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05 April 2009

Representations by the South African National Editors' Forum

Introduction

The SA National Editors' Forum (Sanef) is a voluntary forum of editors, senior journalists and journalism trainers from all areas of the media industry in South Africa. Their primary aim is to promote the quality and ethics of journalism, to reflect the diversity of South African journalism and to champion freedom of expression. The institution has been in being for more than 10 years and has frequently made representations to various bodies including the relevant portfolio committees in the South African National Assembly on issues relating to national legislation, the conduct of the media and of others including that of the authorities toward the media and on media freedom and freedom of expression. In upholding and maintaining freedom of expression and media freedom Sanef is guided by the principle – which has frequently been stressed without qualification by judges of our courts and courts in other democracies -- that those freedoms are vital core values of democratic governance and a country that does not abide by them cannot claim to be a democracy. The key aspect of those values is the defining principle that the public has the right to know, to be informed of all relevant information about events and other occurrences in the country, the conduct of the community and people in authority in the community and society at large and thus have the informed capacity to decide on their future and how the affairs of the country should be conducted. In short, the right to know serves the public interest.

The principles to which Sanef adheres are outlined in the South African Constitution and such international protocols as:

- * Article 19 of the Universal Declaration of Human Rights;
- * The African Union's freedom charter as defined in the Declaration of Principles on Freedom of Expression in Africa by the African Commission on Human and Peoples' Rights;
- * The Windhoek Declaration; and
- * The European Convention on Human Rights.

Chairperson: J Rantao • Dep. Chair: H Jeffreys • Secretary-General: M Papayya • Treasurer: J Williams • Executive Director: F Mehtar •

We emphasise the media freedom factor because it is the underlying principle to these representations. Our broad objection to the restrictive conduct of the sporting codes is that they are introducing terms and conditions relating to media coverage of sports events and/or accreditation which restrict media operations.

Sanef members are from the print media and broadcasting but also encompass websites as most papers and broadcasters have websites where their news and services are duplicated and, in some instances, deal with news and editorial material before it appears in their print editions.

We believe the news media has a duty to keep the public informed on all issues affecting people's lives and one subject to which particular attention is paid is the coverage of sport. This relates to its news value for readers but also to meet the public's strong desire for information about the progress of teams in competition, the players both in their professional and personal lives, anecdotes about them, background information, the tactics employed in playing games, statistics, conduct of the management of teams and sporting codes and how these affect performance, the conduct of the public at games or events on or off the playing field, discussion of past performance and of prospects for future games, the manner in which politicians relate to the sport and other issues that arise from these factors. We are also aware that coverage down the years by the media has helped considerably to develop the public's huge interest in the various sports and enabled those sporting codes to become the huge money-spinning commercial enterprises at the international championship level. Particularly important to South Africa is the fact that money so generated is able to promote sport on a national basis. In South Africa the main sports were not accessible to the majority of the people during the apartheid era.

Against this background of service to the public the media is deeply concerned about the attempts by sports bodies to control not only the way in which sports events are covered but also the manner in which publications (and TV and radio broadcasters) deliver news and information.

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

We recognize the need of sporting codes to protect their commercial rights and their ability to raise money which in addition to protecting their viability enables them to promote their sport by introducing it to young newcomers and to nurture talent. However, we insist that the media's role and the principles which enable it to operate as a free and independent institution must be respected as well as its ability to make use of the latest technological advances in the publication or broadcast of information. Only by insisting on that requirement can the media continue to provide sound editorial coverage of sport.

The media also notes the clear distinction between commercial coverage of sports events which is generally in the form of sought-after entertainment and editorial coverage of those events which is in the form of a public information service with factual reporting of the sports. The two types of coverage meet different needs and have existed for years side by side. News coverage does not try to compete with live commercial coverage provided to entertain the public because it knows it cannot. What editorial coverage does do is to be complimentary to commercial coverage and to expand it to an even wider audience and to promote not only the games but, through pictures, the products or activities of sponsors.

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

We have recognized the role played by commercial interests in dealing with sporting events and the coverage they give to those events as a form of entertainment and we have noted that there is a distinction between that aspect of coverage and that provided by news media which publishes news and information on the basis of free and fair reporting whether it relates to general news, business, politics or sport. Not only does the media meet the "public's interest" in sport but it also deals with aspects of the "public interest" in regard to sport. As stated in 1 the media operates on the basis of the public's right to know and this extends beyond the actual sporting event and performance of players, etc, but into the area where the actual sport or sports generally become tainted with racism, hooliganism, corruption or excessive commercial exploitation. This coverage has to be accurate, unbiased, comprehensive and timely and is provided by independent

journalists (who may or may not be accredited sports journalists) and published in the public interest. Coverage of these issues is simply not in the province of the commercial interests dealing with sport. These issues raise a serious conflict of interest for such organizations which relate to sponsorships and advertising and promotion of sport. Such stories can bring the sporting code into disrepute which commercial interests strive to avoid. We have noted that increasingly among the codes accreditation is conditional on journalists refraining from bringing the sport into disrepute. Several accreditation terms and conditions actually impose a prohibition on bringing the sport into disrepute, a condition which the media cannot accept, even more so when accreditation of one member of staff binds the publication and every other member of staff. Terms and conditions imposed in this manner are simply unacceptable to the media. Also in view of the exclusive rights granted TV subscription services, we believe it has become more important both for the public and the sports themselves to receive coverage via other media and that includes the traditional as well as the new emerging platforms. We maintain that however valid commercial interests may be, they should not be allowed to inhibit free and fair reporting which serves a completely different purpose and cannot be replaced by commercial coverage of sporting events.

3. 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

We revert to our statement in the Introduction that press freedom must not be restricted and that the public have a right to gain access to information through whichever medium (or platform) they choose. Freedom of the press means not only the ability of the media to report freely and fairly and gather and disseminate news and information but also the ability of the public to have access to such information by whichever means they choose. There is a move among sporting codes to restrict the use of certain platforms, especially those emerging with the advance of technology – pcs, mobile phones, etc – and the media rejects this as contravening freedom of expression and freedom of the media principles. Examples have been provided that should an incident occur at a sporting venue (examples cited include a terrorist attack, the collapse of a viewing stand or some other non-sporting situation), the public's right to know about it through whatever news source or platform must not be inhibited. Also rejected is the contention that video streaming, etc, are prohibited.

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

The media in South Africa operates on the basic principle that the freedom of the press is indivisible from and subject to the same rights and duties as that of the individual. It is therefore subject to the same laws as those faced by the individual. We regard special regulations imposed on the media as an unacceptable intrusion on press freedom. We point out, too, that regulation of the press as an entity separate from the public is resorted to by non-democratic authoritarian regimes which seek to control the media.

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

There is no comparison between the commercial interests of sporting organizations in their events and those of the print media. Nor can a comparison be made with TV and radio broadcast media which cover events on a news value basis as distinct from those that pay for exclusive rights to broadcast material. The commercial interests of such contractors, if one may call them such, is substantial but probably not as high as that of the sporting organizations which derive revenue from the contractors' fees as well as a range of other payments for advertising rights and the sale of private boxes and tickets to the general public. The print media does derive revenue from supplements and other advertising associated with coverage of sporting events but no accurate statistics are available to make a valid comparison. It should be pointed out that coverage by news media of a sporting event incurs considerable cost on staffing, transport, communications and general expenses. News agency members of Sanef do not derive additional revenue from the coverage of sporting events. Their standard subscription revenue applies to all coverage, general, business, politics, labour, etc, as well as sport.

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

We are concerned about the use of the term regulation and the suggestion that some regulation should be imposed on news organizations as a kind of balance to meet the needs of commercial enterprises getting fair access to sporting events. We have stated that the principles of a free and independent media are the core values under which the press operates and, indeed, applied to its sports coverage in the past without the need for onerous terms and conditions or, as now, suggested regulation of some sort. We believe that attempts to interfere with the principled operations of the media hold the prospect of causing damage not only to the media and its public in the light of restrictions but on the sporting event organizers themselves. If regulation was imposed that limits the media in its coverage, or worse, raises the suggestion that certain crucial information is being withheld, the integrity and credibility of the event could be seriously jeopardised. Should the public suspect the integrity and genuineness of the information they are receiving from news services and the media, the credibility of events will suffer and public interest will wane with knock-on negative effects for sponsors and contractors. There may be an argument that a standard set of conditions should be imposed so as to avoid the continual argument and haggling that has been the norm over the last few years, but the proviso must be that whatever standards are suggested, they must respect freedom of the media

7. 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

Here again we come up against a proposal that there should be a limit on the ability of the media to publish over several platforms which has now become the standard for newspapers and broadcasters. One understands the desire of TV and radio contractors who want to publish minute-by-minute accounts of the run of play that they should have exclusive access to the action, but we believe that fears that the use by other media of other platforms will harm them are misplaced. People wishing to follow minute-by-minute accounts will continue to do so and not be enticed away by intermittent (at the most) flashes of news from the game by other media. Also, it is to be questioned whether a ban on publication by so-called competing media is in the interests of the other sponsors who derive benefit from their advertising around the pitch and their exposure. Indeed, they expect and should have available to them maximum exposure. The public expects and should be given the widest choice of platforms from which to access information. The public should not be penalised for wishing, for example, to access their information online rather than through a newspaper. It seems impossible to support a view that a body should be able to dictate where the public must seek its news about a sporting event even when that body can dictate where the public must go to watch the live event itself. The area which is potentially the most contentious is editorial coverage of sport on mobiles. This is a new technology and one which sports bodies are looking to commercialise. We believe that there is no difference between the mobile platform and other more established news platforms such as newspapers, television and internet. Indeed, excluding mobile use is practically impossible given that mobile devices can now access regular web content.

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

This limitation stems from the erroneous belief that news gatherers excluded from accessing rights-held video coverage, will attempt to 'simulate television' by means of frequent stills and/or text updates. There is no substitute for live coverage. The public must be able to access current, accurate sports news in the same way as it accesses the latest breaking political or financial news. The live broadcast of a sports event can in no way compare with written or photographic coverage despite it being regularly updated. We accept the right of a broadcaster which has entered into a contract with a sporting body to exclusivity when it comes to live match-action. However, if the question relates to limited "shelf life" for news reports, we need to have the right to not only report the current event and discuss for days, if need be, how certain players played or what actually happened on the field as well as at some future date to write about these events. It may be another issue that has cropped up about the game or it may be a preliminary story on a new game to be

played by the same team or involving a player's conduct or prowess when those details require to be published again. This means that we cannot accept the imposition of a limited "shelf life" on reports. It should be pointed out that the copyright reposes with the publication.

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

We are disappointed at the current accreditation process which has become unwieldy and inefficient and also contains features which are not readily accessible. For instance, while a form is provided for completion for an application for accreditation, the terms and conditions are on a separate website. The terms and conditions should be on the form so that the person applying is fully aware of what he or she is agreeing to. There have been reported instances where journalists have been told that the terms and conditions merely apply to operational conditions and one should not be worried about them, whereas the terms and conditions contain unacceptable provisions. The major complaint against the Fifa terms and conditions, for example, is that they apply not just to the applicant but to his or her newspaper and all staff. This is unacceptable. An application for accreditation should apply only to the journalist concerned and if there are specific clauses where the paper has to comply with certain conditions those conditions should be conveyed to the editor with a request for his or her agreement. Other unacceptable features in the Fifa terms and conditions are that the terms can be changed after an applicant has signed without consultation and that Fifa has the right to remove accreditation at will without consulting the journalist's editor or giving the journalist the opportunity of hearing the complaint and making representations. There is also a clause which suggests that Fifa seeks power to censor certain information, also an unacceptable provision. Some of these conditions are intended to control reporting which is unacceptable..

10. 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.

We are not opposed to industry guidelines or codes of conduct but insist that they should respect and uphold freedom of expression and freedom of the media. That is absolutely essential.

Yours faithfully,

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