

Chapter 3

Current state of play

3.1 The convergence of media technologies and the emergence of new media platforms have created new opportunities for news media organisations, sports broadcasters and sporting organisations alike. These opportunities also bring with them challenges as existing businesses and organisations attempt to adapt to the new media environment.

3.2 Changes to the media landscape have led to some conflict as all stakeholders seek to take advantage of new opportunities as they emerge. This conflict is primarily between some news media organisations and some major professional sporting organisations.

3.3 There are two related concerns being raised.

3.4 First, news media organisations and large sporting bodies engaged in the debate each believe that the other is encroaching on what has traditionally been their domain. This has been most evident in conflict over Internet use of sports news and images, and also to a lesser degree in respect of mobile digital platforms.

3.5 News media organisations have claimed that sporting organisations are entering into the media domain. Ninemsn described this as sporting organisations 'trying to provide many of the same services that media companies are, such as up-to-date scores, news reports on matches, images and video'.¹

3.6 Similarly, sporting organisations have argued that news media organisations have expanded their traditional role to that of providing sports entertainment:

...Ultimately, they will continue to aggregate all of this content and at some point that goes beyond reporting news and actually creating a portal of content that can be commercialised. That is where we see our role, actually commercialising our content. That is the real heart of this. Given that there is this non-linear platform where people can pull information down and people can aggregate it with minutes of vision and hundreds of photos, they become essentially someone who is reselling AFL content rather than strictly reporting the news. The heart of it is that these media organisations are becoming quasi rights holders and commercialising these rights online that we see as our domain.²

1 Mr Nicholas Gray, Chief Financial Officer and Head of Strategy, ninemsn, *Proof Committee Hansard*, 15 April 2009, p. 54.

2 Mr Gillon McLachlan, Chief Operating Officer, Australian Football League, *Proof Committee Hansard*, 15 April 2009, p. 38.

3.7 Second, some stakeholders are unhappy with the way in which traditional regulatory and contractual mechanisms are coping with the challenges presented by the new media environment.

3.8 During the inquiry, the committee heard evidence of conflict between news media organisations and sporting organisations over accreditation agreements. Some news media organisations claimed that sporting organisations were attempting to use accreditation agreements as a means 'to alter or even displace the fair dealing provisions contained in the Copyright Act, the public policy underlying it and the right of news organisations to exercise their rights as copyright owners in the material they create'.³ Sporting organisations argued that their accreditation agreements were used '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'.⁴

3.9 Two specific cases were discussed extensively during this inquiry. One concerned the Australian Football League (AFL) and the Australian Associated Press (AAP). The other concerned Cricket Australia and a number of news media organisations.

AAP and the AFL

3.10 The most significant example that was provided to the committee of conflict in the reporting of sports news concerned AAP's reporting of the AFL. This case is outlined below. Other news agencies expressed concern about the same type of issue, including AP,⁵ AFP,⁶ and Reuters.⁷

3.11 AAP is a news agency or wire service. These services provide news coverage to media outlets, often on a subscription basis. As part of its news gathering activities, AAP has been sending journalists, including news photographers, to sporting events including AFL games. In 2007, this changed, when AAP and the AFL were unable to reach agreement on the terms and conditions of access for journalists. AAP's account was thus:

The issues that we face are clearly illustrated by our recent experience in trying to obtain accreditation for our photojournalist to take news pictures at AFL matches, press conferences and other AFL news events like the Brownlows, the tickertape parade et cetera.

Until 2007 AAP photojournalists were accredited to take news pictures at AFL games. In the same year, AFL appointed Geoff Slattery as their

3 The Associated Press, *Supplementary Submission*, p. 11.

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

5 *Submission 2*, pp 6–8.

6 *Submission 17*, pp 4–6.

7 *Submission 10*, pp 7–8.

commercial picture partner and refused international news agencies like AAP, Reuters and AP picture accreditation. The Australian Press Council queried the refusal of the AFL to accredit the international news agencies and they were assured that AAP would continue to be accredited for news photographs. Despite these assurances, in 2008 we were refused picture accreditation by the AFL. In April 2008 the Australian Press Council wrote to the AFL regarding this decision. In their reply, the AFL told the Press Council that they were misinformed and that AAP had been offered picture accreditation on identical terms to previous years and that AAP had refused it. On the basis of this letter, AAP once again requested AFL provide news picture accreditation and once again we were refused. Prior to the commencement of the current AFL 2009 season, we were again refused news picture accreditation.⁸

3.12 The AFL in its original submission did not comment directly on the dispute with AAP. However, the AFL did note:

Sporting organisations control access to venues to enable them to licence media rights and to ensure compliance with the sporting organiser's and ground owner's standards of conduct. The terms of media access to venues is and must remain the right of the competition organiser.⁹

3.13 The remainder of the AFL's submission was concerned with copyright issues in relation to AFL-owned content, and is not therefore relevant to the dispute with AAP.

3.14 At the hearing, the AFL summarised their view of the issue:

Mr McLachlan—Two years ago, in 2005 and 2006, AAP were accredited photographers. They had not asked for accreditation before that. There was an issue around change of a photographic supplier. They were very comfortable when Getty were the supplier. They were not happy when there was a change to Geoff Slattery Publishing.

Senator LUNDY—Why were they excluded?

Mr McLachlan—They are not a publisher, they are a syndicator of content. In their submission they talk about the fact that they are selling those images to other entities. We accredit their journalists. All their journalists are allowed to come in and cover the game, but in terms of actually selling those photographs, we were very happy for them to continue to provide the photographs—

Senator LUNDY—Some of those photographs would have been used for news purposes?

Mr McLachlan—Yes. They were sold to newspaper companies.

Senator LUNDY—That is for news.

8 Mr Clive Marshall, CEO, AAP, *Proof Committee Hansard*, 16 April 2009, p. 82.

9 *Submission 26*, p. 6.

Mr McLachlan—Yes, but the images are equally available from any number of sources for sale. Essentially, we were restricting someone who was syndicating and selling our photographs.

Mr Lethlean—Just to clarify that, we did not exclude them from entering the grounds. They would not agree to our accreditation terms by which they were not able to syndicate to non-news reporting agencies.¹⁰

3.15 Responding to further request for clarification, an AFL representative remarked:

Mr Lethlean—We never had an issue with AAP or Gettys selling photographs for the purposes of reporting news to anybody that was a news reporting agency. The issue was that they were not prepared to deal with the second arm of our accreditation terms in respect to what they do on a commercial aspect with that, for instance, selling a photo of a footballer for use in posters in newsagents or stores. It is commercial gain activities, not news reporting activities.¹¹

3.16 AAP responded to the AFL's evidence:

In their submission to the committee yesterday, the AFL representatives stated that AAP had been refused picture accreditation because we demanded the right to commercially exploit news photographs taken by our photojournalists. This is simply not true. AAP has only ever sought accreditation to supply news photographs to news media for the purpose of news coverage.¹²

3.17 This case can be summarised as a contractual disagreement over accreditation.

3.18 Each year, the AFL (like many sporting bodies) issues a set of accreditation terms and conditions for media. Agreement to these is generally treated as a condition of access for journalists to sporting events for the purpose of reporting on them. Because these terms and conditions are couched in language suited to the accreditation of journalists from news media outlets, not all the wording is suitable or relevant to news agencies such as AP, AAP, Reuters or AFP. AAP sought modification of the terms and conditions through a side letter that would vary the terms and conditions to better suit a news agency. The committee understands that the dispute between AAP and the AFL arose during negotiations over the content of this side letter.

3.19 The Terms and Conditions offered by the AFL in 2008¹³ contained three clauses that were relevant to the dispute:

10 *Proof Committee Hansard*, 15 April 2009, p. 35.

11 *Proof Committee Hansard*, 15 April 2009, p. 36.

12 *Proof Committee Hansard*, 16 April 2009, p. 82.

13 Similar wording occurs in the 2009 accreditation terms and conditions issued by the AFL.

- Under clause 2.1, applicants (ie. journalists seeking accreditation) could provide text and data 'for the purpose of bona fide news editorial reporting by the Applicant or by a third party under an arrangement in printed newspapers or sports related magazines; and/or on a website'.
- Under clause 2.2, applicants could take photographs which "may be transmitted for the purpose of bona fide news editorial reporting by the employer of the Applicant only: in printed newspapers or sports related magazines; and/or on a Website'
- Under clause 2.4, applicants 'are prohibited from commercial exploiting...any text, data, photographs... except as specifically permitted in accordance with the terms of clauses 2.1., 2.2...or as otherwise agreed by AFL'.¹⁴

3.20 There was thus a significant difference between the conditions surrounding text and data (clause 2.1) and still photographs (clause 2.2). Text and data could be supplied for reporting 'by a third party under an arrangement', effectively covering the operations of news agencies like AAP; however the clause governing photographs lacked this provision.

3.21 AAP supplied to the committee copies of correspondence between themselves and the AFL during the accreditation negotiations that occurred in March 2008. AAP was able by negotiation to resolve a number of issues with the AFL. These included:

- varying the terms and conditions to allow AAP to transmit text and data to its radio and television clients for news purposes;
- varying the terms and conditions to allow AAP to transmit text and data to its corporate and government clients for non-commercial, personal internal use; and
- clarification that the AAP's wire service consisted a "website" within the meaning of the AFL's terms and conditions.¹⁵

3.22 However, AAP's requests to include photographs on the same basis as text and data were refused.¹⁶ Having examined the correspondence between AAP and the AFL, the committee cannot accept Mr Lethlean's suggestion, made at the hearing on 15 April 2009, that AAP had an issue with the AFL's desire to restrict commercial sale of images for non-news purposes. On the contrary, AAP appears to have proposed a wording that said that photographs were to be used only for bona fide news reporting, that its online news customers would be explicitly warned that 'retransmission for any purpose or display for any other purpose is prohibited',¹⁷ as well as agreeing that the

14 *2008 Media Accreditation – Australian Football League*, provided as Attachment 3 to AAP Submission 24.

15 Tony Gillies, AAP, email to Patrick Keane, AFL, 18 March 2008, 4.56pm.

16 Patrick Keane, AFL, email to Tony Gillies, AAP, 19 March 2008, 3:02pm.

17 Tony Gillies, AAP, draft side letter (dated 18 March) attached to email to Patrick Keane, AFL, 18 March 2008, 4.56pm.

AFL could use AAP images for the promotion of the sport¹⁸ (something AAP had initially resisted).¹⁹

3.23 The Australian Press Council also played a role in the dispute. The Press Council wrote to the AFL expressing concern about the disagreement. Responding to the Press Council, the AFL on 6 June 2008 stated that it had 'offered to accredit AAP photographers on identical terms to previous years'.²⁰ In response, AAP on 30 June 2008 wrote to the AFL, indicating that 'AAP would be happy to accept photo accreditations in that case – even at this late stage of the season'.²¹ The AFL declined to re-consider accreditation for the 2008 season.²²

3.24 The committee was provided with the terms offered by the AFL to AAP in 2007, which was the last season for which AAP had accreditation for its photographers. These appear to be quite different to those offered in 2008, and required only that photographs 'may only be used for editorial and non-advertising purposes', and that photographers were not permitted inside the boundary line on the ground.²³

3.25 The committee concludes that during the 2008 negotiations, AAP indicated a willingness to compromise on some points during the negotiation, but that the AFL were unwilling to allow news photographs to be treated on the same basis as text and data. The committee does not accept the claim, made in the AFL's letter of 6 June 2008 to the Press Council, that the terms of accreditation offered to AAP in 2008 were the same as those offered in 2007.

Accreditation of journalists for cricket

3.26 The second case raised by a large number of submitters concerns accreditation of journalists for cricket matches, particularly by Cricket Australia.²⁴ Media organisations appeared to be concerned about several types of restriction being introduced into accreditation for cricket matches, both within Australia and abroad. These include:

- Frequency restrictions on news updates;

18 Tony Gillies, AAP, email to Patrick Keane, AFL, 18 March 2008, 4.56pm.

19 Tony Gillies, AAP, draft side letter (dated 17 March) attached to email to Patrick Keane, AFL, 18 March 2008, 10:20am.

20 Colin McLeod, AFL, letter to Jack Herman, Australian Press Council, 6 June 2008, provided as Attachment 9 to AAP *Submission 24*.

21 Tony Gillies, AAP, email to Patrick Keane, AFL, 30 June 2008, 6:41pm.

22 Patrick Keane, AFL, email to Tony Gillies, AAP, 3 July 2008, 2:30pm.

23 *AFL Media Accreditation 2007*,

24 See, for example, AP, *Submission 2*; Getty Images, *Submission 3*; Reuters News, *Submission 10*; PANPA, *Submission 14*; AFP, *Submission 17*; News Limited, *Submission 20*; AAP, *Submission 24*

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- Prevention of transmission or retransmission of news to mobile devices;
 - Restrictions on what websites can display news material; and
 - Retention of absolute discretion to revoke accreditation or vary accreditation conditions at any time, and without explanation.

3.27 There were also claims that cricket organisations had sought 'the surrender of all intellectual property rights in images taken at match venues, payment for the right to distribute images of the events',²⁵ and that a news organisation 'declare its client list for vetting'.²⁶

3.28 AFP's submission was typical:

Cricket Australia, for instance, has sought to artificially restrict the number of photos or stories that can be sent to Internet publishers from a game, to block mobile news distribution and to prevent certain websites from receiving any Australian cricket news altogether. Cricket bodies in Australia and abroad have even launched accreditation negotiations by demanding that media simply cede their intellectual property rights to the material they create at matches to governing bodies.²⁷

3.29 Several stakeholders reported that these conditions had disrupted their coverage of sport:

international news agencies including Getty Images did not cover the 2008 Australian cricket test series between Australia and South Africa. This was as a result of Cricket Australia making media accreditation conditional on agencies signing restrictive contracts which give Cricket Australia the power to veto copyrighted material to be distributed by agencies and to block distribution of editorial material on mobile news platforms.²⁸

3.30 Cricket Australia's 2008-09 accreditation terms included the following clause:

the transmission of Text from within the Venue either directly to, or to an outside agency for the purpose of retransmission to or display on, Mobile Devices is expressly prohibited (including by way of transmission to any Mobile Device through a "push" service).²⁹

3.31 Identical clauses covered data and photographs.³⁰

25 Getty Images, *Submission 3*, p. 5.

26 PANPA, *Submission 14*, p. 9.

27 AFP, *Submission 17*, p. 4.

28 Getty Images, *Submission 3*, p. 6.

29 Cricket Australia, Terms and Conditions for 2008-09 Season, Clause 2.1 (c).

30 Cricket Australia, Terms and Conditions for 2008-09 Season, Clauses 2.2 (c) & 2.3 (d).

3.32 The accreditation terms defined a website as 'an official on-line website version of a printed newspaper or sport-related magazine or any other CA-approved website...'³¹ It appeared that, unless Cricket Australia had given approval, news sites that were online-only were excluded. This would mean that online news organisations such as Crikey, or newspapers that have ceased to operate in print, might not be able to report cricket news. These conditions also appeared to seek to prevent material being provided to sport web pages (such as sport web pages being maintained by news organisations) other than those of the sport itself or approved rights holders. Similar restrictions were contained in previous recent accreditation conditions from Cricket Australia.³²

3.33 The terms and conditions provided to the committee did not contain a clause that required media organisations to cede copyright in images to the sporting body, however the committee did not receive examples of draft terms and conditions, or side letters between individual organisations and Cricket Australia, that may have involved such proposals. The committee is aware that AFP and Getty Images both reported being presented with such a proposal.³³

3.34 Cricket Australia did not respond directly to this issue during the inquiry. However, the proposal put to AFP and Getty appeared consistent with Cricket Australia's strong concerns about copyright and the ability of the organisation to protect the value of its broadcast and exclusive rights offerings. While the committee accepts the legitimacy of protecting rights-holders' content, the ceding of copyright by news organisations to the sporting body appears at odds with established practice.

3.35 Cricket Australia indicated to the committee that all journalists were accredited on an equal basis:

CHAIR—Under your accreditation of journalists, do you treat them all the same, or are there differential arrangements with different journalists from different organisations?

Ms Beltrame—Our accreditation terms apply across the board; they are platform neutral. Our broadcasters work under different arrangements, but our accreditation is in place to accredit non-rights-holding media to come in for the purposes of gathering news content and reporting news.³⁴

3.36 However, the committee heard evidence at variance from this:

Senator LUNDY—Have you ever been in a situation where, having been provided with what I understand is a standard letter of accreditation from

31 Cricket Australia, Terms and Conditions for 2008-09 Season, Clause 3.

32 Cricket Australia, Terms and Conditions for 2005-06 Season Media Accreditation;, Terms and Conditions for 2006-07 Season Media Accreditation.

33 Getty Images, *Submission 3*, p. 5; AFP, *Submission 17*, p. 4.

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

AFL or cricket, you are then not able to agree to that and had a side letter or additional conditions exempting your organisation to allow you to get through? We are just trying to get a sense of whether there is any differential treatment of media organisations.

Mr van Niekerk—I see what you are asking. Yes, we have had in the background long and difficult discussions with Cricket Australia especially and we have had agreements with them. However, I do have to say that I do not agree with that process going forward. I really do not think that it is the right way to do things. We were under an enormous amount of pressure to get going and allow our print journalists in that case to get on with the job.³⁵

3.37 The committee is concerned not only that accreditation arrangements may be arranged in a way different to how Cricket Australia suggested was the case, but that whether a news organisation gets a successful accreditation outcome simply depends on how powerful it might be:

Ms Chapman—That is correct, but it is worth emphasising that it is very much in the sports bodies' interests that we are there. So the argy-bargy that goes on is: we want to be there and they want us to be there. Campbell said that we have considerable power in this situation, but we obviously cannot speak for all media organisations. We will continue to negotiate, but others will need to speak for themselves.

CHAIR—Is it easier for you because you are the biggest news organisation in Australia?

Ms Chapman—It is partly due to the extent of the coverage that we provide. It is not some heavyweight attitude; it is really that we provide such a breadth of coverage.³⁶

3.38 Several media organisations expressed concern that Cricket Australia was hampering legitimate news reporting in order to protect certain of its own commercial interests:

The underlying cause of the news media tension with CA and other like-minded leagues is that the leagues regard news organizations as competitors of their own information businesses, especially on the Internet.³⁷

3.39 Reuters News provided the committee with the terms and conditions documents from the England Cricket Board and contrasted them with those of Cricket

35 Mr Mike van Niekerk, Editor in Chief Online, Fairfax Media, *Proof Committee Hansard*, 16 April 2009, p. 72. See also Fairfax Media, *Submission 21*.

36 Ms Creina Chapman, Manager, Corporate Affairs, News Ltd, *Proof Committee Hansard*, 16 April 2009, p. 56.

37 Associated Press, *Submission 2*, p. 6.

Australia.³⁸ It appeared that the English terms and conditions are less restrictive regarding the use which can be made of news gathered at cricket matches.

3.40 This is an example of media accreditation agreements in Australia being more restrictive than those elsewhere in the world. There was great interest in this inquiry from overseas news agencies. These submitters expressed concern that Australia was setting a precedent for restrictive media accreditation which may be repeated in other jurisdictions:

Any consideration...must also include an examination of the possible international ramifications of restrictions on news reporting organisations and the news content they create. While foreign news agencies are restricted in disseminating their news content by Australian sporting organisations, similarly Australian news agencies can anticipate commensurate restrictions. The Indian Premier League, notwithstanding its recent temporary relocation to South Africa, is an example of an organisation seeking to severely restrict the rights of news organisations. It will be difficult for Australian news organisations to argue for greater freedoms when Australia's own sporting organisations seek to curtail those same freedoms.³⁹

3.41 The News Media Coalition was also concerned that Australia's example would be copied elsewhere:

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.⁴⁰

3.42 SMP Images is an agency supplying sports photographs for editorial use to the media. It had a different view to the other media organisations:

As a company, we applaud the stance that Cricket Australia has taken with enforcing their terms and conditions as it relates to all media /photo agencies. For too long, the media has dictated terms and conditions to the sporting organisations with the underlying threat that unless you comply with our demands, we will not provide coverage.⁴¹

38 Reuters News, *Supplementary Submission 10*, and attachments.

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

40 News Media Coalition, *Submission 13*, p. 10.

41 SMP Images, *Submission 39*, p. 1.

3.43 Cricket Australia argued that their accreditation arrangements were adequate to preserve the legitimate reporting of news:

CA has therefore outlined in its accreditation terms that no website shall be updated with data, text or photographs sourced from within the venue more than six times per hour. Most websites do not update at rates anywhere nearly as frequently as this.

Importantly, this does not restrict the transmission of data, text or photographs to websites that are accessible by mobile devices solely as a result of being available on the internet.

This effectively allows media organisations, sourcing content directly from inside the venue, to provide a "news" update on the status of the match every 10 minutes.

This frequency specifically relates to the cricket match itself and is what CA regards as more than reasonable to enable "reporting of news".

It does not limit any media organisation to rely on the fair dealing exception under the Copyright Act to report any other news that may occur from the event that does not involve the match per se. For example, media are free to report and update their websites as many times as they chose with non-match-play news that may occur during an event.⁴²

3.44 Cricket Australia also argued that their accreditation disputes had not disrupted Australian media coverage.⁴³ While this may be the case much of the time, it does not appear to have been true for coverage of the first test between Sri Lanka and Australia in Brisbane in November 2007, or the first day of the test between New Zealand and Australia, also in Brisbane, in November 2008.⁴⁴

3.45 While Cricket Australia were arguing that they needed to act to protect the value of their exclusive rights deals, at least one of their rights holders, Hutchison 3G, were unconcerned, and thought existing fair dealing arrangements and accreditation rules were adequate.⁴⁵

3.46 The committee notes that, as in the case of AAP and the AFL, most disagreements over accreditation are between news agencies and sports organisations. As a result, it is the news agencies that face the greatest difficulty.

42 Cricket Australia, *Submission 35*, p. 17.

43 Ms Stephanie Beltrame, General Manager Media Rights, Cricket Australia, *Proof Committee Hansard*, 15 April 2009, p. 20.

44 Steve Boughey, 'Cricket Australia and media lock heads', *nzherald.co.nz*, 21 November 2008.

45 Ms Amanda Hutton, General Manager Products and Services, Hutchison 3G Australia, *Proof Committee Hansard*, 16 April 2009, p. 14.

Underlying issues

3.47 Complaints were put to the committee about the lack of copyright law guidance for managing fair dealing for news purposes in digital media environments. This included reluctance by the parties involved to use litigation to resolve the issue. Sporting organisations expressed their reluctance to pursue litigation, describing it as 'expensive [and] time-consuming'⁴⁶, 'too expensive and too grubby'⁴⁷ and:

...it is an expensive exercise to seek litigation to enforce your rights. There was a six-month process for one infringement on two websites that cost six-figure sums in legal fees only to get to court to then be settled. If you want to instigate those proceedings every time there is a breach of undefined and unregulated guidelines around an exception to the copyright act, then we are going to pretty busy and incurring a great deal of expense.⁴⁸

3.48 The committee recognises there are only a limited number of court decisions with regard to the fair dealing exception for the reporting of sports news and that the outcome of future litigation cases may provide guidance in this area.

3.49 There was, however, broad agreement and considerable support amongst stakeholders for finding a way to ensure that existing fair dealing provisions apply and work. COMPS stated that 'COMPS members are united on the importance of bringing clarity to the fair dealing exceptions for the reporting of news'⁴⁹ whilst ninemsn's opinion was similar to that of other media organisations:

The fair dealing exemption under the Copyright Act has been successful and effective for more than 40 years, despite many developments in technology, news programming and the consumers' relationship with sports. It has rarely been litigated and the boundaries have been determined by engagement and negotiation between media owners and sports rights holders, both before and during the digital age.

ninemsn fully respects and upholds the principles of the fair dealing exemption...⁵⁰

3.50 The concerns put before the committee reflect the broad goals and principles of the parties involved. Sporting organisations rely heavily for income on the sale of broadcasting rights. Traditionally, broadcast rights have been sold for free-to-air and

46 Mr James Sutherland, Chief Executive Officer, Cricket Australia, *Proof Committee Hansard*, 15 April 2009, p. 13.

47 Mr Gillon McLachlan, Chief Operating Officer, Australian Football League, *Proof Committee Hansard*, 15 April 2009, p. 28.

48 Mr Simon Lethlean, Manager, Broadcasting, Legal and Business Affairs, Australian Football League, *Proof Committee Hansard*, p. 37.

49 Mr Shane Mattiske, Director, Strategy and Special Projects, National Rugby League, *Proof Committee Hansard*, 15 April 2009, p. 24.

50 Mr Nicholas Gray, Chief Financial Officer and Head of Strategy, ninemsn, *Proof Committee Hansard*, 15 April 2009, p. 52.

subscription television but increasingly exclusive internet and mobile rights have been offered by sporting bodies. As a major source of income, sporting organisations want to protect and expand these revenue streams, particularly as the digital media environment continues its growth and potentially threatens the available income from more traditional media.

3.51 Sporting bodies are concerned that erosion of the value of these broadcast rights will reduce the financial returns to the organisations and therefore to sports clubs, community sporting events and junior sport development.

3.52 COMPS claimed that 'Without greater protection of their intellectual property, COMPS members' ability to raise revenue will diminish and professional sports will become reliant on greater financial support from Government to ensure their continued viability' and 'Media rights, the primary revenue source for COMPS sports are being eroded'.⁵¹

3.53 COMPS did not provide the committee with specific evidence of such erosion of revenue-raising capacity. Similarly, other sporting bodies were unable to provide the committee with evidence of a reduction in revenue as a result of the expansion of digital news media:

CHAIR—Perhaps I could just jump in here. Do you have any evidence that Cricket Australia has been disadvantaged so far in terms of revenue? People say, 'It's going to affect us,' but where is the hard evidence that your revenues are being affected by increases in forms of transmission?

Mr Sutherland—Our media rights agreements are being extended. Our current Channel 9 agreement is a seven-year agreement, which we are in the middle of right now, so we have not specifically seen the impact of that. But we know what the key levers are to value and to driving that value. We do not necessarily have a specific way of showing or illustrating that, but we know and understand the value drivers and that they will impact on the value of our rights into the future.

Senator WORTLEY—Are you saying that, should there not be regulatory reform, the money you gain from your media packaging and so on will diminish?

Mr Sutherland—That is our absolute and chief concern. We are absolutely passionate about our vision of being Australia's favourite sport and servicing the community.

Senator WORTLEY—But there is no evidence to support that at this stage.

Mr Sutherland—I cannot give you specific, hard evidence on that basis, but we do know that there is a proliferation of use of our content, much of it which is unfair. In itself, that will only increase exponentially as technology

51 COMPS, *Submission 31*, pp 1 & 11.

improves and changes and improvements are made to the platform on which the Australian public accesses content.⁵²

3.54 The Australian Sports Commission also indicated it did not have evidence of sports experiencing diminished revenues as a result of the growing activities of news media organisations in digital media.⁵³ While the Commission was supportive of sports getting online, it also did not have direct evidence that this would open up new revenue streams for all of them.⁵⁴

3.55 The committee is aware, however, that the terms of reference for the current Independent Sport Panel review ('Crawford Review') include the identification of opportunities to increase and diversify the funding base for sport through media.⁵⁵ Such opportunities may include new digital media and platforms.

3.56 The committee also asked rights-holder Hutchison whether it thought the current regime was eroding the value of their rights. They did not think so:

It is a bit difficult to say that the fair-dealing regime has eroded value. We do not see that. Certainly, in our recent discussions I cannot see that that is the case. I was looking forward to hearing the witnesses from the sporting organisations yesterday provide some further clarity around what erosion they have seen or provide actual evidence of that erosion, but I did not see it yesterday.⁵⁶

3.57 News media organisations are seeking to ensure their freedom to report the news and to retain control of their news content. Simultaneously, news reporting is being revolutionised by advances in new digital media and media companies are being forced to compete in this space in order to remain commercially viable. This involves the presentation of online content in new and innovative ways:

Publishers feel strongly that new technologies and publishing platforms do not constitute a reason to start changing the fundamentals of a free press. Mobile technology will in the short term become a major publishing platform of news because the public behaviour dictates this. The internet has become a major platform already and will continue to be so...There is

52 Mr James Sutherland, Chief Executive Officer, Cricket Australia, *Proof Committee Hansard*, 15 April 2009, p. 20.

53 Mr Gregory Nance, Director, Sports Performance and Development, Australian Sports Commission, *Proof Committee Hansard*, 5 May 2009, p. 13.

54 Mr Gregory Nance, Director, Sports Performance and Development, Australian Sports Commission, *Proof Committee Hansard*, 5 May 2009, p. 9.

55 Independent Sport Panel, available: <http://www.sportpanel.org.au/internet/sportpanel/publishing.nsf/Content/terms> (accessed 13 May 2009).

56 Ms Amanda Hutton, General Manager Products and Services, Hutchison 3G Australia, *Proof Committee Hansard*, 16 April 2009, p. 14.

no possible way to control how the public and sports fans will access their information.⁵⁷

3.58 News media organisation and sporting organisations have, in many cases, been able to resolve their differences. Nevertheless, whilst there was agreement that news media organisations should continue to be able to report sport news, and sporting organisations should be able to sell exclusive broadcast rights, there was less agreement as to how to achieve this outcome in the new digital media environment.

57 Mr Mark Hollands, Chief Executive, PANPA, *Proof Committee Hansard*, 16 April 2009, p. 63.