

NewsMediaCoalition

Preserving the function of news organisations to inform public society about events of interest

SUBMISSION TO THE SENATE STANDING COMMITTEE ON ENVIRONMENT, COMMUNICATIONS AND THE ARTS INQUIRY INTO THE REPORTING OF SPORTS NEWS AND THE EMERGENCE OF DIGITAL MEDIA

INTRODUCTION - Our Interest in the Inquiry

The News Media Coalition is an international organisation focused on the specific threat to editorial operations, publishing and independent journalism from excessive controls imposed by events entities such as sports governing bodies through accreditation contracts. The NMC has evolved following action taken by event organisations that have asserted control over news and in so doing threatened existing relationships between sport and the news media whilst undermining the evolving flow of news to the public. The NMC believes that a mutually-beneficial relationship between sport and news media is both desirable and achievable, although this has been severely tested in recent years.

The NMC, based in London and Brussels, raises the concerns of the news-gathering and news-distributing sectors, where these functions are challenged. It gives advice and support to its members as well as, on occasion, some non-members. The Board of the NMC consists of representatives of major news-gathering organisations and representative trade bodies including: national, European and international newspaper trade associations, international news and photographic news agencies, individual publishing company interests; it also has close links with sports journalist associations. Each has interest in attending and covering sports in Australia and following the exploits of Australian sportsmen and women abroad or receiving news from trusted sources about such events.

Some of these news media organisations will have made separate independent submissions to the Senate Committee, while this submission is intended to summarise the issues by drawing from the experiences of the NMC broadly. We would like to thank Senator McEwen and the Standing Committee for this opportunity and look forward to contributing to the Committee's ongoing deliberations.

This submission below consists of four parts.

- 1) A Summary of Concerns**
- 2) A summary response to each of the Terms of Reference**
- 3) Supplementary Notes which seek to give wider context to those references**
- 4) Conclusions**

1) A Summary of Concerns

Genuine press freedom concerns are raised when event organisations restrict news-gathering operations or undermine the standing of independent journalism by introducing some or all of the following:

- Refusal to grant access to an event by a sector of the legitimate news-gathering community
- Assertions that text, data or pictures created by the media at an event are the intellectual property of and are owned by the event
- Imposition of limits and volume restrictions on the number of photographs, stories or items of data that can be published
- Bans on the publication of sports photos, data or stories on mobile devices
- Accreditation language which potentially undermines fair journalistic comment by seeking to ban reports which might bring the game into disrepute or fail to acknowledge the importance of independent journalism or copyright ownership
- Restrictions on the types of publications which may publish content from events, for example allowing photographic content to be published in sports related magazines but not other similar publications such as lifestyle-magazines containing sport imagery
- Demanding prior-approval veto over the way photographic content can be distributed for editorial use by websites
- Stopping the sale of copyright photographs to the public for the personal use of sport-loving readers
- Determining rules on how photographs must be used in print and in digital publications to ensure event sponsorship exposure
- Imposition of limits and volume restrictions on the amount and duration of extra-event audiovisual coverage for website use.
- Very broadly defined open-ended indemnities from the media
- Arbitrary right to exclude accredited journalists and photographers from the event at any time without notice, explanation or appeal
- Restrictions on the conduct of non-accredited media representatives not in attendance at the event, for example watching the event on television

Similarly there are concerns when event organisers:

- Sell so-called media rights and enter into long-term commercial arrangements without accommodating the future and legitimate ambitions of news organisations to deliver news to the public
- Impose accreditation language which:
 - Does not allow for a transparent process for suspected breaches to be remedied
 - Grants the event the ability to impose new terms without reasonable notice or dialogue
 - Mix legitimate safety, management and process issues with myriad legal controls on news-gathering

2) A summary response to each of the Terms of Reference

a.) The Balance of Commercial and Public Interests in Reporting and Broadcasting of Sports News

Striking this balance honestly and fairly is the core of the challenge. Clearly event organisers have legitimate commercial interests which they need to protect and pursue. However it is equally clear that there is a genuine public interest in a free flow of independently gathered and presented news material to the public including the fans that are unable to attend the event themselves.

There is a danger that if purported commercial concerns are unquestioningly allowed to have priority in all decision-making this balance is damaged. In our experience an inflexible attitude to this issue is usually at the centre of disputes between event organisers and the media.

It is not, however, by any means clear that restrictions imposed on the media have typically brought anything more than a theoretical commercial benefit to the sports which have imposed them – while the public interest has unquestionably been damaged. Neither is it clear that it is necessary to restrict the freedom of the media in order for sports to achieve their commercial aims – for instance there is nothing to stop them producing their own “editorial” products which, if attractive enough, can attract their own audience.

- b.) 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 reporting.

News reporting is typically at the forefront of adopting digital technologies. Digital photography, internet websites, mobile publishing and countless other innovations in the recent past have been spearheaded by the news media, often years before their mass market adoption. Digital gathering and consumption of news material has both followed and led the digital revolution. It is today's reality. Even in print, the material is created digitally, the production cycle of newspapers reliant on digital technologies. The internet, adopted by many newspapers more than ten years ago, is just the latest manifestation of news delivery, following earlier platform, stylistic and content form changes.

Photography has, for about a century, been part of the process of informing the public, which wants to see events through independent eyes as soon as possible. Archives have been available for even longer, with newspapers forming the "first draft of history" – preserved in their published form and available to the public in physical and digital libraries and archives – for hundreds of years. Such archives form a rich part of the heritage of entire societies and the idea that they should be restricted or edited after initial publication is a threat to the completeness of the historic record as well as being impractical and pointless. Mobile devices are becoming an almost academic distinction in terms of the internet. Virtually any device can be connected wirelessly to the internet, from anywhere these days. The fact that the technology and devices for this have been developed after the original, wired, internet is no different from other technological developments, for instance the move from dial-up to broadband. The streaming of video news, as allowed by statute or protocols, has a legitimate place within the news distribution chain.

- c.) Whether and Why Sporting Organisations Want Digital Reporting of Sports Regulated, and what should be Protected by such Legislation

It is for sporting organisations to explain why they want digital reporting restricted or regulated. A valid question is whether there is truly anything special about digital reporting which they object to or whether their objective is to simply limit the scope of free reporting generally by preventing the media operating freely in new platforms. On the basis that digital reporting is the norm and has been for more than ten years, and is naturally evolving a greater importance for the public as their consumption of media changes, constraints would be both against the interests of news consumers and a retrograde step. There should be no statutory regulation when it comes to reporting digital news any more than there is for print reporting.

- d.) The Appropriate Balance between Sporting and Media Organisations' Respective Commercial Interests in this Issue

News distributors recognize, and have no wish to undermine, the commercial interests of sporting organizations, especially the licensing of broadcast rights and other commercial assets. The news media make a significant contribution to the commercial interests of sports organizations by providing their coverage, free of charge, and driving public interest in sports and events as well as exposure for sponsors and players all of whom benefit directly from such exposure. In other words the relationship is symbiotic.

The commercial relevance of any individual sport or event to the news media is hard to assess. In general the news media cover hundreds, or thousands, of events each week and invest considerable sums in doing so for the benefit of their readers. The extent to which any one event contributes commercially to the interests of the media is hard to assess since the coverage of events is not sold individually to readers; the media's commercial interests are served by the breadth and quality of coverage overall.

Clearly a healthy and competitive news media sector is one which is free to get on with its business of serving the public with topical, independent and varied news, for the good of the consumer, event-stager and news messenger.

- e.) The Appropriate Balance between Regulation and Commercial Negotiation in Ensuring that Competing Organisations Get Fair Access to Sporting Events for Reporting Purposes.

In a perfect world the symbiosis between the media and sports would be recognised by both sides and a natural balance would be maintained without the need for complex negotiation or any other form of intervention. Where sporting organisations seek to use 'commercial negotiation' to impose unrealistic constraints on a huge range of individual news organisations some kind of intervention is required, especially since a formal negotiation is almost never offered by sports organisations – generally terms are simply published without any discussion.

The News Media Coalition was formed largely to provide the forum for such discussions and promote "best practice" in the relationship between sports and the media. It has been largely successful in this, with many agreements amicably reached without rancour. However it is also the case that sporting organisations have simply refused to acknowledge the right of the media to report freely and have declined to accept the reality of how the media actually works. This has led to coverage being diminished and the public being unable to access the range of independent reporting they are accustomed to. We believe that the situation would be helped if the the role of the free press, and the right of the public to free and unfettered reporting, were clarified so that

reasonable negotiations could take place which focussed on the practicalities, not the principles, of the role of the news media.

- f.) 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

Consumer choice is paramount. The role to the media is to act as representatives in lieu of a public unable to attend or the provider of alternative viewpoints or interpretations. Events too have a role to play, although it cannot claim such independence for its information. As for control, this is too often the single and easy weapon. It is by no means clear that the activities of the news media damage commercial returns for sport in any way, and many events adopt policies to maximise editorial exposure and lessen control. The claim that commercial opportunities are damaged by the media, and the linked claim that there is no benefit for sports in media coverage, are assertions, not facts, used to justify the restrictions sought. The willingness of the news media to invest heavily in event coverage, and the benefit that brings, is taken for granted by sports organisations because the news media's first duty is to its consumers. Many event organisers and sponsors can attest both to the benefits it brings and the costs when their event is ignored by the media. As we said earlier, the relationship is symbiotic – the fact that money doesn't change hands doesn't make it valueless.

- g.) Should Sporting Organisations be able to Apply Frequency Limitations to News Reports in the Digital Media?

Neither the player nor the newsman can predict the news perfectly. News can have a start, but no finish. Attempts therefore to dictate when news will occur are misguided. They are also inappropriate for the realities of digital publishing which seek to update the public across a range of sport and non-sporting happenings which do not coincide with the timing regimes of accreditation terms. The information and pictures which describe today's news will always have a new context tomorrow and attempts to establish the shelf-life of news are as much fad as flawed. It is also not clear what end is served by such restrictions.

- h.) The Current Accreditation Processes for Journalists and Media Representatives at Sporting Events, and the Use of Accreditation for Controlling Reporting of Events.

Events rightly need to know who they are letting in; that access is given to legitimate news organisations and journalists. As public events, sport coverage should be treated in line with the everyday topical mix of political, financial, cultural or global news story. Accreditation for an event must be set against a background of agreed arrangements including necessary terms; and

not subject to the familiar event approach of ‘take it or leave’. Meaningful and mature dialogue about news and sports needs should play out long term rather than upon the distribution of accreditation terms.

- i.) 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

In case where sport feels that its intellectual property has been genuinely breached, it already has the means to use existing statutory provisions or case law to seek redress. The same can be said for news organisations where they feel their copyright content has been abused. The fewer the controls the less necessary become elaborate mechanisms for bi-industry regulation. Codes of practice which support the free flow of news and described agreed procedures would however bring much needed transparency

5) Supplementary Notes which seek to give wider context to those Terms of References

1. The public interest is best served by news-gathering entities which are able to freely operate, subject only to existing law.
2. The news media serve the public as a whole and create communities of interest at all levels from the sport fanatic, the potential convert or the broad-interest news consumer. These are fostered and served by news whether the Australian at home focused on international events or abroad following domestic events.
3. There exist long-standing interlocking relationships between the news media sectors and the public which have transcended changes in the methods of receiving news, choice and habits in the consumption of news
4. News organisations contribute significantly to the profile of events and participants and that this translates into indirect and direct benefits for the events.
5. The editorial processes including the selection of news do not operate on the basis of cost-benefit as a single yardstick; instead combining subjective news-evaluation with public service (as is seen where news publisher coverage straddles high-profile events and hyper-local community news). It is difficult, or impossible, to attribute any commercial value to a specific newsgathering activity. Likewise agencies operations ranging across all topics do subsidise attendance of low-profile and highly expensive coverage – a major sports event which ties up several staff for days or weeks might generate as much usage of content as a single report of a big news event. News organisations are commercial, in that they seek to be profitable by attracting sufficient interest in their output, and they do this by serving the public with the diverse and

independent coverage they seek. Being commercial, and seeking to be profitable, is not in conflict with the public service aspect of their activities

6. Freedom of the press to run viable operations and the right of the public to choose from varied sources are fundamentals of social democracy and societal enrichment through information-sharing and education
7. As has been the case historically (the introduction of photography to newspapers was no less revolutionary in its time as the internet is now) news organisations must be allowed in the future to be able to adapt their public offering, whether content form or platform use.
8. News judgements combine subjective personal analysis with journalistic experience, based on a multiplicity of factors - which change from moment to moment. Definitions of what is 'news' would therefore be inappropriate.
9. News organisations must be allowed to apply the same criteria of selection and use to sport as are allowed in the general environment which are in often indivisible
10. Any attempts to create a 'shelf-life', effectively to retrospectively edit previously published content, would represent a fundamental challenge to the historic and commonplace practice of using news components contemporaneously and the use of news components for the purpose of preview and review as well as being impractical and pointless.
11. It would be wrong to characterise all sports governing bodies as displaying the same tendencies and restrictive and narrow approaches. Sports have co-existed with news reporting online for more than a decade and some sports have taken the broad view and fully recognised the promotional potential of news with the result that they have either never sought to impose restrictions or have made welcome changes to accreditation language in the light of experience, which has led to events:
 - a. Abandon restrictions that limit digital photographic use by volume and or timing
 - b. Introduce language which recognises copyright ownership, abandon wording which could be interpreted as undermining fair comment
 - c. Accept the need for transparent and fair arrangements in the case of suspected breaches
 - d. Allow news content to be distributed to the mobile platform
 - e. Participate in dialogue regarding audio-visual news-gathering, around the game event rather than of it, being extended beyond traditional television companies.
12. The position of the International Olympic Committee, for example, is best summed up thus:

"...there is a disturbing trend amongst other sporting groups to think conceptually of photographs as being something other than news. The term "rights holding

photographers" is a disturbing term if it ever found its way into organised sport. It is rampant in the entertainment industry but we would not like to see this in organised sport. Photographers are news gatherers. It is important for Press Commission members to remind their representatives of this - *Minutes, IOC Press Commission Nov. 2005*

The IOC position is firm in that "still photographers are news gatherers and that photographs are to be considered and treated as news. Photographs are not to be licensed or sold, as with television entertainment rights, and no restrictions are to be placed on how and when the images are released or published by news providers. The only restriction we place is that images are to be used for editorial purposes only. Additionally, all accredited photographers retain copyright of the images they take at the Olympic Games, with the IOC having no copyright claim whatsoever to such images.' – *Anthony Edgar, IOC*

13. The IOC is one of those events that takes all necessary steps in order to ensure the fullest coverage by the different media and the widest possible audience
14. The editorial function is a bed-rock of public information. Self-regulated distinctions between editorial use and commercial use are the appropriate means of determining the legitimate basis for content use
15. Event organisations must recognise the danger of blocking news-delivery evolution and must establish future partnership programmes to accommodate this
16. The statutory copyright provisions recognise the creators right – whether this is material created by event representatives of news-gatherers
17. Event organisations have appropriate opportunities to seek redress under existing 'brand infringement' provisions where they feel their IP, typically trademarks, is breached. It is not necessary or desirable to impose an obligation to police trademarks.
18. They also have the ability to bestow the premium associations of 'official status'. This is about events denying competition with their own websites. Events have a unique opportunity to drive fans and visitors to their own sites and products by finding ways other than enforcing limits of the news media. If they want fans to choose their sites over others they should do so by having the best sites, not the only sites. If their sites were simply more compelling they would deserve to be visited more often.
19. Event information, whilst informative and occasionally exclusive, cannot be a substitute for fair comment, impartial news and criticism.
20. Any notion that picture galleries detract from that value is completely false. The ability of creative web editors to produce visually exciting packages from material they have sourced and re-presented is an acceptable form of displaying the news visually.
21. As technology allows news organisations to continue their improvements in information-provision, editors must be allowed to deliver news to the public as fast as distribution methods permit – the public interest is paramount

22. Textual accounts, still pictures and audio-visual news (the latter gathered and used under protocols and copyright law) each have a legitimate place (either singularly or together) in informing the public
23. News organisations seek to deliver aspects of events based on news judgements and not to reproduce or provide a substitute for the entertainment spectacle or attendance. Conversely the cycle of news before, during and after an event provide an extended life of a game, match or season
24. Procedures for the resolution of apparent breaches must be transparent and equitable

6) Conclusions

It is a matter of profound regret that newspaper publishers, news agencies and associated news providers feel they are being placed into an ever-tighter straight-jacket while the rest of the world upon which they report. The irony is that the media and sports are frequently being pushed into conflict and friction over demands and restrictions whose benefits for sports are theoretical at best. It sometimes seems as if the demands are driven by a general desire by sports for control over every aspect of their event, with justifications post-rationalised and based on a theoretical rationale, rather than any real issue. While it might be true that many people would like absolute control over the media, over what is said about them, over any perceived benefit someone might be receiving or any risk of negative coverage, there are reasons why free societies generally decline to offer such levels of control. The media are responsible participants in democratic society, and the law already offers remedies where they transgress. There is not only no need for additional controls, any such controls would be to the detriment of the public at large.

What happens at this senate hearing will be closely watched by other sporting codes. A number of Australian governing bodies are both members of the Coalition of Major Professional Sports (COMPS) as well as the international Sports Rights Owners Coalition, which boasts numerous major codes as members. Whilst the loss from current disputes to Australian readers and viewers is significant when domestic press restrictions inhibit coverage, that loss is immeasurably higher when viewed from abroad by Australians and others. If forms of event control on news are allowed to become the norm, Australian followers of events abroad will be short-changed. This issue is an Australian export which should give rise to no sense of pride.

As we have seen, attempts to create artificial barriers to contain the free press and separate their work from event and partner platforms have been divisive and damaging. They are unnecessary, given the privileged opportunities that an event can bestow upon their official partners, in terms of official statutes, management of players, access to inside knowledge and non-public aspects of the event.

When the news media are invited into an event it can be a bitter-sweet experience. Mature sports organisations recognise the benefit of engaging with an unfettered news media sector over time. We urge Australian sport to take the broad view and to return to a paradigm where they do not seek to dictate what is news and how it should be used. In that regard it is clearly inappropriate and, viewed in the long term absurd, to attempt to define new and emerging technologies as off-limits for editorial content, especially when editorial content is frequently the early adopter of new technologies which creates the demand from consumers. So, saying that editorial content can never have a home on the mobile platform, which is now the emerging platform of choice for news consumption (and much else) the world over is objectionable, impractical and short-sighted as well as impossible to enforce.

It would be a sad day if government intervention was necessary to mend a previously symbiotic relationship because commercial minds had ignored the realities around us all and sold future publishing and consumer expectations to the highest bidder.

We urge sport to take the common sense approach and call upon the Senators to ensure that the interest of the news-consuming public is best served in this regard.

Author: Andrew Moger, Executive Director, News Media Coalition

Signed:

A handwritten signature in black ink, appearing to read 'A Moger', with a horizontal line underneath the name.

Date:

April 6, 2009

The **News Media Coalition** is an international organisation focused on the specific threat to editorial operations, publishing and independent journalism from excessive controls imposed by events entities such as sports governing bodies through accreditation contracts. Correspondence address: Stanley House, 87 Barry Road, London, England, SE22 0HR

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Appendix One - News Media Coalition founding members:

WAN - World Association of Newspapers

Founded in 1948, the World Association of Newspapers groups 76 national newspaper associations, individual newspaper executives in 102 nations, 10 news agencies, and 10 regional press organisations. It is a non-profit, non-government organisation. In all, the Association represents more than 18,000 publications on the five continents.

Agence France-Presse

AFP is the oldest news agency in the world, and one of the three largest. It is based in Paris, with regional centres in Washington, Hong Kong, Nicosia and Montevideo and bureaux in 165 countries. It transmits news in French, English, Arabic, Spanish, German, and Portuguese.

Associated Press

Founded in 1846, The Associated Press is a global news agency with a staff of more than 4,000 working in 243 offices and bureaux in 97 countries. AP distributes its text, image and multimedia reports to more than 15,000 news outlets throughout the world.

British Newspaper Publishers' Association

The Newspaper Publishers Association (NPA) is the trade association for British national newspapers and its role is to represent, protect and promote the national newspaper industry. It was founded in 1906. The NPA has been instrumental in efforts in Britain and beyond to resist excessive accreditation controls on news.

Getty Images

Getty Images is a global company and the world's largest photo-agency, offering broad collections of imagery and footage in news and sport. It runs editorial and commercial content operations in numerous countries with a base in Australia.

Thomson Reuters

This is the world's largest international multimedia news organization providing indispensable news and information tailored for media and business professionals. Over 2,400 journalists report from 196 bureaux across the globe, delivering fast, accurate, objective and comprehensive coverage of important international and domestic news in multiple languages.

European Publishers Council

Since 1991, the European Publishers Council (EPC) has worked to uphold the fundamental freedoms of a free and competitive media on behalf of members, readers and audiences and to promote diversity and democracy in an enlarged European Union. The EPC is a high level group of Chairmen and CEOs of leading European media corporations actively involved in multimedia markets.

European Newspaper Publishers Association

The European Newspaper Publishers' Association (ENPA) is a key advocate of the European newspaper publishing industry with members from 27 European countries. ENPA represents over 5,200 national, regional and local newspaper titles. Every day more than 140 million newspapers are sold and read by over 280 million Europeans.

Deutsche Presse-Agentur

With 1,200 employees, Deutsche Presse-Agentur has grown to be a major worldwide operation serving print media, radio, television, online, mobile phones, and national news agencies. Based in Hamburg and founded in 1949, its news output is available in German, English, Spanish, and Arabic and ranges across all topics including a large team dedicated to sport.

European Pressphoto Agency

The European Pressphoto Agency – epa – is recognised across Europe for its news-photo supplies. Foundation in 1985, epa is owned by eleven of Europe's news and pictures agencies and their news-photos form part of the epa product. Its own worldwide network currently consists of more than 150 photographers and offices in Asia, Africa, Europe and America. Today more than 1000 epa pictures per day reach hundreds of newspapers and other subscribers on all continents.