

## Chapter 2

### Sport, the media and the changing delivery of news

#### What roles do the media play in sport?

2.1 The media play two distinct roles with regard to sport: the reporting of sport as news and the broadcasting of sport as entertainment. The difference between these two roles is critical to this inquiry.

2.2 The media's role as reporter of sport as news includes the gathering of information, including text, photographs, moving images and audio, for the purposes of editorial use. The reporting of sport news often includes the use of photographs or video images in a "highlight" format to add context and depth to that reportage.

2.3 In the role of broadcaster of sport for entertainment, media organisations generally purchase exclusive (or near-exclusive) rights from a sporting organisation, usually to be allowed to broadcast a sporting event in its entirety. The broadcasting of sporting events in this way is intended to be of commercial benefit to the sporting organisation, the broadcaster (rights holder) and sponsors of the event. The media organisations that primarily purchase broadcast rights are television companies.

#### The delivery of sport through the media

2.4 Sport is delivered to the public by the media as news and entertainment. Traditionally, sport news has been delivered to the public by:

- news services, for example newspapers;
- media companies for whom news reporting is one aspect of their business but who also broadcast sporting events, for example television networks and ABC radio; and
- syndicated news services or agencies that gather news and provide it to media organisations via subscription services, for example Agence France-Presse (AFP) and the Australian Associated Press (AAP).

2.5 Sport news is gathered at its source by journalists, including photojournalists, who attend sporting events, and by media organisations utilising broadcast sound and images gathered by broadcast rights holders.

2.6 It is important to recognise that news can comprise text, still photography, moving images and audio and is not restricted to any one of these categories. Therefore photographs and video can be news reporting either independently of or in conjunction with text reporting.

2.7 The broadcasting of sport for entertainment is delivered to the public via the sale of exclusive rights, primarily to television companies but also radio stations and

increasingly to internet sites and telecommunications (mobile phone) companies. These rights enable the rights holder to exclusively broadcast the sporting event live and, usually, in its entirety.

### **Current regulation of sport news**

2.8 Sport news is currently regulated by a number of arrangements. These are copyright law (the *Copyright Act 1968*), the accreditation of journalists and / or media organisations, and the distinction between the business of news reporting agencies, non-news media (such as broadcasting for entertainment) and sporting organisations.

2.9 Under current copyright law, journalists, or their employer, own the copyright in their reporting. Similarly, photographers own (or their employer owns) the copyright in the still images they capture.

2.10 With regard to sporting events, the copyright does not lie with the event or the sporting performance itself. The copyright in a sporting event applies to the film capturing the event and in the broadcasting of the event by sporting bodies or rights holder(s). This can be owned by the broadcaster or the sporting organisation or jointly, depending on the terms of contract.

2.11 The *Copyright Act 1968* (the Act) governs the use of copyrighted material in Australia. The Act prohibits the reproduction of copyrighted works without the express consent of the copyright holder. However, the Act provides for a number of exceptions which do not constitute infringements of copyright in works.<sup>1</sup> Some of these exceptions are allowed under 'fair dealing'.<sup>2</sup> Section 42 of the Act allows fair dealing for the purpose of reporting news, and states:

- (a) A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if:
  - (i) It is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgement of the work is made; or
  - (ii) It is for the purpose of, or is associated with, the reporting of news by means of a communication or in a cinematograph film.<sup>3</sup>

2.12 In addition, section 103B of the Act enables the use of audio-visual items under fair dealing for the purpose of reporting news:

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1 *Copyright Act 1968*, Division 3.

2 *Copyright Act 1968*, ss 40-42.

3 *Copyright Act 1968*, s. 42(1).

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- (1) A fair dealing with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if:
- (a) It is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgement of the first-mentioned audio-visual item is made; or
  - (b) It is for the purpose of, or is associated with, the reporting of news by means of a communication or in a cinematograph film.<sup>4</sup>

2.13 The Act does not set specific guidelines as to what constitutes fair dealing in these cases. In the absence of guidelines, parties rely on negotiation and, rarely, litigation to determine what falls within the scope of these legislative provisions.

2.14 Over time, conventions have been developed between sporting organisations and the media to implement the fair dealing provisions of the Copyright Act. An example of this is the informal agreement<sup>5</sup> of the 3 x 3 x 3 television protocol; that is, that up to three minutes of footage can be re-broadcast at three hourly intervals and not more than three times in a 24 hour period<sup>6</sup> when reporting sport in television news.

2.15 The accreditation of journalists and / or media organisations is another mechanism by which the reporting of sport news is regulated. Sporting organisations use accreditation to manage the attendance of journalists at their events and thereby control access to sport content. The Coalition of Major Professional Sports (COMPS) described the use of journalist accreditation by sporting organisations:

Accreditation agreements are used by sporting bodies as a means to ensure that without clear regulation or other guidelines the intellectual property of sport is protected and content is appropriately used in line with fair dealing principles.<sup>7</sup>

2.16 News media organisations and other witnesses described accreditation somewhat differently. They viewed it as a means by which sporting organisations could manage entry to their events for security and safety reasons:

Historically, the objective of accreditation terms and conditions was to ensure the security of athletes and spectators attending the event.<sup>8</sup>

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4 *Copyright Act 1968*, s. 103B.

5 Ms Stephanie Beltrame, General Manager, Media Rights, Cricket Australia, *Proof Committee Hansard*, Wednesday 15 April 2009, p. 15.

6 Optus, *Submission 18*, pp 3-4.

7 COMPS, *Submission 31*, p. 19.

8 Agence France-Presse, *Submission 17*, p. 19.

And:

...it is perfectly acceptable for sporting organisations to ask media to apply for accreditation. There have to be controls on the amount of representatives from an organisation attending an event. There is also the additional burden on organisations to make events safe, and having media accredited ensures a potential security loophole is closed.<sup>9</sup>

2.17 The terms of accreditation agreements between the media and sporting organisations are negotiated by the parties.

2.18 Another distinction between news media organisations, non-news media and sporting organisations is provided by the way in which each of these view their business function.

2.19 News media organisations have viewed their business as that of gatherers and distributors of information:

The news media exists to witness events and report on them on behalf of the public. Judging, creating and distributing news is what we have done for generations.<sup>10</sup>

2.20 News media organisations view this role as distinct from that of broadcasters, who provide information for the purposes of entertainment. AP noted:

News organisations exist to gather and report news independently including news on sporting events. Their primary interest in sporting events is editorial. Their commercial interest comes from providing the news that they gather to their subscribers. Organisations such as The Associated Press do not have any other interest in sporting events and do not purport to exercise any of the rights which historically have been regarded as within the domain of the sporting organisations.<sup>11</sup>

2.21 Traditionally, the role of sporting organisations has been that of promoter and developer of sport, and organiser of sporting events. Cricket Australia described this role:

[Cricket Australia] exists to manage the game of cricket on behalf of the Australian public and requires a commercial model that allows it to deliver and invest in the sport in the current format so that cricket

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9 Mr David Smith, *Submission 5*, p. 4.

10 Mr Andrew Moger, Executive Director, News Media Coalition, *Proof Committee Hansard*, 15 April 2009, p. 2.

11 Associated Press, *Supplementary Submission 2*, p. 6.

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continues to be part of the Australian way of life and so that the game can be supported from grassroots to the elite level.<sup>12</sup>

2.22 However, the advent of the digital era and the emergence of technologies such as the internet and mobile devices have meant that the traditional boundary between sport news and sport entertainment and advertising has become blurred.

### **The emergence of digital media**

2.23 The digital era has led to the emergence of a variety of new technologies. Many of these have enabled the communication of information in ways not previously possible, most notably on demand and "on the go" via wireless and mobile devices.

2.24 These new technologies have changed consumers' expectations with regard to how and when they can access information:

...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...<sup>13</sup>

And:

...technology now allows news to be either reported or disseminated in different modes via a multiplicity of platforms. Which device or platform ultimately acquires primacy, will be a function of consumer choice.<sup>14</sup>

2.25 Consumers now expect to be able to access information in a format and at a time that is convenient to them. This has contributed to the success and popularity of both news and sport websites, and news and sporting content delivered to mobile devices.

2.26 Some of these new media platforms and their impact on the provision of both news and sporting content are discussed below.

### ***Digital media platforms***

2.27 Digital television has enabled television networks to broadcast new channels in addition to their traditional offerings. These additional digital channels are often focussed on a particular topic or targeted to a certain audience, such as sport, news or children's viewing. Network Ten's high definition sport channel 'One', providing 24 hour sports viewing, is an example of this.<sup>15</sup>

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12 Cricket Australia, *Submission 35*, p. 14.

13 News Media Coalition, *Submission 13*, p. 4.

14 The Associated Press, *Supplementary Submission*, p. 4.

15 Network Ten, available <http://ten.com.au/one-hd.htm> (accessed 30 April 2009).

2.28 Not only has digital television allowed television networks to offer channels devoted solely to a particular topic but to also offer consumers additional features such as on demand interactive applications. Premier Media Group described interactive services it offers as part of its Fox Sports channels:

...we also offer interactive text based application whereby viewers can access text based news stories produced by our editorial journalists by pressing the red button on their remote. Additionally, during our coverage of certain sports on the FOX SPORTS channels (for example, cricket) we provide our viewers with comprehensive live and historical sports statistics...<sup>16</sup>

2.29 Ongoing technology changes to mobile devices, such as mobile phones and handheld organisers (or personal digital assistants), and the development of the third generation (3G) network and associated services have provided additional means by which consumers can access content. Mobile devices and mobile networks enable consumers to have information delivered to them when and where they want it, for example news updates or the broadcast of a sporting event.

2.30 The advent of the internet along with increased capacity, mobility and speed over time has provided another new media platform. These advances are particularly relevant to the access of large images and video footage via the internet that in the past were too cumbersome to be downloaded and viewed effectively. However, increased download speeds now make it possible for video to be viewed online via a computer in much the same way as traditional television.

### *Effects of new platforms on the media environment*

2.31 New digital media platforms have changed the way in which consumers access information. The accessibility and mobility of new platforms has resulted in an increased appetite for and delivery of news and sport content to consumers, with information available when, where and in a format convenient to the consumer:

Because the points of access are so much more diverse, the public's interest is heightened, their hunger for news has grown...<sup>17</sup>

2.32 The committee heard that whilst technological advances have changed the dissemination and consumption of news they have not fundamentally changed what is news:

Notwithstanding that the mode of sports news reporting may have changed with the emergence of new forms of digital technology, the essential characteristics of the content remain the same. A cricket score, a football score or the winner of a tournament remains the same

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16 Premier Media Group, *Submission 28*, p. 1.

17 AAP, *Submission 24*, p. 7.

regardless of whether the result is broadcast over free to air television, pay television, the internet or mobile phones.

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It is important to recognise that, notwithstanding significant changes in technology, the essential nature and characteristics of sports news reporting remain unchanged in the digital age.<sup>18</sup>

2.33 Rather, consumer demand for information has meant that news disseminated to consumers is updated more frequently. For example, traditionally the score of a cricket match would be disseminated to consumers at scheduled television news bulletins which may be available three times per day. So, the news would provide three updated cricket scores. In the current media environment, however, a consumer may want a news update on the cricket score every hour and so, in response to that demand, news media organisations are providing news updates as the event happens:

News happens with a timing that cannot be predicted. A facet of digital media is its ability to break news. Publishers can see from user surveys and usage patterns that the key demand of users of news websites is “breaking news” – provided by RSS feeds, email alerts, Twitter, dynamically loaded web-pages and so on. These can be delivered either to the traditional web environment or to the mobile platform.

Delivering news in this way has quickly gone beyond a technical capability. The expectations of the Australian public have been re-framed, as they relate to how our citizens wish to consume news.<sup>19</sup>

2.34 The AAP was of a similar view:

The audience is sophisticated and their demands much higher. In an age where the public can see or hear events unfold anywhere via a live broadcast on numerous media platforms, it is a reasonable demand that they will be able to collect the news associated with those events, with the same degree of flexibility and freedom.<sup>20</sup>

2.35 In addition to the increased consumption of news services via digital media, new media platforms have provided new opportunities for sporting organisations to seek to commercialise sport content through the sale of exclusive media rights. For example, it has become increasingly common for sporting organisations to sell internet or wireless / mobile phone rights to enable sporting events to be broadcast in full via internet streaming or as downloads to mobile phones:

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18 The Associated Press, *Supplementary Submission*, p. 4.

19 PANPA, *Submission 14*, p. 13.

20 AAP, *Submission 24*, p. 8.

Hutchison is the sponsor of the Australian test cricket team through Cricket Australia and is the holder of the exclusive wireless content rights to all Cricket Australia matches played in Australia. Hutchison has been a sponsor of the Australian test cricket team and mobile rights holders since 2002, and we recently renewed that sponsorship until 2013. Through that relationship we offer to our customers an extensive range of cricket content including live mobile TV coverage, a magazine style show called The Pitch, highlights, scores, alerts and news.<sup>21</sup>

Similarly, Telstra is the mobile rights holder for rugby league.<sup>22</sup>

2.36 There has also been a notable proliferation of sport internet sites. Not only have sporting organisations developed their own websites detailing fixtures, team line-ups, results, match footage and statistics<sup>23</sup> but so too have some media organisations. Examples include Fairfax Media's 'Real Footy' and 'Rugby Heaven' websites and ninemsn's 'Wide World of Sport' website.<sup>24</sup> These websites offer content that overlaps with that of sporting organisations and include news stories, commentary and analysis, photos, fixtures and games results.

2.37 The internet is a visual platform. As such, most web pages offer not only text but a variety of images to provide depth to their content. Increasingly, with the aid of improved internet capacity, the volume of photos and video footage available via the internet has been increasing. This can be seen in the growing popularity and availability of online photo and video galleries.

2.38 The increasing availability of images and video on internet sites may result in the unauthorised use of images and video on both peer-to-peer web pages and overseas websites outside the Australian jurisdiction. The committee heard evidence of instances in which copyrighted footage was embedded in or made available on websites without the permission of the copyright holder.<sup>25</sup>

2.39 Overall, new media platforms have had a profound effect on the way in which news and sporting content is presented and delivered to, and demanded by consumers. The media environment has changed from one where news and sporting content was provided by a limited number of providers (for example, those with a broadcasting licence or a newspaper printing press) at predictable times (the six o'clock news, the

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21 Ms Simone Brandon, Corporate Counsel, Hutchison 3G Australia, *Proof Committee Hansard*, 16 April 2009, p. 12.

22 Mr Shane Mattiske, Director, Strategy and Special Projects, National Rugby League, *Proof Committee Hansard*, 15 April 2009, p. 29.

23 For example, see [www.afl.com.au](http://www.afl.com.au) and [www.cricket.com.au](http://www.cricket.com.au).

24 See [www.realfooty.com.au](http://www.realfooty.com.au), [www.rugbyheaven.com.au](http://www.rugbyheaven.com.au) and <http://www.ninemsn.com.au/> (accessed 4 May 2009).

25 COMPS, Additional information, received 15 April 2009, pp 6 & 9.



morning newspaper, the Saturday night game coverage) to one where information is available in numerous formats from a multitude of providers when and where a consumer demands it.