

Senate Inquiry into the Reporting of Sports News and the Emergence of Digital Media

Submission by West Australian Newspapers Ltd

Summary

The public's right to freedom of information and access to differing views and opinions is a cornerstone of a democracy. Sporting organisations are entitled to structure their operations to generate fair returns to fund their entertainment activities. This needs to be balanced against the public's right to know and the pre-eminent role of general media organisations, such as newspapers and their associated new media platforms, in providing news and information. Sporting organisations use access and other restrictions which both directly and indirectly limit media organisations' ability to provide a diversity of news and information. Increased access restrictions have been linked to or emerged alongside digital media. The negative effects of restrictions are particularly evident for smaller, independent media organisations and those in more isolated and less populated areas such as WA.

Who are we?

West Australian Newspapers Ltd (WAN) is a wholly-owned subsidiary of publicly-listed West Australian Newspapers Holdings Limited, the leading media group in WA.

The company's flagship publication is *The West Australian*, a daily newspaper which is published Monday to Saturday. *The West Australian* has had a dominant role in providing news and information to West Australians since it was first published in 1833. The Roy Morgan Readership Survey for the 12 months ending December 2008 shows the weekday edition (Monday-Friday) reaches, or is read by, almost one-third of all people aged 14-plus in WA and the Saturday edition reaches more than 49 per cent of all people aged 14-plus.

WAN also publishes thewest.com.au, one of the State's leading digital news and information services, and 23 WA regional newspapers.

The group's head office is in Perth and it has offices in a number of country centres. It employs more than 1500 people.

Our interest in and views for the inquiry

WAN publishes both newspapers (traditional media) and online services (digital media). Direct and unrestricted access to sport events for editorial staff (reporters, photographers and video journalists) and availability of a wide range of third-party content suppliers are critical to its provision of informed, broad-based news coverage and commercial success.

WAN supports the Australian Press Council's Charter of a Free Press, whose preamble states: "A free press means a free people and the people of Australia have a right to freedom of information and access to differing views and opinions and . . . an unfettered flow of news and information both within Australia and across the nation's borders."

[Terms of reference a]

Sporting organisations such as the Australian Football League (AFL), which has become one of the most restrictive and controlling of sport entities in recent years, purport to support such freedoms.

[Terms of reference a]

In its 2009 Media Accreditation documentation, the AFL states: “The AFL respects and supports the right of the public to be informed of news; including news coverage of AFL matches and events. The AFL also supports the principle of ‘fair dealing’ under the law of copyright and editorial freedom in news coverage. However, access to material for legitimate news reporting as envisaged under the existing framework must not be confused with an entertainment offering in the form of short clips or commercial extracts.”

[Terms of reference a, d, e, f]

There is huge public appetite for information about sporting events. This makes sport as much news as mere fixtures, games or offerings of entertainment. Readers – the public – expect comprehensive and independent coverage in newspapers and associated online services.

[Terms of reference a]

To meet this expectation sports news reporting is evolving now, just as it has over decades during and between introduction of other “new” platforms such as radio and TV. There is nothing fundamentally different in today’s process of providing quality, timely news and information on sport or other events – other than that there are more formats and forums. Traditional media groups such as WAN have evolved and extended to embrace the likes of digital media, and require access to information and news in relevant formats to inform the public through these platforms.

[Terms of reference b]

WAN accepts sporting organisations’ use of accreditation processes to ensure only bona fide media representatives are given media access for reporting at sport events. However, WAN strongly opposes any accreditation process which does more than this. Some sporting organisations use the process to restrict fair access by limiting the number (and type) of representatives granted accreditation and restricting the rights of those accredited.

[Terms of reference e, h]

WAN accepts sporting organisations’ right to revenue from their organisation and staging of entertainment events such as games of sport. A vibrant sporting sector brings economic and social benefits. These benefits can be realised by keeping the rights to entertainment, such as to broadcast or stream an entire game of sport, while guaranteeing the unrestricted access needed for media to freely report (in any form) all newsworthy information and incidents before, during and after such a game. WAN seeks to ensure the public’s right to a diversity of news and information through newspapers and other media – including digital media – is not restricted by particular commercial interests and arrangements of sporting organisations.

[Terms of reference a, b]

The public interest in unrestricted reporting should sit above commercial interests. WAN’s commercial interest is directly aligned with the public interest of a right to freedom of information and access to widely differing views and opinion. Sporting organisations’ commercial interests may, but do not necessarily, align with those of the public because their commercial interests sometimes lead them to restrict, control or fragment information or access to information and news.

[Terms of reference a, d]

Sporting organisations benefit from a comprehensive and independent newspaper and online coverage which heightens interest and increases direct attendances and TV viewer audiences. These, in turn, generate and support sporting organisation revenues. Yet while actively seeking and expecting this coverage from newspapers and associated websites, sporting organisations, in a contrary manner, increasingly try to fragment, restrict and control it.

[Terms of reference a, d]

The degree of restriction and control varies from minor to significant – but any limitation on the right of the public and readers to be informed is of concern, and is opposed by WAN.

[Terms of reference a, h]

In some cases a restriction or control is clearly linked with the emergence of digital media. This can be seen, for example, when a condition applied to traditional media (newspaper) is different to that for an associated online site. In all cases the trend of increasing restriction and control has developed with the emergence of digital media.

[Terms of reference b]

Direct and indirect restrictions and controls by sporting organisations are common.

Direct restrictions and controls are applied to the rights of WAN and its staff – such as what can be done with content on which intellectual property is owned – as part of the accreditation process for formally-approved access to grounds, matches or events. As a matter of course, WAN negotiates to limit restrictions on rights before signing any accreditation agreement. But failure to agree and sign can result in WAN being excluded from a sport event of interest to readers. A typical restriction limits or prohibits the sale of photographs, on which WAN and/or its staff own copyright, taken at a sport event. Although not sport-related, WAN did refuse to sign an access agreement and did not provide editorial coverage of a high-profile concert in Perth last year. This was a protest about the accreditation and access conditions.

[Terms of reference a, b, h]

WAN has also had at least one case of a sporting organisation imposing limits on the frequency of online updates. There is a fundamental problem with any restriction on the number of updates allowed – it is impossible to foretell when news will occur and how many (or when) updates will be needed to keep the public informed. Frequency limitations clearly restrict the public's right to know.

[Terms of reference g]

Indirect restrictions and controls are applied to content available to WAN through limits on the number of third-party news and information providers and the breadth of services they provide. Restricted choice or service offering from third-party suppliers has a particular impact on WAN which, because of its geographical isolation and independent ownership, is unable (for practical and commercial reasons) to send its own editorial staff to many events on Australia's east coast. An example which affects WAN is set out in more detail below ("A contemporary case – the AFL").

[Terms of reference e, f, h]

There is a natural and fundamental linkage between a newspaper and its website. The website is an evolution and extension of the parent newspaper. But newspaper websites, including thewest.com.au, are being restricted in their use of news content such as video. Video is as basic to a news website as a printed article is to a traditional newspaper – and its unrestricted use should be allowed on newspaper websites.

[Terms of reference b, f]

The “short clips” or “commercial extracts” referred to in the AFL’s 2009 Media Accreditation documentation do not necessarily equate to “an entertainment offering” when used in an online newspaper. Rather, they typically are one of the contemporary formats for presentation of news in that medium. Restrictions on use of “short clips” limit the rights of the public to be informed (through news) and editorial freedoms which, for example, the AFL states it respects and supports in its 2009 accreditation documentation.

[Terms of reference b, f]

Additional regulation is not the preferred solution for the broad issue of access and control applied by sporting organisations. However, WAN is concerned there will be further deepening of the trend for sport bodies to put their immediate commercial interests ahead of the public interest in the right to know from a diversity of sources. This means there is a place for a mechanism to ensure bona fide media organisations have the access and freedoms needed to meet this public interest.

[Terms of reference i]

A contemporary case – the AFL

The West Australian, its online website and WAN’s regional publications and website cater mainly to the West Australian public.

To represent the WA public’s interest it is vital that the newspapers and websites have free and open access to all sport games and matches. Where WAN cannot have staff attend sporting games or matches outside WA, it needs access to independent pictorial and editorial coverage from a wide variety of news services, picture agencies and affiliated newspapers (including a copy and picture sharing agreement with Fairfax).

[Terms of reference f]

A number of sporting organisations have moved to restrict this necessary access. The most notable in terms of degree of restriction and impact for readers is the AFL, whose desire to control not only the games but who can cover them is heading in a direction where it will be able to control what pictures are seen and to a point what is written.

[Terms of reference a, f, h]

In return for allowing access to games, AFL restricts both what *The West Australian* can do with the content its own staff generate and the choice of other news and information content available to *The West Australian* from other providers.

[Terms of reference a, h]

Match statistics for inclusion in post-game tables for publication in newspapers and online are already firmly under the control of the AFL, with just one authorised provider. This is policed by not approving access to grounds for other potential suppliers. To publish match statistics for readers WAN must buy them from the AFL-approved provider at a fee set by the provider.

[Terms of reference a, d, e, h]

Since the 2007 season the AFL has refused to accredit photographic agencies such as Reuters, AFP and Getty to cover games. Last season it also banned Australian Associated Press, which was a supplier of football pictures to WAN.

[Terms of reference a, e, h]

Before 2007 season the AFL's "official" photographer was Getty, a reputable world-wide picture agency that has supply agreements with numerous newspapers around the globe. Getty was given access to places that were ruled out of bounds to newspaper photographers and was the sole source of team photos and player portraits. Despite the anti-competitive and restrictive nature of this arrangement, at least Getty had control of what pictures were distributed.

[Terms of reference a, d, e, f, h]

In 2007 the AFL appointed Geoff Slattery Publications (GSP), with which it already has commercial arrangements, as official provider of photographs. Pictures from GSP were originally to be credited as "AFL Photos". This was later changed to GSP.

[Terms of reference a, e]

GSP and the AFL share the same address of 140 Harbour Esplanade, Docklands. GSP publish a range of AFL approved publication, including Football Record, the "program" sold at all games.

The alignment with GSP raised issues for WAN of both price and potential control over the release of images. Under this arrangement it may be possible for the AFL to ban the release of pictures that it believes are detrimental to the game or teams or individuals.

[Terms of reference a]

The West Australian publishes a 12-page Friday football liftout "Pre Game" and a 16-page Monday liftout "The Game", in addition to normal sports pages, during the football season. Both, but particularly "The Game", which covers every match of a weekend's round, rely on strong picture content from matches.

Only one game each round is played in WA. There are 22 qualifying rounds and nine finals games, for a total of 185 games in the AFL season which readers (and the AFL) expect *The West Australian* to cover. Only 22 of them – or about 12 per cent – are played in WA. It would be uneconomic for *The West Australian* to have its own staff cover the seven other games played around Australia each week – although the newspaper does have a football reporter and a stringer photographer in Melbourne for away-from-Perth games in that city involving either the West Coast Eagles or Fremantle Dockers (the two WA-based teams).

[Terms of reference a]

The West Australian has a picture and copy sharing agreement with Fairfax which gives newspaper (not online) coverage of games outside Perth. For the past two seasons the AFL's accreditation agreements have had a standard clause precluding news organisation sharing (syndicating) content – but the AFL has agreed to vary this with exemptions to allow the WAN-Fairfax sharing. A ban on sharing news pictures would severely disadvantage WAN and force it to publish numerous GSP-supplied pictures each week, at significant extra cost.

[Terms of reference d, h]

The dominant role of GSP is already having a direct impact for *The West Australian* and thewest.com.au where WAN cannot source photographs elsewhere. This impact is in the form of cost and freedom of use. GSP advised WAN in March that the cost of individual pictures for online use would rise by 25 per cent for the 2009 season. This was later reduced to 5 per cent. GSP also proposed a 150 per cent increase (later reduced to 80 per cent) in the cost of individual pictures for publication in the newspaper.

[Terms of reference d, f, h]

WAN has also been advised by GSP that the AFL has imposed restrictions on online use, with no more than two images allowed to accompany any article and no photographs allowed to be used in galleries.

[Terms of reference b, f, g]

The AFL also uses its accreditation agreement with WAN to impose restrictions on the use of WAN's own material over which it, or its staff, own copyright.

[Terms of reference d, h]