

Chapter 5

Committee conclusions

5.1 The digital age is transforming all aspects of daily life, and that transformation is nowhere more obvious than in the media. From the creation of the Internet and mobile telephony, to the prospect of proliferating digital television channels, the environment in which all media operate has in the space of a generation changed almost beyond recognition. The reporting of news and the presentation of sport have both been profoundly affected by this transformation.

5.2 These changes are overwhelmingly positive for society. They are providing more opportunities for more citizens to access news and entertainment in new ways and with greater frequency. Digital media platforms have the potential to increase the accessibility of information. The Internet allows almost anyone to become an active media participant, and new players require few resources to get involved.

5.3 The delivery of news has been radically affected by the emergence of digital media. Many people now use the Internet as their main source of news, and both existing and new media players are delivering news through this new medium. In addition, news is being delivered through other platforms such as mobile devices, and the availability of new television channels is allowing specialist news and current affairs services to develop.

5.4 One of the consequences of these changes is that citizens' expectations of news media are changing. People's definition of news is not static. What would have been accepted as the norm a generation ago (news being updated once or twice a day, and only being permanently accessible through printed newspapers) has been replaced by expectations of far more regularly updated news, and a growing reliance on Internet resources, such as news site archives, as permanently available records.

5.5 Many non-professional sports continue to struggle to attract media coverage and attention, both in terms of event broadcasting and news coverage. The committee was disappointed to see the extent to which media organisations are failing to use the opportunities presented by digital media to increase the breadth and diversity of coverage, noted by sporting organisations,¹ which have previously been the subject of comment by this committee.²

1 For example, Softball Australia, *Submission 16*; Australian Womensport and Recreation Association, *Submission 15*.

2 Senate Environment, Communications, Information Technology and the Arts Committee, *About time! Women in sport and recreation in Australia*, 6 September 2006.

5.6 It has been hoped that new technologies would create new niches and opportunities for sports to gain coverage where there are currently marginalised by a small number of major commercial sports:

Another effect of the congregating of media audiences around blockbuster broadcast games has been a reduction of the variety of sports the Australian public sees, a breakdown of this status quo may see new, more niched or hyper-local media focussing more intently on covering the range of sports available in their own localities (such as ice-hockey, wheelchair basketball, lawn bowls and water polo). This shift, which is facilitated by new narrowcast technologies, may increase coverage of a wider range of sports with the potential to inspire a wider range of participants than the sports we currently see that are played by super-fit young male sport stars, who we can admire, but many of us don't dare emulate.³

5.7 However, the reality appears to be disappointing:

It was hoped in the early 1990's with the introduction of cable (pay) television in Australia that there would be more coverage of women's sport but while there was an initial trend this way the situation is little changed today. ABC TV2 digital has covered the Women's National Basketball League, the W League (and done a great job too) and Bowling (male and female) and some special women's events. However, the commercial TV companies have been very slow to use their digital channels and are well behind the ABC here. Hopefully the growth of digital TV will increase media coverage of women's sport but as costs of production increase it always seems to be that it is the women's programs that get axed first. This is what happened with paytv.⁴

5.8 The committee believes that both sports organisations and media players (whether as broadcasters or as news reporters) must carry some responsibility for a situation that sees some sports continue to be under-reported or ignored in news reporting and overlooked as potentially viable broadcast content.

Reporting sporting news

5.9 The committee believes that freedom of the press is as important in the new media environment as it ever was. The committee believes that freedom of the press includes ensuring the media have *access to* events and places, as well as having the freedom to report news *about* those events and *from* those places.

5.10 These freedoms are important in sport. Sports news is about more than match reports and the fluctuating fortunes of individual sporting stars and media consumers' favourite teams. Reporting from sporting events can include coverage of everything from disasters (such as the deaths of 95 people at Hillsborough Stadium in 1989) to events of political importance (such as the 1981 anti-apartheid protests associated with

3 Dr Kayt Davies, *Submission 1*.

4 Australian Womensport and Recreation Association, *Submission 15*.

the Springbok rugby tour of New Zealand), to events in which both the media and sport themselves become the news (such as the Rugby League 'war' of the 1990s). Sports news photographs can be more important than the text of the stories with which they often appear, and can be influential well beyond the boundaries of the sport itself. One of the most notable examples is when in 1993 *Age* photographer Wayne Ludbey captured Nicky Winmar baring his torso to the crowd in response to racist taunts.⁵

5.11 The committee believes that bona fide news journalists, including photojournalists, should be able to be present at sporting events. While all participants in the inquiry have indicated that they support media freedom, giving practical effect to that principle, particularly in respect of access to events, appears to be presenting some challenges in the new media environment.

5.12 The committee is aware that there are tensions at the boundaries between stakeholders as the new media environment evolves. As academic and broadcaster David Smith remarked:

In recent years there has been a situation where sports administrators have become a little bit guilty of trying to control the media to an extent whereby the opportunity for the media to do its job has been impaired. I feel that is something which needs to be addressed. I also believe that some media organisations have actually pushed the boundaries a little bit too far. If you are an online rights holder and you are trying to give an overview of what has happened in an event, at times they have pushed the boundaries in the type of content that they have put on there and the extent of that content.⁶

5.13 The committee accepts that media organisations may be 'testing the boundaries' of what constitutes news, and some sporting organisations are 'testing the boundaries' of what can reasonably be asked of news reporting organisations in their accreditation agreements.

5.14 In addressing issues that have been raised during this inquiry, the committee believes there are several points that need to be emphasised:

- Sporting events have a strong public dimension. Major sporting events have long been viewed as public events (notwithstanding sports usually have control over ticket sales and venue access). Sometimes these events are held in facilities that are publicly owned or have been publicly funded or subsidised. Sporting organisations claim to be the 'custodians' of a sport on behalf of the people. For all of these reasons, the media has a particularly important role to play in reporting on these public events, particularly for those who cannot attend the event themselves.

5 See for example Tim Clarke, 'Fame never stops for Winmar', *WAtoday*, 10 March 2009.

6 Mr David Smith, *Proof Committee Hansard*, 15 April 2009, p. 46.

- This is not primarily a copyright issue, though copyright has been a regular topic of discussion. Copyright laws are of no relevance to the issues raised in this inquiry around how those journalists' work is used or re-used.
- The committee agrees that news is not perishable. As the Internet becomes the primary repository of historical news information (supplanting newspapers), it will become increasingly important that news archives remain available over the long term. The committee rejects the idea that news on the Internet should be transitory.
- Some sporting organisations have criticised news media for seeking to use content to 'draw eyeballs and to monetise content'.⁷ This was suggested to be inappropriate conduct by the media. The committee notes that traditional media such as newspapers were never charities. They gathered and disseminated news in order to 'draw eyeballs' (readers) and they sought to sell news in such a way as to 'monetise content' (increase circulation and the value of advertising space). In this regard nothing has changed. The committee cannot accept that 'monetising content' is evidence that news material is being presented in a way that is somehow inappropriate.

Copyright, and copyright law

5.15 The committee believes that sporting organizations have not made a strong case for copyright reform. The committee was not satisfied that current news organisation practices are eroding the value of sports broadcast rights or new media platform rights that sports are aiming to develop. The financial value of online delivery may also be being over-estimated by sporting organisations and the Australian Sports Commission. One witness commented:

There is a notion within sporting bodies that the opportunities that news organisations are exploiting, either through selling photographs to members of the public and newspapers or running picture galleries online, is some kind of financial bonanza. It ain't! Picture sales to the public is a loss-making service we have for our readers. If the sporting bodies have any ideas on how to make money online, we would be delighted to hear them.⁸

5.16 Furthermore, it is not clear that there is a public benefit in ensuring a growing revenue stream to major professional sports. One of the most important public benefits of sport is through mass participation. The committee was provided with no evidence of a connection between the media profile of a sport and its participation levels. The committee notes that some sports and activities with very limited media coverage – netball and swimming for example – appear to have higher community participation levels than the major professional sports.

7 Cricket Australia, *Submission 35*, p. 9. See also COMPS, *Submission 31*.

8 Mr Campbell Reid, Editorial Director, News Ltd, *Proof Committee Hansard*, 16 April 2009, p. 51.

5.17 Finally, as far as the committee can ascertain, the growing availability of sporting information online, through web sites other than those run by major sports and rights holders, are serving to create wider public interest in those sports. The committee is not aware of evidence that websites created by non-rights holders, including news organisations, are undermining levels of public interest.

5.18 Stakeholders in the debate offered differing views about the use of litigation to resolve issues in relation to copyright breaches, particularly in respect of the use of moving images by non-rights holders under the fair dealing provisions of the Copyright Act. The low level of litigation suggests to the committee that there is not a major problem in this area. Notwithstanding the costs of litigation, the committee believes that there are enough well-resourced stakeholders in this sector that, were copyright infringement a major problem, there would be plenty of evidence of it in the courts.

5.19 The committee agrees with sporting organisations that they have a right to protect their copyright. While it received no evidence that copyright infringement is affecting the value of broadcast rights, the committee understands sports' desire to ensure the sustainability of their revenue stream.

5.20 The committee notes that the desire of sports to assert control of content appears founded on concern about current and particularly future potential revenues the sports may derive from digital content on their website or other, as yet unforeseen digital media and platforms. In this regard, the committee shares with sports organisations their broad concern about prospects for future financial and commercial viability. The committee also encourages innovation and investment in web sites by sports organisations to continue to maximise the benefits of the online digital environment, including new opportunities in so-called Web 2.0 and social networking.

Recommendation 1

5.21 The committee urges the government to take into account the opportunities and challenges presented by digital media to sports organisations' current and future revenue prospects and options, and recommends that the current Crawford review of sports pay particular attention to the capacity of sports to invest in digital innovation.

5.22 The committee believes that there is satisfactory existing capacity for litigation to deal with some of the copyright complaints raised during this inquiry. While sports may be reluctant to litigate, they also need to pursue some key cases if they believe their rights are being infringed, to ensure that copyright law continues to keep pace with technological developments. The committee has already seen some evidence that this is occurring. The committee notes that the evolution of the 3x3x3 'gentleman's agreement' demonstrates how negotiated arrangements can develop to avoid ongoing litigation. The committee sees no reason that this evolution cannot continue under existing law.

Recommendation 2

5.23 The committee recommends that the parliament should not amend copyright law to clarify the application of the news 'fair dealing' exception, unless future specific case law outcomes appear to warrant it.

5.24 During the course of the inquiry, there was some discussion of aspects of copyright law reform other than the proposals for changes to the 'fair dealing' provisions covering news reporting. Outlined briefly in the previous chapter, the committee did not deal with these in great depth. The committee notes there was a broad review of copyright law issues, resulting in the Copyright Law Review Committee report of 2002. It understands this is yet to be systematically considered or responded to by government.⁹

Recommendation 3

5.25 The committee recommends that the government consider and respond to the Copyright Law Review Committee report and its recommendations.

Accreditation

5.26 The committee recognises that issues around the accreditation of journalists appear to be the most significant matters raised during its inquiry. As already stated, accreditation is not a matter addressed by copyright law, because the copyright in news text and images belongs to the media organization that gather or create them.

5.27 Accreditation processes are central to determining whether freedom of the press exists for sport, because they determine which journalists gain access to events, and on what conditions. Conflict around accreditation has involved conflict over copyright control by journalists of their product, and over conditions of use by journalists of their material.

5.28 The committee is concerned that the burden of this conflict falls disproportionately on news agencies such as AAP and Getty Images, and that the evidence suggests they have faced problems greater than those of other media organizations.

5.29 News agencies play a very important role in the news media environment, and are particularly critical to international and regional news reporting. They ensure coverage of events is not restricted to the audience of those news companies that have reports 'on the scene' at newsworthy events. Actions that would deny these agencies access to news events such as sporting fixtures could deny quality news coverage to very significant audiences.

9 Mr Norman Bowman, Acting Principal Legal Officer, Attorney General's Department, *Proof Committee Hansard*, 5 May 2009, p. 23.

5.30 The committee believes that the presence of news agencies generally works in favour of sports. They ensure news stories and images reach the largest range of news media outlets. They may also decrease pressure on sporting media infrastructure, by reducing the number of individual journalists seeking accredited entry to events.

5.31 The committee sought to look carefully at the evidence presented to it. It paid particular attention to the example about which it had been supplied with the most detailed evidence, involving AAP and the AFL. Having examined this case, the committee believes certain evidence and information provided by the AFL in regard to its dispute with AAP was not accurate or a fair reflection of events. The committee believes that there are real concerns, which affect matters of public interest and media freedom, arising from recent innovations in accreditation practices by some sports.

5.32 The committee is particularly concerned that conflict over accreditation could cause a diminution of access to news for those least able to do something about it: rural and regional audiences. Getty Images argued:

The steps taken by national sports bodies such as the AFL and Cricket Australia to restrict news media coverage has had, and will have, a significant adverse effect on the breadth and quality of news coverage of those sports. It will also significantly disadvantage rural and regional newspapers which generally rely completely on news agencies such as Getty Images to provide them with photographic images of major sporting events.

For example, in 2007 14 regional newspapers in Queensland and 2 in Victoria were not able to publish photos of AFL games because they were unable to reach photo agreements with the AFL.¹⁰

5.33 Independent operator SMP Images, whose evidence differed from that of many other media organisations on some issues, agreed with them regarding this concern. Mr Keir from SMP Images remarked that the rural newspapers 'tend to struggle for access to the larger sporting events such as the NRL or the AFL'.¹¹ PANPA similarly noted 'the ramifications this has had for newspaper readers in regional areas who prefer their own local newspaper to the metropolitan perspective of the larger newspapers'.¹²

5.34 While accreditation concerns have been brought before this committee primarily in respect of the AFL and Cricket Australia, the issues raised in this report have the potential to affect all sports, and all news media organisations. The committee accepts that all sports are seeking to find ways forward for their members in a rapidly evolving media environment. It is inevitable that there will be points of

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

11 Mr Warren Keir, Managing Director, SMP Images, *Proof Committee Hansard*, 29 April 2009, p. 45.

12 PANPA, *Submission 14*, p. 16.

conflict as a range of large and often powerful stakeholders seek to adapt to a new environment, in which they may find themselves facing new pressures.¹³

5.35 The committee believes there are two options for government to act if it wished to try and facilitate improvements in the outcomes of accreditation processes:

- Broker the development of voluntary guidelines for accreditation; or
- Advise the affected industries to move toward an industry code of conduct recognized by the ACCC under the Trade Practices Act.

5.36 While regulatory action to resolve industry disputes should not be the first course of action, the fact that these conflicts have now existed for several years suggests government intervention may ultimately be necessary. The committee believes that a mechanism which allows all journalists, including photojournalists, to access sporting events, and which respects the nature of news agencies' business, must be found.

5.37 The committee notes that, despite their differences, submissions from diverse stakeholders have indicated openness to further discussion and negotiation. In these circumstances, the committee is unwilling to recommend the development of a mandatory code under the Trade Practices Act at this stage.

Recommendation 4

5.38 The committee recommends that stakeholders negotiate media access to sporting events based on the principle that all bona fide journalists, including photojournalists and news agencies, should be able to access sporting events regardless of their technological platform.

Recommendation 5

5.39 In the event that these negotiations are unsuccessful, the committee recommends that the Minister consider initiating the process for consideration of a code under Section 51AE of the Trade Practices Act.

5.40 The committee hopes that, aided by the forum that has been provided by this committee, stakeholders will be able to negotiate satisfactory arrangements in future and that regulatory action will be unnecessary.

Senator Anne McEwen
Chair
