

The Senate

Standing Committee on
Environment, Communications
and the Arts

The reporting of sports news and the
emergence of digital media

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Recommendations

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.

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.

Recommendation 3

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

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.

Abbreviations

AAP	Australian Associated Press
ABC	Australian Broadcasting Corporation
ACCC	Australian Competition and Consumer Commission
AFL	Australian Football League
AFP	Agence France-Presse
AP	The Associated Press
ASC	Australian Sports Commission
CA	Cricket Australia
COMPS	Coalition of Major Professional Sports
PANPA	Pacific Area Newspaper Publishers Association
RSS	really simple syndication
SBS	Special Broadcasting Service
TPA	Trade Practices Act

Chapter 1

1.1 On 12 February 2009, the Senate referred the following matter to the committee for inquiry and report by 14 May 2009:

The reporting of sports news and the emergence of digital media, with particular reference to:

- (a) The balance of commercial and public interests in the reporting and broadcasting of sports news;
- (b) The nature of sports news reporting in the digital age, and the effect of new technologies (including video streaming on the Internet, archived photo galleries and mobile devices) on the nature of sports news reporting;
- (c) Whether and why sporting organisations want digital reporting of sports regulated, and what should be protected by such regulation;
- (d) The appropriate balance between sporting and media organisations' respective commercial interests in the issue;
- (e) The appropriate balance between regulation and commercial negotiation in ensuring that competing organisations get fair access to sporting events for reporting purposes;
- (f) The appropriate balance between the public's right to access alternative sources of information using new types of digital media, and the rights of sporting organisations to control or limit access to ensure a fair commercial return or for other reasons;
- (g) Should sporting organisations be able to apply frequency limitations to news reports in the digital media;
- (h) The current accreditation processes for journalists and media representatives at sporting events, and the use of accreditation for controlling reporting on events; and
- (i) Options other than regulation or commercial negotiation (such as industry guidelines for sports and news agencies in sports reporting, dispute resolution mechanisms and codes of practice) to manage sports news to balance commercial interests and public interests.

1.2 In accordance with its usual practice, the committee advertised details of the inquiry in *The Australian*. The committee also contacted a range of organisations and individuals, inviting submissions. The committee received submissions from 43 individuals and organisations, listed at Appendix 1. A list of tabled documents is also at Appendix 1.

1.3 The committee held four public hearings in Canberra on 15 April and 5 May 2009, Sydney on 16 April 2009 and Melbourne on 29 April 2009. Details of these public hearings are shown at Appendix 2.

The relationship between sport and the media

1.4 Sport and the media enjoy a mutually beneficial relationship. Access to sports and sporting events enables the media to provide a breadth of coverage to the public whilst simultaneously providing sport with publicity to a diverse audience.

1.5 It became apparent to the committee during the course of its inquiry that there is much common ground between sporting organisations and the media on this issue. Both sporting and media organisations believe there is a need for news coverage of sport and wish for sports news reporting to continue. News organisations detailed the benefits of news reporting to sports:

...there can be no better promotion for any sport than the availability of timely, unbiased information to as many newspapers, websites, broadcasters and magazines as possible...news agencies have the ability to constantly and consistently deliver this information globally to both developed and emerging economies; to very large and very poor media outlets.¹

And:

Independent news coverage in all media builds excitement in sports, attracts new fans, elevates the status of sports in the public sphere, and lends enhanced credibility to the leagues and their events.²

1.6 Mr David Smith also highlighted the necessity of news reporting to the continued success of sport:

Without the oxygen of publicity you will stifle your sport. It is actually within the interests of the sport to cooperate with the media and to try to get as many media outlets as possible to get the message across that this is a viable sport and an interesting sport...³

1.7 Similarly, sporting organisations discussed the role of the media in the success of major sports:

The AFL recognises that its success as a sporting code in Australia is due, in part, to the substantial news media coverage it attracts. This media coverage assists the AFL in generating support and interest for the AFL Competition and promoting the sport of Australian football generally. Further, news media coverage of the AFL also assists commercial interests associated with the AFL Competition, such as AFL Clubs and sponsors.⁴

1.8 Tennis Australia held a similar view:

1 Thomson Reuters, *Submission 10*, p. 1.

2 The Associated Press, *Submission 2*, p. 10.

3 Mr David Smith, *Proof Committee Hansard*, 15 April 2009, p. 49.

4 Australian Football League, *Submission 26*, p. 5.

In what is a symbiotic relationship, Tennis fully supports the appropriate reporting of its events via news broadcasts, regardless of the media platform through which such news is disseminated. The dissemination of information through news and other reporting stimulates public interest in the sport, which in turn drives up the commercial value of the sport.⁵

1.9 Both media and sport organisations acknowledged the commercial benefits of reporting sports news. It is important to note, however, that the reporting of sports news also has elements of public interest. This public interest may include:

- Public health – health benefits derived by the public from exposure to sport via broadcasting and / or news reporting;
- Social inclusion benefits;
- Media freedom and the public's right to know – freedom of the media contributes to the dissemination of information, ideas and debate;⁶
- Funding – funds saved by media organisations or made by sport organisations and contributed to other activities with a public good (such as quality journalism in other areas or community-level sporting activities); and
- Economic benefits – the economic contributions made by the public, sporting rights holders and broadcasters, sporting organisations and media organisations.⁷

5 Tennis Australia, *Submission 32*, p. 2.

6 Melissa de Zwart, 'Seriously entertaining: The Panel and the future of fair dealing', *Media and Arts Law Review*, volume 8, number 1, pp 1-17.

7 Dr Kayt Davies, *Submission 1*, p. 2.

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.¹ Some of these exceptions are allowed under 'fair dealing'.² 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.³

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:

1 *Copyright Act 1968*, Division 3.

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

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

-
- (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.⁴

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 agreement⁵ 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 period⁶ 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.⁷

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.⁸

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.⁹

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.¹⁰

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.¹¹

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

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.

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

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...¹³

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.¹⁴

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.¹⁵

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...¹⁶

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...¹⁷

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

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.

...

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.¹⁸

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.¹⁹

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.²⁰

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:

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.²¹

Similarly, Telstra is the mobile rights holder for rugby league.²²

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 statistics²³ 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.²⁴ 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.²⁵

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

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 and www.cricket.com.au.

24 See www.realfooty.com.au, 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.

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.

Chapter 4

Responding to the challenges of the new media environment

4.1 The committee heard a range of proposals seeking to maintain a balance between the right to report news and the right to sell exclusive broadcast rights on a variety of platforms. Some of these related to copyright, others to news media access to events.

Retain the status quo

4.2 Most media organisations, both news media and rights holders, recommended to the committee that the status quo be maintained.¹ Those submitters in support of maintaining the status quo argued that the current copyright laws, and particularly the fair dealing provisions, were working well, did not require amendment and were the best option for the future:

This regime relating to the reporting of news is set out in sections 42 and 103B of the Copyright Act and has worked well in establishing the right balance between the commercial imperatives of the rights holders, and the public interest in ensuring the independent reporting of news.

The fact that there are remarkably few instances of proceedings coming before Australian courts regarding the application of sections 42 and 103B of the Copyright Act confirms our view that the current regime of fair dealing exceptions is working well and that the principles underlying it should be preserved.²

4.3 The SBS was in agreement with this position:

As digital media gains in popularity and relevance, it is vital that fair dealing conventions are extended and evolve to meet the needs of the community. SBS believes this process should be allowed to continue, free from regulation, as is currently the case. Status-quo arrangements represent the best possible model for the future.³

4.4 Some of the submitters in favour of the status quo did, however, acknowledge some difficulties with accreditation agreements:

1 See, for example, Hutchison, *Submission 11*; PANPA, *Submission 14*; SBS, *Submission 19*; News Limited, *Submission 20*; and Fairfax Media, *Submission 21*.

2 The Associated Press, *Supplementary Submission*, p. 5.

3 SBS, *Submission 19*, p. 9.

Beyond accreditation agreements, News is of the view that current laws work well for digital news reporting. There is no case for interfering with the current laws.⁴

And:

Fairfax Media does not believe, at this time, that legislation is required to remedy this situation. However, we respectfully urge this Committee and the Parliament to continually monitor these developments, specifically by seeking from the relevant parties the formal accreditation terms proposed.⁵

4.5 Maintaining the status quo would leave news media organisations and sporting bodies to continue to act on their own interpretations of fair dealing. There may be future legal action and this would provide direction as to how current fair dealing provisions apply to the digital media environment. The Attorney-General's Department agreed that legal proceedings on fair dealing and its application to digital media would be useful.⁶

4.6 The committee is aware, however, that a number of witnesses to this inquiry considered litigation to be problematic. The AFL claimed that there was a 'high cost of policing infringement and enforcing copyright through litigation'⁷ and stated 'litigation, which is too expensive and too grubby...is not something that we want to do'.⁸ Cricket Australia agreed that litigation was 'expensive [and] time-consuming'.⁹

4.7 Keeping the situation as it currently stands means that the responsibility for negotiating media accreditation agreements – and resolving disputes – will remain with news media and sporting organisations. In some instances, parties may be comfortable with this (for example, the committee heard that News Limited had sufficient resources and expertise to manage accreditation negotiation disagreements on its own).¹⁰ Other media organisations have been involved in disagreements over media accreditation by sporting organisations for a number of years and to date have been unable to reach satisfactory resolution. It is not clear whether these disputes can be satisfactorily resolved without some outside intervention in the negotiations.

4 News Limited, *Submission 20*, p. 3.

5 Fairfax Media, *Submission 21*, p. 4.

6 Ms Helen Daniels, Assistant Secretary, Copyright and Classification Branch, Attorney-General's Department, *Proof Committee Hansard*, 5 May 2009, p. 20.

7 Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 15 April 2009, p. 32.

8 Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 15 April 2009, p. 28.

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

10 Ms Creina Chapman, Manager, Corporate Affairs, News Limited, *Proof Committee Hansard*, pp 53 & 56.

4.8 Some submitters believed, however, that the costs of changing the status quo and attempting to regulate news reporting would outweigh the benefits, and that:

...this area of dispute between sports and media should be settled under existing laws. We do not believe that regulating news coverage or imposing artificial definitions of what constitutes news is in the public interest. Regulation of something as complex as news reporting is very difficult and could lead to unintended consequences.¹¹

Right of access

4.9 AAP recommended that a guaranteed right of access for the news media at sporting and related events would be 'the most effective way to protect the public interest in receiving news'.¹² AAP suggested that this right of access could be achieved by the creation of:

...a legislative provision for a right of access for news media to sporting and related events for general news reporting and editorial purposes including the taking of pictures. The provision must provide that terms and conditions of accreditation cannot include "revoke at will" arrangements and which do not impose restrictions on the frequency and manner of legitimate news reporting...¹³

4.10 The proposal is intended to remove the ability of sporting organisations to control news media's access to sporting events through accreditation. Certainly, this proposal might prevent sporting organisations from discriminating between news media organisations with respect to granting access to a sporting event.

4.11 The proposal does not, however, specifically address the issue raised by a number of sporting organisation where news media organisations use images they have gathered at sporting events not only for the purposes of news reporting but also for other contested non-news purposes.

4.12 The committee notes that this proposal would be likely to have implications for other situations in which event organisers control access to venues. The Attorney-General's Department advised the committee that it would be incongruous for the Copyright Act to contain clauses specifically pertaining to the media's right of access to sporting events. Rather, the department indicated that a general clause guaranteeing the media's right of access would be necessary and that this would apply equally to art exhibitions, musical and theatrical performances, and other instances relevant to the Copyright Act in which access to a venue is controlled:

Ms Daniels—The other thing I would add in looking at that issue, if that change were put forward, is that there would be no justification for the

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

12 AAP, *Submission 24*, p. 2.

13 AAP, *Submission 24*, p. 18.

galleries, museums and everybody else having a similar no-opt-out provision. Therefore, galleries and museums could no longer prevent anybody from coming in and taking whatever photograph they wished to. Why limit it to sport? How I am reading your question is that you are not being allowed to exercise all your copyright exceptions because you are not allowed access to a venue.

Senator LUNDY—That is right.

Ms Daniels—Then I would query: why limit it to only sport?

Senator LUNDY—That is one of the issues that has been put to us. So you tell me: why would that or why could that only apply to sport? Or are you saying to me that that would have the effects of also changing the parameters or arrangements by which photographers or news reporters could also access other places other than sporting venues? Is that what you are saying?

Ms Daniels—That is right. I guess the point I am making is it would be unusual for the Copyright Act, for example, to, all of a sudden, start talking about sport or sporting bodies. It is an act of much more general application, including in the exceptions area, which ultimately is about the public interest. So you would have to be talking about entities or anybody who is holding an event.¹⁴

4.13 It was not clear to the committee how such a right of access would be legislated, or how it would co-exist with existing legislation. Proponents of change did not make satisfactory arguments as to why sports events should be treated in a different manner to cultural events.

Enhanced fair dealing provisions

4.14 Current copyright law permits the use of copyrighted material without the right holder's permission for a limited number of exceptions, including for the purposes of reporting news. This is referred to as 'fair dealing'.

4.15 Some submitters suggested to the committee the need for guidance as to what constitutes fair dealing, with particular regard to its application in the digital media environment. The ABC indicated:

...that it is appropriate for time or quantity limitations to be applied to material on websites or other digital platforms, to ensure that rights holders continue to get value for the rights fees they have paid. For instance, sporting bodies are probably entitled to guard against “semi-streaming” of live sport by non-rights holders.¹⁵

14 Ms Helen Daniels, Assistant Secretary, Copyright and Classification Branch, Attorney-General's Department, *Proof Committee Hansard*, 5 May 2009, p. 27.

15 ABC, *Submission 26*, p. 5.

4.16 Cricket Australia provided the committee with the following list of items which they believed required further clarity under the Copyright Act:

- A better understanding of what is "news reporting" (not what is "news" as this is not CA's role) and what constitutes bona fide reporting of information against what constitutes the provisions of a significant depth and breadth of coverage that is created to draw eyeballs and to monetise content.
- The appropriate use of news; what is editorial use and what is commercial use?
- How long should copyright material remain accessible as "news" and continue to be monetised without any recognition or benefit to the copyright owner?
- Who are bona fide news organisations?
- Are content aggregators bona fide news organisations?

Specifically, CA requests that:

- The fair use exceptions under the Copyright act be given greater clarity and definition to accommodate the expansion from traditional to digital mediums.¹⁶

4.17 The AFL also believed that there needed to be 'leadership in a legislative form on this issue'.¹⁷

4.18 Guidelines and / or definitions to provide clarity around the application of fair dealing in the digital media environment could be achieved via legislation or regulations to the Copyright Act, or could be developed as non-binding explanatory advice issued by government.

4.19 The committee notes that the Copyright Act is intended to be platform neutral and that this was reflected in the Digital Agenda amendments moved in 2000 which sought to replicate "hard copy" rights and exceptions under the Act in the online environment:

The Copyright Act was amended years ago to deal with the online environment. The government's overall intention was that we should try to replicate what happens in the hardcopy world to the online world to the extent that you can. Again, Australia was not unusual in that regard; it really was an approach by other countries to cope with the emerging technology and how what exists under the hard copy should, where possible, translate to the online environment. So when amendments were made to the act many years ago to introduce the communication right and

16 Cricket Australia, *Submission 35*, p. 9.

17 Mr Gillon McLachlan, Chief Operating Officer, AFL, *Proof Committee Hansard*, 15 April 2009, p. 30.

all the online rights, there was a replication that the relevant exceptions would also apply in that area.¹⁸

4.20 Whilst legislation or regulation providing guidelines and / or definitions such as those requested by Cricket Australia and the AFL would provide greater clarity to stakeholders, they would sacrifice flexibility.

4.21 The committee acknowledges the difficulties with defining what constitutes fair dealing, news and news reporting. The committee is particularly aware of the flexibility required in this area and that the use of material for the reporting of news under the fair dealing provisions will be guided by the nature and context of the newsworthy event in question.

4.22 It is not possible to predict with certainty future technological changes. Legislation or regulations under the Act that refer specifically to particular digital platforms may be superseded and become irrelevant over time.

4.23 The committee also notes that copyright and fair dealing is not relevant to still images and text created by journalists, as the copyright in this material rests with the journalist or their employer. Since much of the material used by news media organisations is their own, enhancing fair dealing provisions would not make a significant difference to the current situation.

Code of conduct

4.24 A number of submitters recommended that a code of conduct be developed. These proposals were focussed on accreditation agreements and intended to 'cover both the practical elements of applying for accreditation and the negotiation process, as well as setting ideal or minimum levels for specific issues which frequently arise in the accreditation discussions'.¹⁹ A code was suggested by Cricket Australia:

that provides guidelines addressing duration, frequency, volume, context, archiving and dissemination of news content to complement a sports organisation's right to enjoy the benefit of its copyright.²⁰

4.25 The News Media Coalition was of the opinion that 'Codes of practice which support the free flow of news and described agreed procedures would...bring much needed transparency'.²¹ It was suggested to the committee that such guidelines 'could be developed either in conjunction with the Australian Government or by a working group representing both sports bodies and news agencies'.²²

18 Ms Helen Daniels, Assistant Secretary, Copyright and Classification Branch, Attorney-General's Department, *Proof Committee Hansard*, 5 May 2009, p. 19.

19 Reuters Thomson, *Submission 10*, p. 7.

20 Cricket Australia, *Submission 35*, p. 9.

21 News Media Coalition, *Submission 13*, p. 7.

22 Reuters Thomson, *Submission 10*, p. 6.

4.26 There are a number of ways in which guidelines for the negotiation of media accreditation agreements between news media organisations and sporting organisations could be instituted. These range from informal agreements between interested parties – like the 3x3x3 'agreement' between television rights holders and television news media²³ – as to expectations for the negotiation process and terms of accreditation, through to more formal mechanisms such as a code of conduct.

4.27 The committee is aware that there are three different types of codes of conduct in Australia and that the legal standing of each of these differs.

4.28 A non-prescribed voluntary industry code sets out specific standards of conduct for an industry about the manner in which it deals with its members and customers. The requirements of such a code are voluntarily agreed to by its signatories.²⁴

4.29 Such a code would be an industry initiative and need not have any particular status under the Trade Practices Act. It would be a code administered by the relevant industry itself.²⁵ For example, Medicines Australia – the industry association for the innovative pharmaceutical industry – administers a code of conduct that 'sets the standards for the ethical marketing and promotion of prescription pharmaceutical products in Australia'.²⁶

4.30 Although such a code could be a purely voluntary arrangement between sporting and media organisations, the committee notes that non-prescribed voluntary codes of conduct can be endorsed by the Australian Competition and Consumer Commission (ACCC), where the Commission believes the non-prescribed voluntary code is of a high quality.²⁷ The ACCC Chairman Mr Graeme Samuel has stated, with regard to endorsement of industry regulated codes, that:

- The industry needs to demonstrate that its code is achieving its objectives
- Endorsement will be hard to obtain and easy to lose
- Endorsement should provide the consumer with some reassurance that the business they are dealing with operates in a fair, ethical and lawful manner

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

24 ACCC, Non-prescribed voluntary industry codes of conduct, available <http://www.accc.gov.au/content/index.phtml/itemId/783116> (accessed 8 May 2009).

25 ACCC, Prescribed industry codes of conduct, available http://www.accc.gov.au/content/index.phtml/itemId/783097#h2_17 (accessed 8 May 2009).

26 Medicines Australia, Code of Conduct, available: <http://www.medicinesaustralia.com.au/pages/page5.asp> (accessed 11 May 2009).

27 Len Gainsford, 'The Australian Competition and Consumer Commission's proposed industry codes of conduct – a compliance solution?', *Journal of Law and Financial Management*, vol. 3, no. 2, pp 8-13.

- Endorsement will provide the business operator with a degree of confidence that they are applying industry best practice
- If the ACCC assesses that an industry code is not achieving its objectives, the Commission will recommend possible changes to the code to ensure all essential criteria are met
- If the industry fails to adopt the Commission's recommendations, the endorsement may be withdrawn, and
- Industry groups who achieve endorsement can advertise it but the ACCC will also advertise the removal of endorsement if an industry group fails to maintain the effectiveness of the code.²⁸

4.31 In contrast with non-prescribed voluntary codes of conduct, prescribed codes of conduct are a co-regulatory mechanism administered by government. Unlike non-prescribed codes of conduct, prescribed codes have standing under the Trade Practices Act.

4.32 The ACCC is responsible for administering prescribed industry codes of conduct under section 51AE of the *Trade Practices Act 1974*.²⁹ The ACCC promotes compliance with prescribed codes of conduct by providing education and information, and where necessary, taking enforcement action.³⁰

4.33 A prescribed *mandatory* industry code of conduct is binding on all industry participants.³¹ Mandatory industry codes are implemented where 'a systemic enforcement issue exists' and / or where 'inadequate industry coverage...fails to address industry problems'.³² There are currently three prescribed mandatory industry codes under the Trade Practices Act for franchising, oil and horticulture.³³

28 Len Gainsford, 'The Australian Competition and Consumer Commission's proposed industry codes of conduct – a compliance solution?', *Journal of Law and Financial Management*, vol. 3, no. 2, pp 8-13.

29 ACCC, Prescribed industry codes of conduct, available http://www.accc.gov.au/content/index.phtml/itemId/783097#h2_17 (accessed 8 May 2009).

30 ACCC, Prescribed industry codes of conduct, available http://www.accc.gov.au/content/index.phtml/itemId/783097#h2_17 (accessed 8 May 2009).

31 ACCC, Prescribed industry codes of conduct, available http://www.accc.gov.au/content/index.phtml/itemId/783097#h2_17 (accessed 8 May 2009).

32 The Treasury, *Prescribed codes of conduct, Policy guidelines on making industry codes of conduct enforceable under the Trade Practices Act 1974*, May 1999, p. 8.

33 ACCC, Prescribed industry codes of conduct, available http://www.accc.gov.au/content/index.phtml/itemId/783097#h2_17 (accessed 8 May 2009).

4.34 A prescribed *voluntary* industry code of conduct is binding only on those members of an industry who have formally subscribed to the code.³⁴ At present, there are no prescribed voluntary industry codes in Australia.³⁵

4.35 Non-compliance with a prescribed industry code, mandatory or voluntary, is a breach of section 51AD of the Trade Practices Act. The ACCC may take action where a breach has occurred, however, industry participants can also take their own private action for a breach of a prescribed code.³⁶

4.36 Remedies for a breach of a prescribed code of conduct may include:

- declarations that particular conduct is in breach of the Trade Practices Act
- injunctions to stop the prohibited conduct continuing, or to require some action to be taken
- damages
- rescission, setting aside or variation of contracts
- community service orders, and
- corrective advertising.³⁷

4.37 During the course of this inquiry, AAP suggested 'a mandatory industry code under the TPA' as their 'preferred approach to introducing a right of access to sporting events'.³⁸ AAP recommended that an 'Access to Sporting Events Code' should be based on the following principles:

- All news organisations must be given access to all sporting events for the purposes of news gathering, including photographic news gathering; and
- The terms of such access must:
 - be fair and reasonable;
 - must not interfere with the editorial independence of the news organisation; and

34 The Treasury, *Prescribed codes of conduct, Policy guidelines on making industry codes of conduct enforceable under the Trade Practices Act 1974*, May 1999, p. 4.

35 ACCC, Prescribed industry codes of conduct, available http://www.accc.gov.au/content/index.phtml/itemId/783097#h2_17 (accessed 8 May 2009).

36 ACCC, Prescribed industry codes of conduct, available http://www.accc.gov.au/content/index.phtml/itemId/783097#h2_17 (accessed 8 May 2009).

37 ACCC, Prescribed industry codes of conduct, available http://www.accc.gov.au/content/index.phtml/itemId/783097#h2_17 (accessed 8 May 2009).

38 AAP, *Supplementary Submission*, pp 2 & 4.

- must not require news organisations to assign or otherwise limit their use of their intellectual property for the purposes of news reporting.³⁹

4.38 AAP believed that a prescribed mandatory code of conduct was applicable because:

- i. ...in addition to the market failure referred to in this submission, a mandatory code would support the social policy objective of ensuring that the public receives quality, unbiased information about significant cultural and social events;
- ii. a mandatory code is preferable and is the most effective and simplest way to remedy the conduct of the sporting organisations. In particular, it represents the most light handed regulatory measure of the four alternatives considered in this submission;
- iii. there would be little cost to the public or indeed to any of the relevant participants. The only cost which AAP foresees is that sporting organisations may claim a loss of revenue, however that loss is theoretical given that it is based on their assertion of legal rights which do not exist at law otherwise than by contract as a result of misuse of market power;
- iv. as demonstrated by recent events, particularly with the AFL, self regulation has failed and sporting organisations are willing to dissemble. In AAP's view there is cogent evidence before the Senate Committee that the conduct of sporting organisations is clearly unacceptable and systematic and is likely to be irremediable; and
- v. while there is currently no voluntary code, AAP submits that given the sporting organisations approach to the issue and their position before the Senate Committee, a voluntary code is unlikely to be effective.⁴⁰

4.39 In-principle support for AAP's recommendation for a prescribed mandatory industry code of conduct was offered by West Australian Newspapers Ltd, PANPA, Getty Images and News Limited.⁴¹

4.40 The committee sought the advice of Treasury on the use of prescribed codes of conduct. Treasury advised that it would be necessary to determine:

...whether a code of conduct would be appropriate in the circumstances raised in this inquiry...if a proposal were to be brought forward for a code of conduct in this area, it would likely come from the Department of

39 AAP, *Supplementary Submission*, pp 5-6.

40 AAP, *Supplementary Submission*, p. 5.

41 West Australian Newspapers Ltd., *Supplementary Submission*; PANPA, *Supplementary Submission*; Getty Images, *Supplementary Submission* and News Limited, *Supplementary Submission*.

Broadband, Communications and the Digital Economy. The way that would happen is that the minister would give consideration to types of regulation that might be appropriate—or to not regulating, as the case may be—and discuss them with the Treasury, as the Treasury plays in effect a gatekeeper role with respect to the regime, and other ministers that would have a responsibility for areas touched on by this regime. Because it is a code of conduct, it is often referred to as a coregulatory regime. It is not self-regulation nor is it the traditional direct regulation by government. It is meant to be coregulatory. What that means is that the proposal for developing a code may come from the minister or it might be proposed from the industry itself and the development of the code takes place on a coregulatory basis...The idea is that the government would work very closely with the industry, through developing draft proposals, roundtables discussing draft codes and setting up processes for the further management of the code into the future. The idea is that issues that arise under the code, including disputes, are resolved through the code process rather than by having to rely on enforcement by government.

...

The other thing to keep in mind is that, although it is a co-regulatory approach, it is regulation so it would potentially involve costs to industry. Any proposal for a code of conduct would have to comply with the best practice regulation requirements, including consideration for alternative means of dealing with the problem—whether that involves self-regulatory or non-regulatory measures or other forms of intervention that might be better able to address the problem.

...

One comment I will make about existing codes is that they commonly appear to put in place a process for resolving issues, particularly where there are bargaining imbalances between parties, or perceived bargaining imbalances...⁴²

4.41 The committee is aware that a bargaining imbalance, or a perceived bargaining imbalance, between the parties may exist in the case of news media and sporting organisations in respect of accreditation agreements. Treasury advised the committee that prescribed codes of conduct can be used to address this issue. The committee recognises it would be necessary to develop a prescribed mandatory code of conduct in collaboration with both news media and sporting organisations, rather than a code being imposed on either party without input.

4.42 A prescribed code under the Trade Practices Act has the potential to result in a resolution of the kinds of disputes that currently exist between some sporting organisations and some sporting bodies. However, the committee notes that many stakeholders remain optimistic that current disagreements may be able to be worked

42 Mr James Chisholm, Manager, Consumer Policy Framework Unit, Competition and Consumer Policy Division, Department of the Treasury, *Proof Committee Hansard*, 5 May 2009, pp 30–31.

out through less intrusive mechanisms. A proposal such as AAP's for an 'Access to Sporting Events Code', while always an option, is never desirable if voluntary, negotiated arrangements are possible. The committee returns to this option in the final chapter.

Copyright in sport

4.43 The copyright in a sporting event or performance under existing law rests in the film on which the event is recorded and in the broadcast of the event. No copyright currently exists in the sporting event or performance itself:

Ms Daniels—No, not per se. There would be copyright in the broadcast of an event; that is a separate copyright. In the underlying film, if it is not live, and in any underlying works, yes, definitely—but in an event per se, no.

CHAIR—That is fine. So there is no copyright inherent in a sporting event?

Mr Bowman—No. Copyright only subsists in certain forms of protected expression. Those forms of protected expression are literary works, musical works, artistic works and also in film, sound recordings and broadcasts. So, if a footballer wanted to write their autobiography, there would be copyright in the book as a literary work, but there is no copyright in any event.⁴³

4.44 Lander & Rogers Lawyers recommended to the committee that the Copyright Act be amended so that a copyright lay with a sporting event or performance in itself:

The athletes, clubs and sporting organisations put on the 'show'. It is our submission that they should be rewarded by ensuring the Copyright Act protects their performance. That is, that there should be copyright in the performance of sport. Sporting organisations should be able to use and commercialise this intellectual property in the same way they can with other intellectual property assets. Whilst some discussion will need to be had to properly define this right, we submit that the government should recognise 'sporting works' as a category of protected works under the Copyright Act. Using this approach, the rights of news agencies would still be protected under the fair dealing for news reporting provisions of the Copyright Act.⁴⁴

4.45 Lander & Rogers Lawyers further submitted that this could be achieved by 'a clear distinction and protection of the rights in the event belonging to the event owner'.⁴⁵ It was proposed that such a definition include:

43 Ms Helen Daniels, Assistant Secretary and Mr Norman Bowman, Acting Principal Legal Officer, Copyright and Classification Branch, Attorney-General's Department, *Proof Committee Hansard*, 5 May 2009, p. 17.

44 Lander & Rogers Lawyers, *Submission 33*, p. 5.

45 Lander & Rogers Lawyers, *answers to questions on notice*, 29 April 2009 (received 8 May 2009).

...the rules of the game, and the fact that the game is being played under the auspices of, or recognised by, the peak body for that sports in Australia. The right should recognise in a legal sense the recognition and sporting rights conferred on national sporting bodies by being a member of an international sports federation...the sporting body creates the event. It determines the rules, and generally provides the venue and the officials. It ensures and facilitates that the event actually proceeds.⁴⁶

4.46 Such an amendment to the Copyright Act would give legislative effect to a claim made by sporting organisations during this inquiry that they are the intellectual property holders in a sporting event.⁴⁷

4.47 The Attorney-General's Department informed the committee that under current copyright law, there is no intellectual property in a sporting event or performance per se. The department drew comparison with the current copyright in a musical or theatrical performance, advising that this copyright seeks to protect a performer from unauthorised recording of their performance and is acknowledgement of the copyright in the underlying written work, as well as Australia's international obligations:

Ms Daniels—...The protection of performers derives from the close connection to either a choreographic work or a literary work or an artistic work. That is the creative input that you are protecting. The performers rights extend to singers et cetera, but they do not extend to actors in the Hollywood sense of the term. So performance protection is quite limited. And as you probably appreciate from your knowledge, Senator, most of this derives from international treaty. Australia's approach to a lot of these issues derives from what our treaty obligations are. The World Intellectual Property Organisation's relevant treaty on performers does not extend into the sporting area.

Mr Bowman—Within the Copyright Act there is copyright per se, which is basically economic rights, and then there are certain other rights recognised which are not part of copyright. They include performers' rights as well as moral rights. The performers' rights extend, at their most basic, to being able to prevent an unauthorised recording of a performance. The reason for that right being recognised was essentially to prevent bootlegging—where somebody could go to a concert, make a sound recording or a film of the performance and then sell the sound recording afterwards.⁴⁸

46 Lander & Rogers Lawyers, *answers to questions on notice*, 29 April 2009 (received 8 May 2009).

47 See COMPS, Submission 31; Mr James Sutherland, Chief Executive Officer, Cricket Australia, *Proof Committee Hansard*, 15 April 2009, p. 14; Mr Shane Matiske, Director, Strategy and Special Projects, National Rugby League, *Proof Committee Hansard*, 15 April 2009, p. 24.

48 Ms Helen Daniels, Assistant Secretary and Mr Norman Bowman, Acting Principal Legal Officer, Copyright and Classification Branch, Attorney-General's Department, *Proof Committee Hansard*, 5 May 2009, p. 18.

4.48 Vesting copyright in a sporting event or performance would not address what some submitters have argued is the main problem: media organisations using the fair dealing exception for the reporting of news to protect what the sports organisations believe are non-news uses such as sport web pages.

Other copyright law reform

4.49 The AAP and Optus recommended that the Copyright Act be amended so as to invalidate contractual abrogation of the fair dealing exception for news reporting:

AAP believes that the most effective way to protect the public interest in receiving independent and unbiased information about significant social and cultural events is to...provide expressly that sporting bodies can not “contract out” of and media organisations cannot be required to sign away the benefit of the fair dealing exception under the Copyright Act.⁴⁹

And:

Optus considers that the existing fair dealing principles may be undermined by restrictive coverage conditions and/or accreditation conditions of the kind that have been sought by some sporting organisations in recent times. Accordingly, Optus would support an amendment to the legislative framework to render of no effect any provision of an agreement or contract that would exclude or modify the terms of fair dealing rights as they relate to news reporting, criticism and review.⁵⁰

4.50 In 2002 the Copyright Law Review Committee made recommendations for copyright law reform. Some of these recommendations related to whether it should be possible to abrogate one's legal rights under fair dealing exemptions, though the matter was raised in a different context at that time, and it is a legally complex area. The committee identified this policy option relatively late in its inquiry and unfortunately the Law Council of Australia, though willing to assist the committee, in the time available was unable to provide input. Correspondence with the Attorney General's Department raised queries as to whether it would in fact be of any assistance in dealing with the matters raised before the committee. The committee did not consider this issue in detail, but does return to it briefly in the final chapter.

49 AAP, *Submission 24*, pp 17-18.

50 Optus, *Submission 18*, p. 2.

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

Appendix 1

Submissions and tabled documents

Submissions

1. Dr Kayt Davies
2. The Associated Press
3. Getty Images
4. The Coal & Allied Newcastle Knights
5. Mr David Smith
6. World Association of Newspapers
7. AAA Australian Athletes Alliance
8. The Australian and New Zealand Sports Law Association
9. South African National Editors' Forum
10. Reuters News
11. Hutchison 3G Australia
12. West Australian Newspapers Limited
13. News Media Coalition
14. Pacific Area Newspaper Publishers' Association
15. Australian Womensport and Recreation Association
16. Softball Australia
17. Agence France-Presse
18. Optus
19. SBS
20. News Limited
21. Fairfax Media
22. Yahoo !7

23. Free TV Australia
24. Australian Associated Press
25. Australian Press Council
26. Australian Football League
27. Australian Sports Commission
28. Premier Media Group
29. Ninemsn
30. International Cricket Council
31. Coalition of Major Professional Sports
32. Tennis Australia
33. Lander & Rogers Lawyers
34. International Olympic Committee
35. Cricket Australia
36. Australian Broadcasting Corporation
37. National Rugby League
38. Victoria Racing Club
39. Sports Media Publishing Pty Ltd
40. ASTRA
41. Confidential
42. Racing Victoria Limited
43. Australian Racing Board Limited
44. Department of Health and Ageing

Tabled documents

Australian Football League, *Next Generation – Securing the Future of Australian Football*, tabled by Australian Football League, 15 April 2009, Canberra.

Supplementary Material for Senate Hearing, tabled by the Coalition of Major Professional Sports, 15 April 2009, Canberra.

Exchanges Between AAP and AFL on Media Accreditations, tabled by Australian Associated Press, 16 April 2009, Sydney.

Supplementary Submission, tabled by Premier Media Group, 29 April 2009, Melbourne.

Appendix 2

Public hearings

Wednesday, 15 April 2009 – Canberra

News Media Coalition

Mr Andrew Moger, Executive Director

Mr Dominic Young, Board Member

Associated Press

Mr David Tomlin, Associate General Counsel

Cricket Australia

Mr James Sutherland, Chief Executive Officer

Mr Peter Young, General Manager, Public Affairs

Ms Stephanie Beltrame, General Manager, Media Rights

Coalition of Major Professional Sports

Mr Peter Friend, General Manager, Strategy, Communications and Chief Executive Officer's Office, Australian Rugby Union

Mr Shane Mattiske, Director, Strategy and Special Projects, National Rugby League

Mr Gillon McLachlan, Chief Operating Officer, Australian Football League

Ms Kate Roffey, Manager, Tennis Development and Government Business, Tennis Australia

Ms Jo Setright, Head, Legal and Business Affairs, Football Federation Australia

Mr James Sutherland, Chief Executive Officer, Cricket Australia

Australian Football League

Mr Gillon McLachlan, Chief Operating Officer

Mr Simon Lethlean, Manager, Broadcasting, Legal and Business Affairs

West Australian Newspapers Ltd

Mr Peter Jeanes, Editorial Manager

Mr David Smith (Private capacity)

ninemsn

Mr Nicholas Gray, Chief Financial Officer and Head of Strategy

Thursday, 16 April 2009 – Sydney

Thomson Reuters

Mr Christoph Pleitgen, Managing Director, Reuters News Agency

Hutchison 3G Australia

Ms Amanda Hutton, General Manager, Products and Services

Ms Simone Brandon, Corporate Counsel

Australian Broadcasting Corporation

Mr Bruce Belsham, Editor, abc.net.au

Ms Georgina Waite, Senior Lawyer

Special Broadcasting Service

Mr Bruce Meagher, Director, Strategy and Communications

Ms Lesley Power, General Counsel

Getty Images

Mr Stuart Hannagan, Vice President

News Ltd

Mr Campbell Reid, Group Editorial Director

Ms Creina Chapman, Manager, Corporate Affairs

Pacific Area Newspaper Publishers Association

Mr Mark Hollands, Chief Executive Officer

Fairfax Media

Mr Mike Van Niekerk, Editor-in-Chief, Online

Australian Associated Press Pty Ltd

Mr Clive Marshall, Chief Executive Officer

Mr Tony Gillies, Editor in Chief

Ms Emma Cowdroy, General Counsel

Australian Press Council

Mr Jack Herman, Executive Secretary

Agence France-Presse

Mr Pierre Louette, Chairman and Chief Executive

Mr Marc Lavine, Bureau Chief, Australia, New Zealand and South Pacific

Wednesday, 29 April 2009 – Melbourne**International Olympic Committee**

Mr Kevan Gosper, IOC Press Commission Chairman

Mr Anthony Edgar, Head of Media Operations

Premier Media Group

Mr Jon Marquard, Chief Operating Officer

Ms Christina Allen, Manager, Legal and Business Affairs

Dr Kayt Davies (Private capacity)**Sports Media Publishing Pty Ltd**

Mr Warren Keir, Managing Director

Lander & Rogers Lawyers

Mr Ian Fullagar, Partner

Ms Amelia Lynch, Partner

Australian and New Zealand Sports Law Association Inc

Ms Mel Mallam, Director

Mr Martin Ross, Director

Tuesday, 5 May 2009 - Canberra

Australian Sports Commission

Mr Rob Clement, General Manager, Innovation and Best Practice

Mr Greg Nance, Director, Sports Performance and Development

Attorney-General's Department

Ms Helen Daniels, Assistant Secretary, Copyright and Classification Branch

Mr Norman Bowman, Acting Principal Legal Officer, Copyright and Classification Branch

Department of the Treasury

Mr James Chisholm, Manager, Consumer Policy Framework Unit, Competition and Consumer Policy Division