



Australian Government
Australian Sports Commission

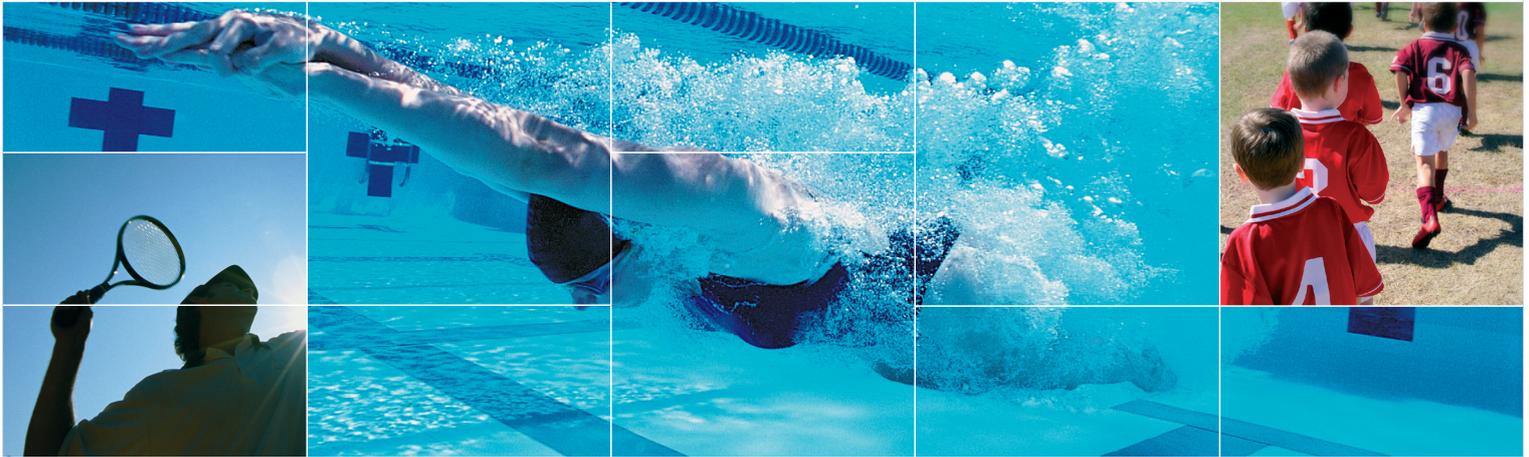


TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
OVERVIEW.....	4
Introduction	4
The ASC’s position on sports news reporting and fair dealing.....	5
Importance of sport in Australia	6
Australian Sport Funding Models.....	7
Key drivers of revenue in the digital world	8
The Transitioning media landscape.....	9
Challenges presented by the Emergence of new digital media.....	10
Additional considerations	11
Insights from International markets.....	12
Suggested outcomes.....	12
RESPONSE TO TERMS OF REFERENCE	14
A. The balance of commercial and public interests in the reporting and broadcasting of sports news;	14
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;	15
C. Whether and why sporting organisations want digital reporting of sports regulated, and what should be protected by such regulation;	16
D. The appropriate balance between sporting and media organisations’ respective commercial interests in the issue;	18
E. The appropriate balance between regulation and commercial negotiation in ensuring that competing organisations get fair access to sporting events for reporting purposes;	19
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;	20
G. Should sporting organisations be able to apply frequency limitations to news reports in the digital media;	21
H. The current accreditation processes for journalists and media representatives at sporting events, and the use of accreditation for controlling reporting on events;	21
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;	22

EXECUTIVE SUMMARY

In contrast to the wider public perception of the seemingly wealthy successful sporting teams and organisations operating within the Australian sporting landscape, is the evidence of regular reports of financial difficulty among various levels of our domestic sporting industry.

The most recent public admissions of financial difficulties have involved national league football teams, national basketball league teams and ongoing regular concerns over several Australian football league clubs. This despite all these teams being part of highly publicised and broadcast national sporting leagues, receiving significant media rights for access to their content.

In addition, the majority of Australia's Olympic sports are dependent on government financial support to fund their development pathways to ensure our elite athletes have every opportunity to compete and be successful on the world stage. Often these national sporting organisations cannot negotiate or influence any media outlets to purchase broadcast rights relating to their competitions and events even though they are highly publicised through news reports, updates and articles.

On the global stage Australian sport is not only feeling the effects of the Global Financial Crisis, through reduced sponsorship endorsement, reduced corporate marketing budgets and a deflated naming rights market, our sporting landscape has to deal with an increasingly global sports economy. The advent of world leagues, ever expanding international events and competitions has meant the domestic broadcast market is being eroded by increasing opportunity for international sporting content to be received by more and more Australians through different mediums, free to air, pay TV, mobile technologies and the internet.

Whilst these challenges do not directly form part of the scope of this important inquiry, the protection of sports' intellectual property in an emerging digital world is. Protecting and therefore enabling sports to commercialise their digital intellectual property is critical for the Olympic, non-Olympic and professional sports as the main long term opportunity to develop independent revenues through either advertising or subscription models. The key issues for all is protecting the sports' intellectual property and at the same time protecting and embracing independent news reporting.

The Australian Sports Commission (ASC) supports the Senate addressing this critical and rapidly changing issue of reporting sports news and the emergence of digital media for Australian sport.

The ASC supports open and unfettered access for the public to sports news, regardless of the media platform. News reporting on relevant and current sporting events is both critical for public interest and debate as well as generating exposure for major sports for all Australians. Public access across all media platforms to reporting and broadcast of sports news reporting should remain supported and unencumbered.

In the traditional media environment, covered by the Copyright Act, fair dealing had additional informal agreements to limit highlight clips on television in duration, frequency

and number of reports. The intent of the original copyright act and the fair dealing provisions served the public interest. However, these principles now need to be applied consistently across all media platforms, including digital media. In the evolving digital world, the principles of fair dealing and legitimate sports news reporting are still relevant and should be applied across all digital media platforms.

The fair dealing provision requires modernisation to reflect the rapid emergence of new forms of media. This must aim to ensure that news organisations cannot directly commercialise or proliferate sports content without limitation.

The reporting of legitimate sports news should not be restricted or limited by any new regulations or guidelines; however sports intellectual property needs to be protected. Any regulation or guideline should strive to draw a more distinct border between legitimate news reporting and commercial sports content. The reporting of sports news is absolutely necessary and the ASC is not seeking to restrict reporting organisations from making commercial returns on appropriate reporting of news.

The preferred method for protecting sports' intellectual property and enforcing the intent of the fair dealing provision is a legally enforceable guideline or code of practice. However, in order to ensure these guidelines are legally binding, appropriate regulations need to be in place. To achieve this end, action is required at three levels: It must:

- Clarify regulation on (or definition of) fair dealing to be consistently applied across all media platforms;
- Create a set of guidelines or Code of Practice enforceable by regulation to ensure that agreed, specific limitations are in place;
- Have an agreed upon dispute resolution mechanism (such as mediation) that legal action is not required.

In designing any legislation or guidelines, recognising and maintaining archiving rights for Key Cultural Institutions and National Sporting Organisations (NSOs) to preserve and maintain digital media asset is essential. Non-commercial 'Performance Analysis' should be specifically covered in the Copyright Act and fair dealing exception to provide the full benefit of improved performance across all sport in Australia.

In addition any legislation change should reasonably control the ability to protect rights and provide for unique situations such as large international events. Otherwise, it will require special legislative requirements for those events.

Any Regulation must;

- be firm and robust so that sports are not laboured unnecessarily with onerous methods of monitoring and challenging media organisations;
- support fair access to all media types so long as they are reporting legitimate sports news ensuring a wide range of coverage and viewpoints;
- provide clarity around the definition of legitimate sports new reporting to enable NSOs to implement consistent controls.

Sport commercialisation of intellectual property should not limit the legitimate reporting of sports news across all media platforms. It is important that the public has access through all relevant media platforms. However, sports should be able to limit access to sporting intellectual property in order to commercialise content and maintain exclusivity of media rights across all media platforms. Sporting organisations should be afforded the protection over the sport's intellectual property regardless of media platform

In enacting regulation, guidelines or media accreditation terms, there will need to be limitations applied to sports content across all media platforms. The limitations could include:

- frequency of refresh
- length of video clips
- volume of coverage
- amount of images and video available both current and historic
- context of use (i.e. promotion of unlicensed products, unrelated advertising)
- timing in relation to event.

The most likely desired outcome for all parties involved would be the creation of industry guidelines. Industry guidelines would be most effective if collaboratively developed with sports, media organisations, government and other key stakeholders involved.

An expedient dispute resolution process should accompany any regulation or guidelines. In particular, this process should minimise the administrative burden on government, media organisations and sports, and allow for rapid resolution but also appropriate input from all stakeholders any combination of regulations and guidelines should seek to:

- provide a clear definition of legitimate sports news content regardless of medium,
- support sports of all sizes in negotiating accreditation terms,
- be equitable for all media and news reporting organisations,
- be enforceable without legal action (such as mediation),
- minimise the scope for disputes by including key stakeholders,
- offer provisions for exceptional circumstances and exemptions,
- provide royalty free access for non-commercial Performance Analysis,
- protect the Australian sports legacy through a clear digital archiving rights description.

Finally, there is a need to be innovative in finding a solution that ensures, open and unfettered access for the public to sports news; protection and ability for sports to commercialise their intellectual property; non restriction of legitimate reporting of sports news or restricting reporting organisations from making commercial returns on appropriate reporting of news; regardless of media platform, within a framework that is workable and cost effective to all parties.

OVERVIEW

Introduction

The Australian Sports Commission (ASC) is pleased to provide a submission to the Senate Inquiry on the reporting of sports news and the emergence of digital media. It provides this submission on the basis of its vision and key objectives.

ASC Vision: To continue to be recognised as the world leader in developing high performance and community sport.

The ASC's key objectives are improved participation in structured physical activity, particularly organised sport, at the community level, including through leadership and targeted community-based sports activity; and to secure excellence in sports performance and continued international sporting success, by talented athletes and coaches, including through leadership in high-performance athlete development, and targeted science and research:

- **sustained achievements** in high-performance sport by Australian teams and individuals;
- maintaining the Australian Institute of Sport (AIS) standing as a world centre of excellence for the training and development of elite athletes and coaches;
- **grow sports participation at the grassroots level, particularly for children, youth, Indigenous Australians, women and people with a disability;**
- **improve best-practice management and governance of sport within and through national sporting organisations;**
- **enhance and maintain the integrity of Australian sport** to ensure a fair, safe, ethical and inclusive culture pervades sport at all levels;
- **enhancing Australia's leadership in the international sports community.**

The ASC objectives highlighted in bold are those that have links to the scope of this Senate Inquiry.

The ASC notes to the Inquiry that the National Sport Organisations are not-for-profit organisations dedicated to the development of the sport. The commercial interests of the NSOs are reflective of a need to fund their sports' international competitions, national leagues and the ongoing development of the sports and community involvement at a 'grassroots' level.

However, at this time Australian sport is being particularly challenged not only as a result of the global financial crisis but also the need for further investment in Olympic high performance sport. The recent Australian Olympic Committee (AOC) submission to the Prime Minister and Minister of Sport, *The National High Performance Plan for High Performance Sport*, suggests that the Olympic sports would require additional funding of \$109.5 million per year to maintain Australia's leading position in Olympic sports. The

future needs of Australian sport are also being reviewed by the Minister of Sport's Expert Independent Review Panel chaired by David Crawford. Further, the emerging and professional sports are facing their own challenges in ensuring the long term viability of some of their clubs which is an issue at the heart of the successful national leagues.

Whilst these challenges do not form part of the scope of this important Inquiry, the protection of sports' intellectual property in an emerging digital world is.

Protecting intellectual property and therefore enabling sports to commercialise their digital intellectual property is highly beneficial for the emerging and professional sports but critically it is also the main long term opportunity for the ASC fully funded sports to develop independent revenues through either advertising or subscription models. The key issue across all sports is protecting the sports' intellectual property and at the same time protecting and embracing independent news reporting.

The ASC's position on sports news reporting and fair dealing

The ASC supports the Senate addressing this critical issue of reporting sports news and the emergence of digital media for Australian sport. Other countries are dealing with the same issues and Australia has the opportunity to set an international benchmark on the clarity and definition regarding the digital reporting of sports news. The ASC endorses freedom of information and sports news reporting with open public access to sports news and information. News reporting on relevant and current sporting events is both critical for public interest and debate, as well as generating exposure for major sports for all Australians. NSOs should ensure that news reporting organisations continue to have access to sporting events for the purposes of genuine news reporting.

News reporting models are evolving onto digital platforms with the ever changing media environment. The ASC reiterates that the reporting of sports news will continue irrespective of channel or technology platform.

It is critical that the Senate Inquiry develop solutions in regards to:

1. Clarification of fair dealing protection on sporting news and the protection of sports' intellectual property;
2. Inclusion of Performance Analysis under fair dealing protection.

Clarification of fair dealing protection

The current distinction between reporting of news and entertainment (sports' intellectual property) content is blurred. The transition from traditional to new media has opened broad interpretations of fair dealing that have surpassed the intent of the *Copyright Act of 1968*. The current fair dealing interpretation does not provide adequate protection for sports media rights in relation to defining the boundary between the reporting of sports news and commercial sports content. ASC requests that the interpretation of fair dealing be reformed to support a clear and enforceable distinction irrespective of media platform between:

- Legitimate Sports News Reporting - Where 'sports news' is defined as information or commentary about recent sporting events or happenings, limited to content that is sufficient to convey this information or support related commentary;
- Commercial Sport Content (Intellectual Property) - Sporting content that provides extensive and directly commercial able coverage of sporting events including live and archived information, photographs, video footage or commentary. Also relates to intellectual property (IP) or content developed by the sporting bodies such as editorial, commentary, statistics, player profiles, images or videos.

Inclusion of Performance Analysis under fair dealing protection

In order to maintain Australia's prominence in global sporting performance, focus and investment in technology and sport science is a necessity. This has been identified by the ASC and further confirmed in the recent AOC submission on high performance sport. Performance analysis is a non commercial coaching activity conducted within the Australian sporting industry that directly relates to improving athletic performance. Elite coaches, athletes and sport scientists analyse video recordings as part of their ongoing technical direction and tactical planning processes. Royalty-free access to broadcast sports footage (including supporting graphics, animation, telemetry) by NSOs and peak sport bodies is required for performance analysis. The majority of the benefit of advances goes directly to the sport and broadcast partner in improving the athlete's performance and therefore quality of the sport broadcast product. In enhancing the fair dealing legislation, the ASC contends that royalty free performance analysis use should be protected.

Importance of sport in Australia

Sport is integral to Australia's way of life, our view of ourselves and how we are viewed by the rest of the world. It helps build the social cohesion that binds families, communities, regions and the nation. Sport is important for more than just reasons of national pride, or even as a way of building a fitter, more vibrant nation. Sport reaches across our society in ways which are not always apparent, and involves even those who profess no love of sport.

Sport and recreation are major components of the national economy, be it through employment in the sport and recreation industry (75,155 people in 2006), sales of goods and services both domestically and internationally and small business development. In 2004-05, the total income generated by the sport and recreation industry in Australia was estimated at \$8.82 billion. The income reported by sports and physical recreation clubs, teams and sports professionals was \$1.88 billion and sports and physical recreation administrative organisations was \$1.53 billion.

Sport is also a powerful tool for international engagement as well as being important for tourism, aid and trade. Australia has developed an international reputation for sporting excellence, through our national team performances, the staging of major international events including the Olympic and Paralympic Games, the 2003 Rugby World Cup and the

Federal Government is supportive of the Football Federation's bid to bring the World Cup to Australia in 2018.

Major international sporting events yield opportunities in tourism. Such activities attract people to Australia's rural and regional areas as well as major cities generating income and employment for local economies. Further, it can be said that major events attract sizeable global television audiences, providing significant opportunities to promote Australia as a tourism destination.

At a local level, involvement in sport builds families as well as communities. Active parents provide positive role models for children for engaging in sport and for maintaining lifelong activity. As importantly, the parents who are involved in their children's sport through coaching, umpiring and general volunteering send a powerful message about the importance they place on sharing and valuing the efforts and interests of their children.

Sport has a range of benefits at both the community and individual level. At the community level, sport brings people together, breaks down barriers and unites those who may have nothing else in common. Sport has a unique ability to transcend race, religion, gender and creed. It is truly a tool of social cohesion. For sport to continue to be able to provide these and other benefits to the Australian community it needs to be able to protect its commercial rights and commercialise these within a commercial context to ensure its financial and economic sustainability.

[Adapted from *Australian Sport: emerging challenges, new directions*]

Australian Sport Funding Models

New media rights are becoming increasingly important for sport in Australia across all sport types. In most cases, Australian sport has a smaller talent pool and funding level in relation to other key Olympic competitors; a reality of the size of Australia. Elite sport in Australia relies on a range of funding models from primarily government funded to self funded professional sport. Across all categories, new media has the opportunity to create or enhance revenue streams and close the funding gap.

Olympic Sports fully funded by the ASC (Rowing, Cycling, Sailing, Canoeing, Winter Sports, Equestrian, etc): The audience is not large enough to justify TV coverage so they have to fund TV production themselves through a broadcaster. However, aggregating the audience over the reach of the web may support online coverage. Digital Coverage, both on-line and mobiles, can enable these sports to build a formidable digital presence that then has the potential to build economic numbers of unique browsers (UBs). UBs will drive either advertising and or subscriptions, and protecting unique access to these sports IP is paramount. For example, the World Cycling Championships and World level cycling events can be viewed streaming online through the Union Cycliste International (UCI) Channel on www.cycling.tv which is advertising and subscription funded. The reach of new media is opening up new fragile sources of revenue that need specific protection.

Emerging Professional (Swimming, Athletics, Netball, Basketball, etc.): These sports have a large enough audience to enable major events to be covered on TV. New media

technology will enable the NSOs to supplement the emerging broadcast rights with increased new media and sponsorship revenue.

Self Funded Professional Sport (Australian Football League (AFL), National Rugby League (NRL), etc.): New media rights are a growing portion of revenue and will become larger, enhancing the traditional media rights. This revenue source is directly under threat from the proliferation of new media content from news reporting organisations. Self funding of these sports is based on the external revenue sources.

These alternative models can be demonstrated in the illustrative mode below:

Sports Revenue Sources :

Revenue Opportunities	Fully Funded Sports	Emerging Professional	Professional Sports
1. Broadcasting rights fees (over-the-air, cable, direct) <ul style="list-style-type: none"> - national - local - Digital (as a medium) 			
2. Sponsorships <ul style="list-style-type: none"> - teams - arenas - in-stadium/arena (signage, "official" stadium concession brands) - broadcast ads 			
3. In-stadium <ul style="list-style-type: none"> - naming rights - luxury boxes - personal seat licenses - concessions - parking 			
4. Stores <ul style="list-style-type: none"> - branded retail partners - licensed merchandise/equipment - publications/videos 			

Source: Adapted From Sport – Funding and Finance

Key drivers of revenue in the digital world

The key drivers (model) in generating revenue in the digital world are:

Advertising Revenue: Content drives unique browser traffic generating ad revenue;

Subscription Fee (Platform): Content drives increased subscriptions;

Premium Service (Content): Exclusive content drives revenue for a pay-per-view model or a monthly premium subscription fee.

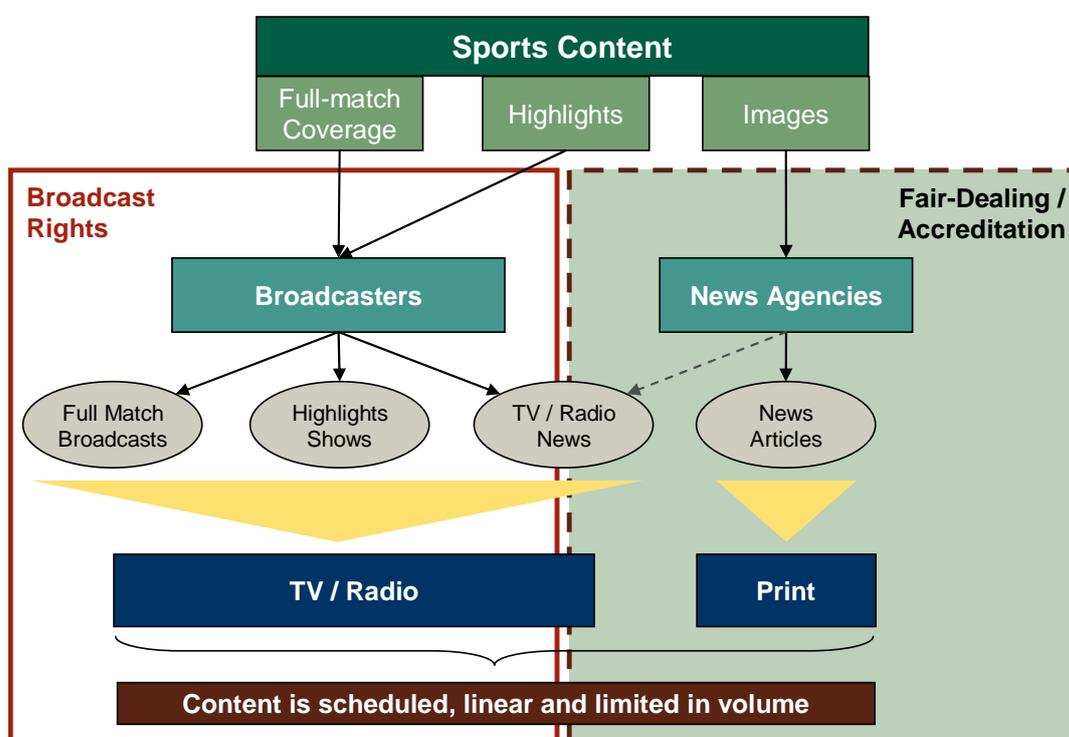
The foundation of being able to commercialise any new media platform is scale through the number of unique browsers and click throughs. Under current fair dealing interpretation, the volume of unique browsers through the official sites is at risk of being fragmented by third party media outlets containing significant content (sports owned

intellectual property such as videos and libraries). Once this audience is captured elsewhere (media outlets), there is little chance of these emerging sporting organisations being able to commercialise their digital IP.

The Transitioning media landscape

The ‘traditional’ media environment (as shown in the following figure) in Australia has been linear content, delivered across a limited number of platforms (i.e. newspapers, radio and television). In the traditional environment, fair dealing had additional informal agreements to limit highlight clips on television in duration, frequency and number of reports. This environment is evolving with rich digital content being delivered on-demand across a wide range of technology platforms (e.g. the internet, mobile phones, mobile devices, etc.).

Traditional Media Environment:



The nature of both sports news reporting and sports broadcasting will change in the next 5-10 years. Audiences are migrating from ‘traditional’ linear channels to digital platforms. The role of these emerging digital platforms in news reporting and sports content is becoming increasingly important. Similarly, the value of sports content as an aggregator of audiences will become ever more important in this increasingly fragmented media environment.

Challenges presented by the Emergence of new digital media

Digital - The New Television

The benefit of the technology is that “anyone can put content onto a website and deliver it directly into people’s homes...”

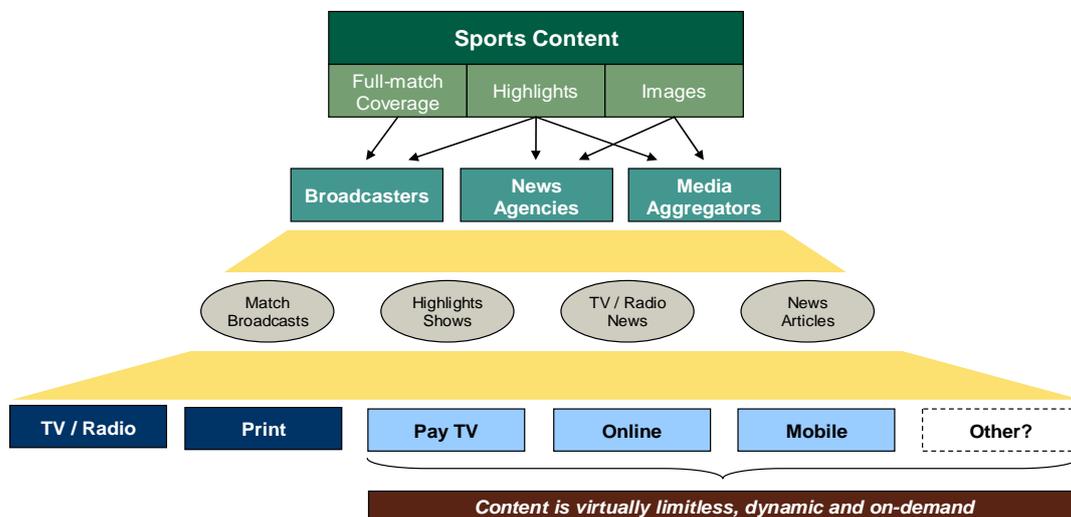
The technology offers either an additional or an alternative revenue source for sports. For those sports that struggle to get television coverage, this is an alternative source; but for those that are already on television, the technology offers further opportunities.

Source: Sports Media Rights

In the ‘traditional’ media environment, content distribution channels naturally delineated sports news from commercial content with more clearly defined boundaries. The format of traditional sports news reporting limited the volume and availability of sports news content on offer, for example in a television sports bulletin or press article.

While the transition to the ‘digital media’ sports news has not entirely changed, it has opened up almost limitless space for news reporting organisations. News and media organisations are now able to offer virtually unlimited volumes of content with ‘on-demand’ and near-live delivery to consumers. This applies to video, audio, graphics, statistical/results telemetry and print. The new reporting organisations are “blurring” the boundaries of sports news reporting and sport intellectual property as shown in the figure below.

New Media Environment:



In the evolving digital world, the ASC continues to strongly endorse genuine sports news reporting, irrespective of the technology platform. However, the potential proliferation of ‘on-demand’ sports content represents a significant threat to sports IP through its media rights that affects their future funding opportunities.

News and media organisations are seeking to drive audiences to their digital properties (e.g. websites or mobile portals), and as a result have rapidly broadened their content

offerings. As part of this overall trend, these organisations have begun expanding the boundaries in terms of sports news content to be beyond news reporting.

The distinction between sporting news content and sport IP content is less defined. For example, news organisations have begun developing unofficial online sports portals offering sports highlights footage as well as large volumes of archived images and video.

The ability for reporting organisations to broaden their content propositions in this way represents a significant threat to sports rights holders' IP and exclusivity in the case of professional sports. This will negate the opportunity for the fully funded sports and emerging sports to build funding models using their IP and again place reliance on further government funding. As a result, the value of sports' digital media rights are already being eroded. In addition, the advanced nature of the media organisations' offerings will be ahead of the emerging sport capabilities essentially blocking them from ever commercialising their digital rights.

If not resolved, the impact is likely to become more significant. As the media environment evolves, new digital platforms will create new sources of rights income. Therefore, the inability for sports to fully protect the exclusivity of their IP content in this space will represent a growing threat to their funding.

The fair dealing provision exists to protect the reporting of news, not the ability of news and media organisations to make an additional commercial return from news content and to develop a sports type portfolio. It is clear that under the auspices of fair dealing, a number of media organisations are expanding beyond a reasonable definition of 'news' in terms of the content on offer. These organisations are infringing upon the commercial interests of sports organisations in terms of their media rights and are therefore undermining the viability and development of those sports.

Additional considerations

Australian Sports Legacy

In considering any new legislation, the ASC suggests that attention should be given to protecting Australian sports legacy in the public interest. The problem of 'Digital Amnesia' will become a much larger issue as the proliferation of media platforms and content expands and the application of technology protection measures (TPMs) by content distributor's increases. With no clear direction on the responsibility of retaining and maintaining key Australian cultural moments in sports, it defaults to the media rights holders. Media rights holders do not have the incentive, nor resources, to protect and maintain information currently being created by the proliferation of media formats for future generations. In designing the legislation or guidelines, recognising and maintaining archiving rights for key cultural institutions (and NSOs) to preserve and maintain digital media asset is essential.

Hosting International Events

Custodians of major global sporting events demand that host nations must comply with strict requirements regarding the use and protection of IP and media rights. Typically

these events are subject to stringent accreditation agreements with host countries required to provide sufficient regulation to support these agreements. In the event that Australian Government legislation on fair dealing does not support these obligations, Australia will not be permitted to host the event.

International trends are showing strict limitations by highlight clips broadcast over the internet. Any legislation change should reasonably control the ability to protect rights and provide for unique situations such as large international events. Otherwise, it will require special legislative requirements for those events.

Increased Awareness of NSOs on Media Rights

Historically, there has been a general lack of rights management awareness within the fully funded NSOs. They do not have the resources or experience to monitor and defend suspect use of their content in accordance with the Copyright Act. Currently, there is little recourse for the fully funded or emerging sports as they do not have the resources to dispute the conflict in court. Clear regulation or guidelines are required to aid protection of these media rights. Even for the professional sports, there are potential conflicts as news reporting organisations may also be bidders for broadcast rights. Without clarity and transparency, sport in Australia has significant challenges in protecting their IP unlike bodies such as the International Olympic Committee (IOC) and or the Federation Internationale de Football Association (FIFA).

Insights from International markets

ASC has reviewed equivalent regulation in other markets as well as the typical accreditation terms used by international sports. Major sporting organisations worldwide are enacting very strict media accreditation terms in relation to the use of video highlight clips online. For example, the IOC, National Football League (NFL), Major League Baseball (MLB) and International Rugby Board (IRB) do not allow any video highlight clips to be broadcast online by unlicensed websites. Currently, they are having success in enforcing these restrictions either due to the size and power of these sporting organisations, or due to the fact that there is no legal ground to challenge the limitations.

Suggested outcomes

The ASC is seeking from the Inquiry clarity and improved protection in terms of the application of 'fair dealing' in the evolving digital media environment. In particular, any regulatory reform or guidelines should:

- Provide a clear definition of legitimate sports news content regardless of medium;
- Support sports of all sizes in negotiating accreditation terms;
- Be equitable for all media and news reporting organisations;
- Be enforceable without legal action (such as mediation);
- Minimise the scope for disputes by including key stakeholders;

- Offer provisions for exceptional circumstances and exemptions;
- Provide royalty free access for non-commercial performance analysis;
- Protect the Australian sports legacy through a clear digital archiving rights description.

...Availability to sports enthusiasts of live sports coverage which is not being aired on TV in their locality, and their ability to review highlights and archives when it suits them will carry a financial value [for sports] either through subscription [or advertising]...

Source: Broadband Opportunities in Sports

However to enable this to be achieved and deliver on the ASC's key objectives it is vital that the sports IP is protected through fair dealing. The protection of news reporting across all platforms including digital media must be protected.

The ASC requests the Inquiry to consider the challenge of enforceability of Copyright / Fair Dealing for the fully funded and emerging professional sports in particular. The NSOs of these organisations have very limited financial resources but are focused on high performance and development. These NSOs also do not have the ability to challenge copyright and fair dealing within a court based system. The inclusion of regulation will assist these NSOs to protect their intellectual property and build alternative revenues external to the Australian tax payer.

RESPONSE TO TERMS OF REFERENCE

A. The balance of commercial and public interests in the reporting and broadcasting of sports news;

Reporting of sports news is important for the exposure and public interest of sport in Australia. Exposure and discussion promoted by appropriate news reporting is key to generating interest in sport and plays a critical role in its ongoing development. There is no interest in limiting the reporting of legitimate news, specifically:

- Fully Funded / Emerging Professional Sports: Many of the Olympic / emerging sports struggle for exposure in the mainstream media. News reporting, while brief, can capture the energy and excitement from an event and increase interest in the sport;
- Self Funded Professional Sports: Sports news reporting across all media platforms helps professional sports compete for audience in the crowded entertainment marketplace. Top of mind awareness is critical to maintaining the health of the sport and increasing interest and participation.

The NSOs fully support independent and unencumbered access for reporting of sports news. However, the intellectual property of sports needs to be protected consistently across all media platforms. The ability to fully commercialise sports intellectual property provides revenue streams to support the ongoing viability and elite performance of the NSOs. Protecting revenue streams of NSOs is in the public interest as:

- Fully Funded/Emerging Professional Sports: Olympic/emerging sports are primarily supported by tax payer contribution, therefore any commercial interest of the sport is aligned with the public interest;
- Self Funded Professional Sports: The major professional sport governing bodies are primarily self funded and invest the majority of revenue back into the development of sport at every level from the professional leagues to community development and local clubs.

Any regulation interpretation that undermines the ability for sports organisations to commercialise intellectual property will have detrimental effects on sport, including the potential for:

- Increased government funding to maintain international performance levels;
- Decreased competitiveness at the international level;
- Reduced capacity to support sport development/participation initiatives.

The ASC recommends that:

- The intent of the original copyright act must be applied consistently across all media platforms;
- The public interest is served by the original Copyright Act and fair dealing provision for sports news reporting and will also be served by applying it consistently across all media platforms, including digital media;
- Public access across all media platforms to reporting and broadcast of sports news reporting should remain supported and unencumbered.

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;

The conventional media technologies in Australia have linear content, delivered across a limited number of platforms (i.e. newspapers, radio and television) that naturally limit the frequency and duration of the sports highlights used. The fair dealing provision in this setting has been successfully vetted over years of litigation, negotiation and agreement and has resulted in a sufficient definition of the characteristics of legitimate sports news and commercial sport content.

However, this environment is evolving with digital content being delivered on-demand across a wide range of technology platforms (e.g. the internet, mobile phones, mobile devices, etc.). News and media organisations are now able to offer virtually unlimited volumes of content with 'on-demand' delivery to consumers over the internet and mobile devices that include video, audio, graphics, statistical / results telemetry and print.

News and media organisations are seeking to drive audiences to their digital properties (e.g. websites or mobile portals) and as a result have rapidly broadened their content offerings. As part of this overall trend, these organisations have begun expanding the boundaries in terms of sports news content to be beyond news reporting.

News and media organisations are offering increasing quantities of sports content that need additional definition in regards to fair dealing that include:

- Websites that contain extensive catalogues of current and historical images and video that far exceed the requirement of reporting the news;
- Comprehensive sport specific websites that contain extensive information regarding a single sport that directly affects the value of the official websites;
- Mobile providers that distribute sports content through monthly subscriptions directly commercialising sports content beyond reporting of news;

- Websites and mobile technologies that use extensive video highlights showing significant portions of a match.

While the main examples currently are limited to self funded sports, there are likely many instances involving emerging sports. However, these sports have limited resources to identify and police questionable material.

In addition, the increase in digital content creates the issue of 'Digital Amnesia'. With no clear direction on the responsibility of retaining and maintaining key Australian cultural moments in sports, it defaults to the media rights holders who do not have the incentive, nor resources, to protect and maintain the amount of information currently being created as digital media assets. Australian sports legacy will come under increasing pressure as proliferation of content creates increased amount of digital media assets.

The ASC recommends that:

- In the evolving digital world, the principles of fair dealing and legitimate sports news reporting are endorsed across all digital media platforms;
- The intent of fair dealing for the reporting of sports news needs to be applied consistently across all media platforms;
- In designing the legislation or guidelines, recognising and maintaining archiving rights for Key Cultural Institutions and NSOs to preserve and maintain digital media asset is essential.

C. Whether and why sporting organisations want digital reporting of sports regulated, and what should be protected by such regulation;

The original intent of the Copyright Act and fair dealing are not being applied consistently across all media platforms and more specifically emerging digital media. NSOs have intellectual property rights in relation to their sporting events that are currently protected (subject to fair dealing provisions).

While not the direct reason for digital reporting regulation, it is important to highlight the effect on NSO revenue as a result of the current interpretation of fair dealing. New media rights are becoming increasingly important for sport in Australia across all sport types. Elite sport in Australia relies on a range of funding models from primarily government funded to self funded professional sport. Across all categories, new media has the opportunity to create or enhance revenue streams and close the funding gap.

For Olympic/emerging sports, the audience is not large enough to justify TV coverage so they have to fund TV production themselves through a broadcaster. However, aggregating the audience over the reach of the web may support online coverage. Digital Coverage both on-line and mobiles can enable these sports to build a formidable digital presence that then has the potential to build economic numbers of unique browsers (UBs). UBs will drive either advertising and or subscriptions and protecting unique access

to this sport's IP is paramount. The reach of new media is opening up new potential sources of revenue that need specific protection.

In regards to major professional sports, digital media rights are a growing portion of revenue and will continue to become larger, enhancing the traditional media rights. This revenue source is directly under threat from the proliferation of new media content from news reporting organisations. Self funding of these sports is founded on full commercialisation of sport intellectual property.

Australia's aim to host major international events is at risk if regulation does not support protect of traditional and digital media rights. International organisations such as the International Olympic Committee demand that host nations must comply with strict requirements regarding the use and protection of intellectual property and resulting media rights. In the event that Australian Government legislation on fair dealing does not support these obligations, Australia will not be permitted to host the event.

In addition, access to copyrighted content for the purposes of 'performance analysis' and technical direction requires a separate source licence from each NSO. Performance analysis is a non-commercial coaching activity conducted within the Australian sports industry that directly relates to improving athletic performance. Elite coaches, athletes and sport scientists analyse video recordings as part of their ongoing technical direction and tactical planning processes. However, currently athletes can access footage for personal use under fair dealing, but cannot use it as part of technical direction at institutions such as State or National Institutes of Sport. Identifying and attaining source license from each NSO consumes vital State or National Institutes of Sport resources.

The ASC recommends that:

- Digital reporting of sports news should be regulated in a consistent manner as traditional media is currently regulated;
- The reporting of legitimate sports news should not be restricted or limited by any new regulations or guidelines; however sports intellectual property needs to be protected;
- Any regulation or guideline should strive to draw a more distinct border between legitimate news reporting and commercial sports content;
- The preferred method for protecting sports intellectual property and enforcing the intent of the fair dealing provision is a legally enforceable guideline or code of practice. However, in order to ensure these guidelines are legally binding, appropriate regulation needs to be in place. To achieve this end, action is required at three levels, It must:
 1. Clarify regulation on (or definition of) fair dealing to be consistently applied across all media platforms;
 2. Create a set of guidelines or Code of Practice enforceable by regulation to ensure that agreed, specific limitations are in place;

3. Have an agreed upon dispute resolution mechanism (such as mediation) that legal action is not required.
- Any legislation change should reasonably control the ability to protect rights and provide for unique situations such as large international events. Otherwise, it will require special legislative requirements for those events;
 - Non-commercial 'Performance Analysis' should be specifically covered in the Copyright Act and fair dealing exception to provide the full benefit of improved performance across all sport in Australia.

D. The appropriate balance between sporting and media organisations' respective commercial interests in the issue;

Sporting and media organisations both have significant commercial interests regarding the reporting of sports news and more specifically on reporting sports news on digital media.

For large professional sports, traditional media rights can make up the majority of their annual revenue. The emerging digital rights are currently only a small proportion of traditional media rights, but digital media rights will become increasingly important. The future growth of digital media rights must be protected in order for these marquee sports to further invest in the development of their sport in the community.

Olympic/emerging sports have a slightly different commercial interest. As these sports have not historically attained high audience numbers they have not been able to benefit from significant placement in traditional media, unless they have been able to pay for coverage. The emerging digital media allows for content from these sports to be delivered to their more fragmented audience through the internet or mobile devices. These sports must be afforded the necessary protection to generate revenue and interest from these new technologies. The digital media landscape offers great potential for promotion of these sports.

Unlike the majority of sporting organisations, media organisations are for profit organisations that distribute excess earnings to owners and shareholders. While they often provide substantial promotion of sport, this ultimately comes as a lower priority to commercial interests. Due to the increasing competition and changing landscape in the media industry, media organisations have sought to expand their offerings through digital media. This expansion needs to be limited to legitimate reporting of sports news.

The fair dealing provision aims to protect sporting bodies' intellectual property while allowing media organisations to present the public with newsworthy content.

The ASC recommends that:

- The reporting of sports news is absolutely necessary and hence should not seek to restrict reporting organisations from making commercial returns on appropriate reporting of news;
- The fair dealing provision be modernised to reflect the rapid emergence of new forms of media. This must aim to ensure that news organisations cannot directly commercialise or proliferate sports content without limitation;
- There is an appropriate balance between the commercial interests of sporting organisations and news organisations. This compromise will need to be determined through a consultative approach with key stakeholders;
- Regulation should be firm and robust so that sports are not laboured unnecessarily with onerous methods of monitoring and challenging media organisations.

E. The appropriate balance between regulation and commercial negotiation in ensuring that competing organisations get fair access to sporting events for reporting purposes;

Traditionally, sports protect their intellectual property through commercial negotiation in the form of accreditation agreements. The existing regulation fails to adequately specify boundaries for legitimate sports news reporting and creates inconsistent access to sporting events for the reporting of sports news.

Smaller NSOs in particular have little power to entice sufficient media accreditation. Meanwhile, there have also been disputes regarding media accreditation for some of the most popular Australian sports.

There is a need for regulation and guidelines to better define legitimate sports news reporting so that smaller NSOs with minimal resource levels can manage their sporting intellectual property.

As the fair dealing principle can be so inconsistently applied to digital media there is sufficient uncertainty as to what constitutes reporting of news.

The ASC recommends that:

- Regulation or guidelines must support fair access to all media types so long as they are reporting legitimate sports news ensuring a wide range of coverage and viewpoints;

- Regulation or guidelines must provide clarity around the definition of legitimate sports news reporting to enable NSOs to implement consistent controls.

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;

The ASC believes the public should have access to legitimate news reporting across all forms of media.

NSOs hold intellectual property rights to their sporting events. Sports have a right to make a commercial return on this content through media rights. For the larger sports, media rights can represent more than half their total revenue. This funding goes towards the essential development of their sport including national leagues and tournaments, talent development and local community programs.

Sports must firmly retain their right to their intellectual property. As such, it is necessary for sports to limit the amount of content available to the public via non-rights holders. However, it is not in the sports' interests to prevent legitimate news coverage of their events.

Media organisations are currently expanding the frontier of what was traditionally considered news reporting. Increasing amounts of sport are available, and it is no longer uncommon to see non-rights holders offer highlight clips on a pay per download basis. Large video and image galleries have also been made available to the general public.

While the ASC promotes public access, there is currently a lack of regulation obscuring the actual meaning of news reporting and making it unclear if some news and media organisations are improperly benefiting from sports' intellectual property.

The ASC recommends that:

- The public should retain the right to access sports news across all forms of media;
- Sport commercialisation of intellectual property should not limit the legitimate reporting of sports news across all media platforms. It is important that the public has access through all relevant media platforms;
- However, sports should be able to limit access to sporting intellectual property in order to commercialise content and maintain exclusivity of media rights across all media platforms.

G. Should sporting organisations be able to apply frequency limitations to news reports in the digital media;

Frequency as defined in the traditional media market is difficult to apply across digital media as access is typically continuous. There have been natural limitations on the extent of sports news reporting as the platforms dictated limited availability of space that enforced true editorial decisions on the newsworthiness of sports news. In addition, gentlemen's agreements and litigation have helped define what is legitimate reporting of news. The majority of disputes have been between media organisations that hold the media rights and have agreed to limitations with little input from sports. The sports news was limited to frequency, length, volume and availability.

The digital media platforms allow a limitless amount of content to be provided and the content is going beyond the domain of legitimate sports news reporting. Media organisations have begun to aggregate large amounts of sports content under the protection of fair dealing that will erode the value of digital media rights.

The ASC recommends that:

- Sporting organisations should be afforded the protection over the sport's intellectual property regardless of media platform;
- In enacting regulation, guidelines or media accreditation terms, there will need to be limitations applied to sports content across all media platforms. The limitations could include:
 - frequency of refresh;
 - length of video clips;
 - volume of coverage;
 - amount of images and video available both current and historic;
 - context of use (i.e. promotion of unlicensed products, unrelated advertising);
 - timing in relation to event.

H. The current accreditation processes for journalists and media representatives at sporting events, and the use of accreditation for controlling reporting on events;

The ASC supports diverse and widespread access to sports news and information.

The major professional sports have been attempting to use media accreditation to control the exploitation of their commercial intellectual property. Without sufficient regulation or standard guidelines support, accreditation terms have led to recent disputes between media and sporting organisations. Other international organisations have begun to

enforce very strict limitation of the use of video content online (i.e. the IOC and National Football League (United States) prohibit the use of any video highlight of sporting events. These restrictions are likely beyond the limitations required to protect intellectual property.

The rapid evolution of the digital media technologies and rapid increase in media/journalists has put pressure on the accreditation terms as the sole protection of sporting intellectual property even for the major professional sports. Smaller NSOs will be unable to limit any access around the gathering of legitimate sports new reporting as they do not have sufficient power or resources to challenge the larger media organisations.

This uncertain interpretation regarding fair dealing on digital media has led to inconsistent media accreditation terms and imbalance of power in negotiations between media and sporting organisations.

The ASC recommends that:

- In order for media accreditation to be consistent and fair, the intent of the fair dealing provisions need to be consistently applied across all media platforms;
- Clarity in regulation and guidelines will remove the requirement currently placed on media accreditation as the last resort for protecting intellectual property.

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;

Existing regulation does not provide adequate coverage for sporting organisations to protect intellectual property. However, regulation alone will unlikely be the preferred solution in managing sports news reporting. Regulation will not be able to keep up with the rapid changes in both digital technologies and the multitude of sports and related content.

The ASC recommends that:

- Industry guidelines are created (likely the most desired outcome for all parties involved). However, in order for these guidelines to be enforceable, they need to be backed by clear regulation that clearly defines fair dealing across all media platforms;
 - the industry guidelines would be most effective if collaboratively developed with sports, media organisations, government and other key stakeholders involved;

- In order for changes to have any effect on the smaller NSOs, a expedient dispute resolution process should accompany any regulation or guidelines;
 - in particular, this process should minimise the administrative burden on government, media organisations and sports, and allow for rapid resolution but also appropriate input from all stakeholders;
- Any combination of regulations and guidelines should seek to:
 - provide a clear definition of legitimate sports news content regardless of medium;
 - support sports of all sizes in negotiating accreditation terms;
 - be equitable for all media and news reporting organisations;
 - be enforceable without legal action (such as mediation);
 - minimise the scope for disputes by including key stakeholders;
 - offer provisions for exceptional circumstances and exemptions;
 - provide royalty free access for non-commercial Performance Analysis;
 - protect the Australian sports legacy through a clear digital archiving rights description.