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The Secretary
Senate Standing Committee on Environment, Communications and the Arts
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: eca.sen@aph.gov.au

Dear Sir/Madam

INQUIRY INTO THE REPORTING OF SPORTS NEWS AND THE EMERGENCE OF DIGITAL MEDIA

Free TV Australia is the peak industry body representing all of Australia's commercial free-to-air television licensees.

Free TV welcomes the opportunity to contribute to the Senate Standing Committee on Environment, Communications and the Arts Inquiry into the Reporting of Sports News and the Emergence of Digital Media.

Widely available news coverage and reporting of sports events is of significant benefit to both the public and sports administration bodies. The public places a high value on news and information regarding their favourite sports and administration bodies gain valuable publicity for their sports and events.

We note the terms of reference for the Inquiry are reasonably broad and cover matters ranging from the public interest in the reporting and broadcasting of sports news to the nature and effect of new technologies and the appropriate regulatory framework for digital media rights.

This submission comments on the appropriate regulatory framework for the use of copyright material in news reporting. Free TV broadcasters are able to comment as both copyright holders and as users of copyright material in reporting of sporting events.

Free TV supports the continued application of the existing fair dealing provisions of the *Copyright Act 1968* to the use of sports footage in news reporting, regardless of the medium.

Free TV notes that, in some circumstances, contractual arrangements regarding media accreditation and access to venues are separately negotiated. As part of these arrangements, the parties may agree that these contractual arrangements override general rights under copyright law. There should be no change to the ability of parties to negotiate in this way. That is, where a party is granted access to a sporting venue for the purposes of news reporting and in return agrees to limit their use of copyright material, then such an agreement should override general rights under copyright law, as is presently the case.

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Free TV notes that in such situations, if an appropriate agreement regarding accreditation can not be reached between parties, copyright users can continue to rely on the fair dealing provisions.

Free TV does not support an access code setting out specific parameters for the use of copyright material in sports news reporting, whether implemented through industry guidelines or direct regulatory measures or otherwise. As noted above, we support the continued application of existing fair dealing provisions, except where general copyright law is overridden by private contractual arrangements. An access code would create an unnecessary level of prescriptive regulation for the use of copyright material.

The fair dealing provisions provide certainty for both rights holders and copyright users, without being overly prescriptive. As presently drafted, they are technology neutral, an important consideration given the infancy of the market for digital rights. The technology (at both the network and consumer level) for utilising these rights and the commercial and delivery models are also still developing. A legislative or regulatory framework applied at this time would almost certainly become redundant in the near future as technology progresses.

In the television broadcasting context, existing fair dealing provisions are underpinned by a healthy level of competition in the market for sports rights. Coverage of major sporting events is spread reasonably evenly across the television broadcasting sector, providing an incentive for rights holders to allow reasonable use of footage in news reports.

In contrast, there appears to be less competition for digital sports rights in Australia, with one party acquiring the rights to a number of key events. It is unclear if recent consolidation in the sector may also lead to a lessening in competition for digital media rights. If a single operator achieves a dominant position in this market, there may be less incentive to apply a reasonable interpretation of 'fair use'.

This has the potential to result in less reporting of sports events online and on mobile platforms, to the detriment of the Australian public. Such a situation may also result in an increase in costly and time consuming legal action, making copyright users more risk-adverse.

At this stage, Free TV supports regular monitoring of the market for digital rights as it emerges and develops, to ensure that there is an appropriate level of competition.

The open reporting of sporting events on television is evidence that the fair dealing provisions, underpinned by a healthy level of competition for sports rights, can appropriately protect the interests of copyright users and holders, to the benefit of the viewing public.

Yours sincerely



Julie Flynn
CEO