



14 April 2009

Committee Secretary
Senate Standing Committee on Environment, Communication and the Arts
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Inquiry into the reporting of sports news and the emergence of digital media

The National Rugby League (NRL), as the custodian of the major professional Rugby League competition across Australia, welcomes the opportunity to make a submission to the Senate Committee Inquiry into the reporting of sports news and the emergence of digital media.

The views of the NRL are supported in principle by the Australian Rugby League (ARL), whose media access guidelines are administered with the support of the NRL, and this submission is therefore reflective of the views of Rugby League on a national basis.

Together with a number of other major professional sports, through the COMPS group, the NRL has jointly submitted its response to the official Terms of Reference as outlined by the Senate when this inquiry was referred to committee on 12 February 2009.

As is evident from the combined COMPS submission, the major professional sports have many areas of concern given the current activity of a wide variety of news and commercial organisations in what is an ongoing change from the traditional media environment to a digital media environment.

The NRL strongly supports the free public access to information for the reporting of sports news across the full range of media platforms. The NRL also strongly supports the expressed concern from sports that that media and commercial organisations are, from time to time, using content gained under the guise of "news" for purposes that fall well outside that definition. This includes content that is retained and re-used for commercial benefit in ways that erode the ability of the NRL to rightfully commercialise what is its own intellectual property.

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It needs to be stressed that it is the rights of professional sports to commercialise this property outside of the news environment that allow them to reinvest in the propagation of the sport through community development.

The balance between free access to content for news reporting purposes and the sport's right to commercialise its intellectual property to provide self-sustaining revenue has been increasingly blurred by technology in the same way that the protection of intellectual property rights in general have presented major challenges throughout the internet. The music industry and the film industry are cases in point.

The most important aspect of current news reporting and access arrangements is that our media accreditation process is driven by a fair and responsible balance between the public's right to know and the need to fairly protect the sports commercial assets.

As evidenced in the COMPS submission, intellectual property rights are a significant revenue source for any major sporting organisation.

Our current media rights partners expect that their exclusive purchase of our premium sports content is protected where ever possible, to the extent permitted under "Fair Dealing" for news reporting.

It is an anomaly to suggest that every media and new media outlet can be represented at every sporting event or that they can have equal access to vision – at its most basic it is impractical in terms of the sheer space available within sporting venues to accommodate everyone.

Sports are however focused on gaining as much media attention as possible. A sporting body's ability to attract and to prioritise media access to gain maximum exposure within commercial guidelines is indeed a key part of what makes the sport successful.

The media need and deserve access to faithfully convey the activities of a sport to the public. The sport offers accredited media free access to capture this material in good faith.

There are those purporting to be media agencies who seek to gain this access with a primary aim not to disseminate the information to the public so much as to create commercial gain beyond the immediate news cycle. This includes the commercial sale of imagery and or the sponsoring of photo archives known as photo galleries as well as the sale of archival vision through public sites whose advertising revenue is not reinvested within the sport.

The scale of the modern media is such that the number of freelance media organisations across photography, moving vision and print are so numerous that it is not conceivable that representatives of each and every one could be accommodated.

The government and the media agree that sport is an essential part of Australian way of life and therefore a significant community asset. To continue to provide this asset the commercial environment of professional sport must be respected.

Advances in new media technology have focused on the opportunities that technology provides in gaining greater access to content - access that was beyond the imagination of the public a decade ago. The subsequent changing of the media economy is leading to a reshaping of the media industry with traditional print publications under significant financial challenge. The lines between the traditional media streams are shifting rapidly with print organisations now providing video and audio, television stations providing print based websites and radio involved in print, audio and visual content.

Not only have the traditional media lines blurred but the changing media economy has led to a breaking down of the previous separations between what is news content and what was previously respected commercial content. A clear example of this is subscription based news and highlight services in which the content is not a general news offering but which amounts instead to the sale of imagery and vision from an event through new media platforms, eg. mobile phones.

At the heart of this matter needs to be recognition that the NRL is the Rugby League content provider via the Telstra Premiership.

We would submit that already few other content providers outside of professional sport are as subject to regulation in commercialising their intellectual property. The Fair Dealing provisions of the Copyright Act and Anti-Siphoning Legislation already restrict the revenues of professional sport.

As outlined earlier in this submission, it needs to be accepted that the provision of professional sporting content by organisations such as the NRL is made possible by its ability to generate revenue to be thus self-sustaining and feed the grassroots of the game. The notion that sport should be there simply because it 'belongs to the public' defies the often turbulent economic realities that Australian sports face and a key part of any sport's future is its ability to develop and protect its primary revenue streams.

That is not to say that professional sports do not recognise their role within the community and the need to provide sporting opportunities. In 2009, the NRL together with its Clubs will expend over \$8 million on community development programs in the areas of literacy, health, harmony, and charitable work. Both the NRL and the Clubs fill a need within society that is not free and needs to be financially realised.

Another aspect of the current news media landscape that we ask the Committee to examine when inquiring into the reporting of sports news is the Anti-Siphoning List. Whilst we understand the reasons for the List's existence, it too detracts from the ability of sport to properly realise a commercial gain from the premium sporting content we create. The simple fact is that the existence of the List acts as a price limiting mechanism in the currently rapidly changing media environment.

The List was devised in an era in which free to air networks had only one station signal and in which subscription television was seen as an elitist option with questionable market penetration. The ability of Government to dictate to sports what they can and can not do with content fails to take into account the many variables that can determine the extent to which networks will commit to sports content at all, let alone which sport they will purchase. Already it has put free to air networks into a negotiating position that allows them to determine factors such as national and live broadcasts safe in the knowledge that sports cannot threaten to take their events to a subscription based alternative.

The addition of multi-channelling to the Australian digital media landscape should not give rise to the Government extending the Anti-Siphoning List any further or to the government dictating where a specific type of content can be shown. Indeed this change in the network structure makes the Anti-Siphoning List increasingly outdated. Certainly there is a real risk that the original purpose of the legislation is now being contradicted.

The List itself was designed to stop consumers being forced to pay for technology they were not yet inclined to adapt. An extension of the Anti-Siphoning List to other free to air channels would see sport used as a lure to force people to take up technology for free to air networks. There is no guarantee that the networks will generate sufficient funds from extra channels to pay premium or even current prices for sports content on these second and third channels, indeed the television industry is under considerable pressure in this area. Anti-Siphoning offers no safeguard for sports in terms of their ability to negotiate market rates for their events.

The impact of any extension to the Anti-Siphoning Legislation would severely curtail the ability of sports to be self-funding into the future. The point that the Anti-Siphoning Legislation fails to take into account is that sports are already in the business of achieving the widest possible coverage within the media landscape. In doing so they are subject to market forces.

All sports look to free to air coverage but few actually achieve it, often because networks do not perceive the audience demand to be sufficient or because the networks are not prepared to invest in the rights fees and production costs. The sports that do achieve free to air network interest need to be able to freely negotiate the extent of coverage and the mix of free to air versus subscription telecasts in order to balance revenue versus public exposure.

As the COMPS submission points out (page5):

“The COMPS members are united in the need for mechanisms to support their rights. We would encourage Government consultation on this issue. It is yet to be collectively determined as to the best mechanism going forward, either being through Codes of Practice or regulatory/legislative change.”

It is the NRL's belief that the major sporting organizations, together with the legitimate sports news reporting organisations/agencies, should establish a Code of Practice where by consultation and a harmonious working relationship is promoted before the Government considers regulation and legislation.

To ensure clarity, it must be noted that the NRL is not seeking favorable treatment or to limit the principle of "Fair Dealing" but we seek the same ability as other industries to protect their Copyright, Trademarks, Patents, etc and thus their premium content. For example, the music industry and its crusade against music piracy which has cost the industry millions over the last two decades as digital media has grown rapidly.

This is not a proposal to readdress the Copyright Act or to allow sports unfettered rights to commercialise media access beyond the accepted areas of existing broadcast and radio rights. It is a strong request that the Committee focuses on the need for sports to be able to make determinations in terms of media access.

The NRL appreciates the Committee's consideration of this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Gallop", with a stylized flourish at the end.

David Gallop

Chief Executive Officer