



**AUSTRALIAN
PRESS
COUNCIL**

SUBMISSION

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Australian Press Council submission to the Senate Environment, Communications and the Arts Committee on its inquiry into the reporting of sports news and the emergence of digital media

Executive summary

The public has a right to receive sports news in the same way as other news. There should be minimal interference with the collection and reporting of sports news, in words and images, whatever the form that news takes and in whatever medium it is published or broadcast. The same principle should also apply to the publication in any medium of commentary upon that news. Sports bodies and media organisations need to get together and work out an agreement that will allow such reporting to occur.

Submission

The Australian Press Council is the Australian print media self-regulatory body. It comprises members of the public, together with representatives of the publishers (metropolitan, regional, country and community newspapers, as well as magazine publishers and AAP, the news agency), and journalists. Its remit has extended in recent years to cover both the print versions of publications, and their online material as well. In recent times, the Council has signed up, as members, publishers whose material is published solely online, with no print outlet.

The Council seeks to maintain the traditional freedom and responsibility of the press in Australia. The public should not be denied information of public interest and concern. In the Press Council's view, the increasing diversity of the media through which information is disseminated does not alter the basic principles enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which the Australian government has signed and ratified.

The Council seeks to promote freedom of speech through responsible and independent print media, and adherence to high journalistic and editorial standards, by, *inter alia*:

Keeping under review, and where appropriate, challenging political, legislative, commercial or other developments which may adversely affect the dissemination of information of public interest, and may consequently threaten the public's right to know.

For that reason, and in support of the public's right to know, the Council strongly supports the free access of all journalists to events, so that they are able to report, and comment on, news, whether it be political, economic or sports. The Council is concerned whenever sporting bodies seek to restrict the access of journalists to events and to news conferences preceding or following events.

The Press Council regards reporting of sports events as legitimate news. It is alarmed that sports bodies, both locally and internationally, are attempting to deny, or limit, coverage of events, and of press conferences, as part of commercial agreements with broadcast, on-line and telephony partners. There should be minimum interference with the collection and reporting of news, in words and images, whatever the form that news takes.

It notes that there have been technological changes in the past that have expanded the concept of news reporting, and that the news media and sports bodies have found ways to accommodate the ability of the news media properly to report the news, whilst preserving the legitimate interests of sports bodies, and their media partners, in exploiting the commercial opportunities available as a result of the public interest in sports. In the area of television news, this has been achieved by agreements that enabled non-rights holders to present sufficient written, oral and audio-visual

material to enable their viewers to have the news presented to them. The complexities of digital media are not of such magnitude to prevent such arrangements being extended to them.

It does not support attempts by sports bodies, using the excuse of the digital media, to restrict the availability of independent news reports of particular sports. For example, in the last few years the Australian Football League has sought to restrict the availability of legitimate news photographs from their games.

The AFL case

In 2007 the AFL changed access by news organisations, particularly overseas news organisations, to photograph AFL fixtures. The Council argued that the AFL's decision to licence its own agency as an exclusive provider of images from its games threatened the ability of the press freely to report news. While most large media organisations still had agreements enabling them to have their own photo-journalists present to record events, many smaller outlets, particularly country newspapers, which rely on agencies such as Getty's to provide them with images for use in their mastheads, were forced to use the AFL agency, giving rise to a concern that it may seek to restrict distribution of images that it finds distasteful or which it sees as threatening to undermine the 'standing' of the game. Newspapers want to report all the news, not just the AFL's spin on it.

In that year, in response to the Council's concerns that the AFL was seeking to commercialise the reporting of news, the AFL said:

To assist rural newspapers who do not have the resources to provide their own photojournalists, the AFL accredits 12 AAP photographers. The photos provided by AAP are free of charge to rural newspapers, provided they are used for editorial purposes and are not for resale.

But, in April 2008, the AFL decided not to accredit AAP photographers. Moreover it accredited photo-journalists from other publishers only on the basis of a continuance of their current arrangements for syndication of images. What conclusion could the Press Council have come to other than that the AFL was determined to commercialise the reporting of the game?

This was only tangentially about digital media. It was commercialisation of the sale of photos with a strong possibility that there might be a sanitisation of the news, or incidents that the League would not allow to be covered.

When pressed the AFL prevaricated, telling the Council that "the AFL offered to accredit AAP photographers on identical terms to previous years, including the provision of photos to rural newspapers on a free of charge basis. However, AAP chose not to accept accreditation on this basis. The AFL would have preferred that AAP continue the existing arrangements and to thereby ensure continuity of the supply of images to rural newspapers. However, the decision ultimately rests with AAP."

When this comment was made known to AAP, it approached the AFL to take up the implied offer of accreditation, but the AFL refused accreditation of its photo-journalists for the 2008 season. There has been no accreditation for the 2009 season. The restrictive agreements with other media organisations continue. The Council has been informed that the consequence is that many regional newspapers now have to rely on the AFL's in-house photography agency for images. The risk of censorship remains, to the detriment of the readers of those newspapers.

This issue is a serious threat to press freedom - the freedom of the press to inform the public on matters of interest and to report properly on news events without the intermediation of those seeking to 'manage' the news.

The particular terms of reference

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

The public's legitimate interest in sports as news events must be insulated from the sale of commercial rights to the broadcast of games. The news element has to do with description, results and related matters, including controversies. Both the event itself, and any news briefings and media conferences following it, are legitimately included. The concept of 'fair use' has long been established as the acceptable yardstick for the reproduction of images, for instance.

The reporting of news need not and, if sensibly negotiated, does not interfere with the commercial interests of sports bodies and their media partners. In fact, if anything, it enhances them. Sporting bodies need to keep in mind that the value of their sporting brands has been built on the back of the reporting of the events in the free print and electronic media. Without the continued reporting of such sports as news, the value of their brand, would substantially decrease (amply provable simply by reference to the relatively low commercial value of most women's sport, which is generally under-reported).

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

With due respect to those who see the emergence of each new iteration of media as changing completely the landscape of news reporting, the emergence of digital media, and the more immediate access to news afforded by those media, does not, and should not, alter the basic premise of news reporting. Journalists should be allowed to do their job, no matter what medium they report in.

Nonetheless, the Council believes that it is in the interest of both sports bodies and media organisations to find a way, through the 'fair use' doctrine, perhaps modified to accommodate new devices, to allow the responsible reporting of legitimate sports news events in all media, enabling the protection of commercial interests without interference with news reporting.

There is a real synergy: the news reports help build the value of the commercial interests.

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

The Council argues that any regulation that restricts or inhibits the right of the media freely to gather and distribute news, views and information can only be justified by the public interest. Sports bodies have not indicated any public interest served by censoring the online reporting of sports news. Given the inexplicable results so far of attempts to regulate the online environment (for example, ACMA's blacklist of online sites), the Council can see no way in which regulation could be achieved with having an unintended adverse impact on the freedom of the Australian public to receive and impart information.

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

The reporting of news, per se, is not a commercial interest. When engaged in journalism, media organisations are not exercising a commercial interest.

Where media organisations have commercial interests in sports, whether as partners of sports bodies or otherwise, these interests need to be managed so as to keep them separate from their obligation to allow unhindered news reporting. Press Council principles require that its members

divulge any commercial, or other, interest that might interfere or pollute the fair reporting of, or commentary on, the news.

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

The Council favours negotiation as the way to deal with these questions. Since the advent of live sports broadcasting, such agreements have been successfully negotiated between sports bodies and media organisations, to the benefit of both parties. The Council does not see that there has been such a change in the landscape that a 'fair use' agreement, or some analogous form of agreement, cannot be negotiated. The basis for such an agreement must, however, always be that the legitimate reporting of sports as news not be interfered with.

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

'Fair use' does not imply full broadcasting rights, for example. The 'fair use' concept can be re-jigged from time to time to accommodate new devices without there being any necessary implications for news reporting. It is legitimate for sports authorities to want to prevent alternative broadcasts, but, where news reporters are simply seeking to inform the public on matters of public interest and concern, they should be free of impediments. News reports will lead to an increased value in the brand, not a lessened one.

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

The Council opposes any regulation that would lead to a statutory or any other body deciding for the news media what is a legitimate news event and what should be reported in the public interest.

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

The AFL/AAP case detailed above demonstrates that sports bodies are using accreditation processes as a way of restricting the availability of news material, thereby forcing media outlets to use the sports' own agency as a source for photographs. Sports journalists representing legitimate newspaper organisations should be accredited as a matter of course, although there remains possibility of negotiating numbers with larger media organisations, as Parliaments do for their Press Gallery.

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 Press Council has argued that this should not be a matter for legislation or regulation, but that sports bodies should negotiate with media organisations to ensure that sports news is reported freely to the public. The Council already deals with complaints about irresponsible and unethical behaviour of publishers, whether in print or online, in the reporting of, and commentary on, the news. The Council is happy to make its 'Good Offices' available to parties should they need an independent arbiter to help negotiate the sort of agreement referred to in this submission. Likewise the Council is available to any complainant, whether an individual or a sports body, that feels that a newspaper or website has been unbalanced, unfair or inaccurate in its reporting, or has failed properly to abide by ethical standards.

The Australian Press Council

The Australian Press Council is a voluntary association of organisations and persons established on 22 July 1976. The membership of the Council is set out in the attachment.

The objects of the Australian Press Council are to promote freedom of speech through responsible and independent print media, and adherence to high journalistic and editorial standards, by:

- considering and dealing with complaints and concerns about material in newspapers, magazines and journals, published either in print or on the Internet;
- encouraging and supporting initiatives by the print media to address the causes for readers' complaints and concerns;
- keeping under review, and where appropriate, challenging political, legislative, commercial or other developments which may adversely affect the dissemination of information of public interest, and may consequently threaten the public's right to know;
- making representations to governments, public inquiries and other forums as appropriate on matters concerning freedom of speech and access to information;
- undertaking research and consultation on developments in public policy affecting freedom of speech, and promoting public awareness of such issues;
- promoting an understanding of the Objects, Principles and workings of the Council especially among editors, journalists and journalism schools, through forums and consultations; and encouraging feedback for Council's consideration.

The Australian Press Council
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April 2009

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Alan Kennedy

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Gary Evans

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Jack R Herman

For details and biographies see:

<http://www.presscouncil.org.au/pcsite/about/members.html>