit against Google on the grounds that You Tube encouraged and profited from clips of matches uploaded to the site by users. This action has since been joined by the Rugby Football League, the Scottish Premier League, the French Professional Football League and French Tennis Federation, the National Music Publishers Association and Cherry Lane

Music and seeks, among other things, an injunction on direct or indirect copyright infringement, the broad use of technological measures to prevent the posting of copyright material. While monitoring the 2008 Australian Open Tennis Championship NetResult located 59 sites offering unauthorised streams or linking to these streams. Currently sports have little alternative outside of the legal system to prohibit unauthorised delivery of content.

The reality is that attempting to use the legal system to police unauthorised delivery of content is at best slow, cumbersome and costly, and at worst almost entirely ineffective.

In short, the sport and media industry require appropriate protection via either a very strong, directive and enforceable code of practice, or, in the event such a code cannot deliver appropriate direction and enforcement, regulation, to effectively balance commercial and public interests. To be effective to the level required, any code of practice or legislation must:

- Be granted copyright in the key elements of performance of our sporting events
- Clearly define news content and the parameters around news reporting
- Restrict the frequency, size, delay, archiving, context, specificity and distribution format of information, and
- Redefine fair dealing such that it is appropriate to the new digital media environment

As history has shown us, industry guidelines or codes of practice are only of value if they are prescriptive and specific, and are binding and enforceable. Notwithstanding this it is also vital such guidelines are fair and reasonable.

Anti-Siphoning

Although it does not specifically form part of this inquiry, it would be remiss to discuss a range of issues around news reporting in the digital media without noting anti-siphoning issues as they relate to new media platforms, in particular digital multi-channelling.

In the absence of any clarity around the proposed treatment of events listed on the anti-siphoning list in relation to multi-channelling it is not possible to foresee the impact the introduction of new digital media channels will have on the issues outlined above. Given anti-siphoning and digital content will be inextricably linked as the move to a fully digital television system moves closer to a reality however, these issues will have to be considered in the broader digital media context.

Tennis Australia is happy to provide comment in this space as required.