

6 April, 2009

Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
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Submission of Fairfax Media Limited Inquiry into the reporting of sport news and the emergence of digital media

Fairfax Media welcomes the Committee's inquiry into the reporting of sport news and the emergence of digital media.

In recent years, every new season for most major sporting codes in Australia and, increasingly, for major international sport events, brings with it new and more restrictive proposed terms for accreditation of the media to cover these events. These restrictions seek to privatise the reporting of sports news.

With increasing frequency, Fairfax Media has encountered significant problems with major sporting bodies in obtaining accreditation for our journalists for major sport events.

Major sporting bodies are also increasingly demanding, as part of accreditation, that they are given broad rights to our photographs for their own use, without restriction and without paying any license fee.

News agencies and wire services are being denied accreditation for their photographers, thus depriving audiences across the country of photographic coverage of major sport events.

The next frontier is access to news on mobile devices, and we have no assurance that our news coverage of major sporting events will be permitted to reach mobile device users.

At the heart of this issue is the media's free and independent ability to report major sports news online, as we do in print, but with a frequency and depth of our choosing in order to serve our large and growing audiences.

Unless these trends are checked – and we believe the scrutiny of this Committee will have a salutary effect on the managers of our nation's sporting franchises – something fundamental to the existence of a free press is in danger of being lost: the ability of media to cover public news events for the benefit of our audience, in print, online, by mobile device and on-air.

Whatever commercial rights the sporting codes seek to exploit, there must be full protection for the ability of non-rights holders to access sporting events to report the news and to distribute such reporting to their audiences.

Fairfax Media's Experience With Various Sporting Events

These issues first crystallised in a systematic fashion in September-December 2006, when Fairfax Digital encountered the following discriminatory practices against online media wishing to cover premium sport events:

AFL Grand Final. In September 2006, The Sydney Morning Herald Online was denied accreditation by the AFL for a reporter who would file news reports to our websites from the AFL Grand Final. SMH online was also denied accreditation to the post-match media conference and the dressing rooms. Additionally, a Fairfax Digital camera crew was denied access to the Grand Final parade on the preceding Friday morning to film news footage for the websites of The Age and The Sydney Morning Herald. Access to the post-Grand Final media conference was also denied to the camera crew. Fairfax and other print journalists and television and radio non-rights holders were permitted in the media conference and dressing rooms but their copy and photographs could not be filed on-line.

Melbourne Cup. In October, 2006, Fairfax Digital engaged in lengthy discussions with the Victoria Racing Commission regarding accreditation for an online journalist with a video camera to the Bird Cage and Fashion on the Field events. While accreditation was granted to Fairfax Digital to the Birdcage, it was initially denied to Fashions on the Field. After vigorous protest, Fairfax Digital obtained the same access other non-rights holders to Fashions on the Field, that is, the ability to record and use under "fair use" provisions up to one minute of image for our websites.

The Ashes Cricket Series. Cricket Australia initially advised us that it will not be approving any filming in venues, including at end of day player media conferences, for use on any interactive platform (including internet, wireless and any other interactive medium). The only filming in venues permitted before and during match play is by designated Cricket Australia media rights partners. We were finally permitted to record the post-match media conferences and use up to 2 minutes of video for our websites.

More recently, we encountered the following demands from major sporting codes:

The International Rugby Board, in its proposed terms for the 2008 Rugby World Cup, sought to deny our journalists the ability to provide live audio commentary to our websites, and to limit images to no more than 5 images per half. In addition, the IRB sought a ban on photo sales of our own copyright photos, and to allow video coverage by non rights holders only on non-match days.

Tennis Australia, for the 2009 Australian Open, sought limits on the uploading of still images, the ability of our journalists to use transcripts of interviews, and the posting of progress scores.

The AFL, for the 2008 season, sought to limit the scope of our use of match statistics and also sought to obtain for themselves a license to use any of our photographs for use in the non-commercial promotion of Australian football by the AFL and its clubs and affiliates, on a royalty free basis. The AFL also sought to limit distribution through our existing syndication arrangements (such as we have for news with West Australian News).

For the 2008-09 season with Cricket Australia, it required extended negotiations on our part to ensure that there was no restriction on ball-by-ball or over-by-over text and data coverage on our websites; that there be no numerical limit on match updating on our websites; that we were permitted to upload photos at a sufficient rate to ensure proper journalistic coverage of matches; that there are no limits on the format, e.g. photo galleries, in which we could present our photographs; that we could continue to syndicate our coverage to third parties with whom we have pre-existing agreements; that there are no restrictions on our photo sales to the public; and that we could use our photographs to promote our own publications.

The way we have resolved these challenges to our ability to report the news is through a series of private negotiations between Fairfax Media and the sporting codes, in an attempt to agree in a side letter variations to the formal, published accreditation terms.

This is an extremely cumbersome, time consuming, complicated and unsatisfactory process. Some media organisations, like Fairfax Media, may fare relatively well in these negotiations, but others clearly have not. There is no uniformity of accreditation terms or outcomes. The loser is not just the media organisation who is locked out of the stadium, but the public who relies on that organisation to report the news.

Real and Potential Restrictions on News Coverage

To date, Fairfax Media has successfully resisted, the worst restrictions on our reporting. By engaging in robust discussion and negotiation, and by being pragmatic, we have not had to compromise our journalism.

We have come very close, however, to being locked out of covering events when we would not accede to demands that would impinge on our journalism. Unfortunately, where we have been successful to date, other media organisations have suffered severe defeats in their ability to do their jobs.

This has indeed happened to AAP and other wire services and agencies, which have been excluded from covering the AFL and cricket because of unacceptable limits on their journalistic activities.

AAP reporting and photography are the lifeblood of news for regional and rural newspapers across the country. Millions of Australians are being prevented from receiving full AAP coverage of major sporting events. When photographs of sport events are privatised, all forms of journalism are vulnerable to such restrictions.

Looking towards the future, we believe that our websites and mobile news services are extremely vulnerable to being excluded from covering the news because major sporting franchises have privatised it. To date, no major sporting code has sought to prevent mobile devices from accessing news sites via the internet. This allows mobile subscribers to access Fairfax Digital websites and for our coverage of sport on those websites, including live updates, photos and images, and video. Untested yet is whether sporting codes will seek to restrict special news content purpose-designed for mobile phones so as to protect mobile rights agreements they sell.

Fair Use of Video

We are pleased to report, thanks to the protections afforded under the Copyright Laws, that we are able to incorporate video coverage of major sport events in our online news coverage. Fairfax Media believes that, under existing copyright law, generally we are entitled to around 3 minutes of video on a “fair use” basis for our news and sports reports online.

Rights Holders and News Coverage

Media entities that purchase rights to sport events are fully entitled to do so. Such arrangements are an important source of revenue for organised sport and provide a valuable franchise for programming and attracting audiences.

But coverage of the news need not be restricted by commercial agreements between sporting franchises and media entities to provide comprehensive coverage of sporting events.

This is exactly what has happened for decades with non-rights holders in television and radio being able to fully report on major sport events, and utilise video and audio segments to illustrate their reporting.

So far as we are aware, no sporting code has ever attempted to sell exclusive rights to newspaper coverage for their events – and restrict the ability of other newspapers to report on them.

In our discussions on these issues with the sporting codes, we sought simply to maintain the practices that have existed for decades where non-rights holders have been able to do their job as news organisations.

Based on what has transpired over the past several years, and the threats posed to news coverage, those practices deserve more clarity and transparency. Media accreditation terms for non-rights holders should, at a minimum, provide the following assurances:

News: no restrictions on the right to report the news as it happens, no discriminatory access to media conferences; no limitations on updates; no restriction on the presentation of photos and images; no restrictions on syndication agreements

Photography: no restriction on syndication; no perpetual right to access and use our photographs.

Video: full protection of fair use video rights.

Mobile: no restrictions on access to websites; no restrictions on fair use content.

Oversight by Parliament and the Public Interest

Fairfax Media does not believe, at this time, that legislation is required to remedy this situation. However, we respectfully urge this Committee and the Parliament to continually monitor these developments, specifically by seeking from the relevant parties the formal accreditation terms proposed. This will allow the Parliament to examine the extent to which trends towards privatising news coverage are threatening the ability of sport to be covered by all media – not just rights holders –in the public interest.

Fairfax Media would be pleased to work with the Committee on these matters.

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