



Let the games begin

*During the Olympic Games held in Atlanta, the Seven Network, holder of the exclusive Australian television rights to cover the event, and the Australian Olympic Committee attempted to impose on the other television networks unprecedented restrictions on the coverage of the Games by other Australian television networks. **Bridget Godwin**, SBS, **Susan Oddie**, Network Ten, **Georgina Waite**, ABC and **James McLachlan**, Nine Network, argue the wider implications of this dispute.*

The recent Atlanta Olympics saw the Australian Olympic Committee (AOC) and the Seven Network pitted against Networks Nine and Ten, the ABC and SBS in a battle which would not have been out of place as an Olympic event itself. But the conflict wasn't just about lawyers, exclusive television rights and money. It placed a spotlight on much wider issues with implications for Australia's participation in the Sydney 2000 Olympics.

In essence, the Australian non rights holders - that is, all Australian television broadcasters other than Seven - found themselves in disagreement with the AOC and Seven in Atlanta over two specific principles: access to Australian athletes in Atlanta for the purpose of conducting interviews, and access to footage of the Games for the purpose of reporting news. At the heart of each of these issues is a central question: is it possible for one organisation to own the Olympic experience?

The restrictions imposed by the AOC not only protected the rights of the Seven Network to broadcast the Atlanta Games, they effectively restricted any other Australian broadcaster from reporting the Atlanta Olympics in the same manner it would any other news event of world importance.

In doing so, the AOC placed the commercial interests of the rights holder above the interest of Australian athletes, the public's right to information and the founding principles of the Olympic Games.

Athletes gagged

At past Olympics it has been standard practice for Australian broadcasters, other than the rights holder, to send reporters to cover the Olympics as an important news event. Accreditation gives the broadcasters access to Olympic venues and media conferences. Although non rights holders are not permitted to film Olympic events, the coverage generally includes interviews with Australian athletes conducted outside Olympic venues.

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In the days prior to the commencement of the Games, the AOC issued a direction to all athletes that they should not talk to any Australian broadcaster in Atlanta other than the Seven Network. This direction was issued despite an express provision in the athletes' contracts with the AOC that the athletes could share with other Australian broadcasters their 'own sporting performance at the Games'.

Following threatened legal action from some of the non rights holders, the AOC reissued its guideline as merely a 'recommendation' not to talk to other broadcasters. The ques-

tion remains as to the basis on which the AOC should be suggesting to our athletes that they should only talk to the rights holder.

The attempt by the AOC and Seven to secure exclusive access to each and every Australian athlete led to some ridiculous and sometimes disturbing incidents. All members of the Australian women's hockey team were left in a bus for a considerable period of time following their gold medal performance to ensure that they were available for interview by the Seven Network and the Seven Network only. The non rights holders had AOC officials physically drag athletes away during interviews with reporters outside of Olympic venues. An on air personality from the Ten Network was unceremoniously evicted by the AOC from an Australian High Commission dinner during the Games to which she was invited. And more recently, the AOC told the Nine Network it could not cover the Brisbane ticker tape street parade, a public event.

No news is good news

The second area of dispute between Seven and the other Australian networks was over access to Seven's footage of the Games for the purpose of reporting the news.

In the past, owners of major sporting events, including the Olympics, have provided the other networks with access to footage of the event on the understanding that the footage



would only be used in relation to the reporting of news. The common rule of thumb for the Olympics was that a non rights holder would not use more than three minutes of footage of the rights holder in any one bulletin. Until Atlanta this had been a co-operative arrangement which had worked well.

In the lead up to the Atlanta Olympics, the non rights holders were unable to reach agreement with the Seven Network. Seven relied on restrictive news access rules published by the International Olympic Committee (IOC) to deny non rights holders the access for news granted in previous Olympic Games, including an initial suggestion of an 18 hour delay before news footage could be broadcast.

One of the more novel suggestions was that no more than one third of any one event could be shown. This would have produced some interesting results in the reporting of events such as the 100 metre dash - an event which takes less than 10 seconds from start to finish. While we may live in the era of the 10 second grab, even television journalism recognises the impossibility of squeezing out anything more than a few syllables in 3.3 seconds. Consequently, the non rights holders refused to agree to such rules.

The AOC sought to assist the Seven Network in enforcing these rules by linking access to athletes with compliance with these rules. The AOC even assisted Seven in having Network Ten's accreditation withdrawn in Atlanta, in our view unfairly, without allowing Ten any opportunity to respond.

Whose rights are right?

Australian law recognises the legitimate property interests of those who acquire exclusive broadcast rights to sporting events. Considerable

amounts of money change hands to acquire these rights and it seems only fair that the purchaser ought to have the benefit of what it paid for.

So what rights does the rights holder actually acquire? The right which is bought and sold is the exclusive right to broadcast the sporting event, both live and by delayed telecast. The Seven Network obtained the exclusive rights to broadcast over 300 hours of the Atlanta Olympics and has the same rights to the Sydney Olympics in 2000.

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What a broadcaster does not acquire is the right to prevent the Australian public from obtaining information about a news event of world importance from the source of their choice. The rights holder does not become the owner of all public discussion and comment on that event. Not even the IOC can buy and sell free speech.

Australian law recognises another principle which must co-exist with commercial interests. It recognises that no one can own news information and it balances the commercial interests of the purchaser of exclusive broadcast rights against the interests of the Australian public in being informed and having a diversity of sources of news. The Copyright Act contains a specific provision which ensures that even where there are legitimate property interests, as in the case of broadcast rights, these are tempered by an even more important principle - the public interest in a free press.

At the time the broadcast rights to the Atlanta and Sydney Olympics

were offered, there was no proposal that the successful bidder would not only obtain the right to broadcast the Olympics as a sporting event, but that it would also obtain the right to control all public discussion of the event. Nor was there any suggestion that the successful bidder would obtain the right to prevent athletes discussing their achievements and experiences with the Australian public, or that the rights of Australians to obtain news from the source of their choice would be challenged.

Sydney 2000

The Sydney 2000 Olympics are still four years away. Yet already the AOC has threatened not only to repeat the Atlanta news experience, but to further restrict the right of athletes to conduct interviews with the media of their choice and share their efforts with all Australians, and not just those tuned into the Seven Network. Those athletes deemed not to be newsworthy by Seven will simply not be shown at all.

John Coates, President of the AOC, has already said that he thinks 'the best solution is not to accredit the non rights holders'. If non rights holders are not granted accreditation, then the overseas networks will not all be flocking to Australia to cover the Sydney Games. The coverage will be restricted and the windfall benefits to Australian tourism, marketing, the profile of Sydney as an international city - all of these benefits traditionally associated with the hosting of an Olympic Games will be reduced.

Australia's participation in the Olympic Games is about the athletes of our country representing Australia in an event which is probably the pinnacle of their sporting career. The original purpose of the modern Olympics was not about the almighty dollar. It



was to foster cooperation between nations. The Olympic charter requires the fullest media news coverage of the Games.

When Sydney hosts the Olympic Games in 2000, it will be the product not only of the efforts of the IOC and AOC, but also the cooperation of the people of NSW and of Australia. It will be the product of the huge amounts of taxpayer dollars which will subsidise the event. The performances of our athletes will in some part be the product of the considerable amount of public money which is channelled into training programs.

And the product too of the millions of dollars spent on sponsoring and supporting our Olympic hopefuls in their bid to participate in the Olympics. Without these dollars, the Sydney Games would feature considerably fewer high profile sporting stars. The AOC delivers these organisations and the athletes they support a huge slap in the face and runs counter to their legitimate commercial interests when it seeks to limit the exposure of those athletes during their most important endeavours.

Commercial interests have an important role to play in staging the Sydney Olympics. But what right does the AOC have to take the fullness of the Olympic experience away from the people of Australia and the world and give it to the highest bidder? What right does that organisation have to gag the open and proper reporting of news of an event of world importance? What right does it have to control the voices of our athletes? What right does it have to take the fruits of huge amounts of taxpayer dollars and present the Olympic experience not as the property of the people of Australia and the world, but as a commercial property to be exploited without proper regard to the interests of all Australians?

The answer must surely be - none. □

Cross media inquiry looms

EXPECTATION IS growing that the government will soon announce a review of the present cross media ownership laws. The laws were earmarked for revision in the Coalition's *Better Communications* policy statement, released shortly prior to the April election. Reviews into other areas of the media earmarked by the Coalition - ABC and the future use of the sixth television channel - have already been announced.

The cross media laws were established in 1986 by the Keating Government to supplement its reforms to the media concentration laws. A summary of the present regime appears in the April edition of *CU*.

The present cross media laws are intended to ensure a diversity of voices within licence areas. Because of the unique importance of the media in informing society and shaping its cultural outlook, it is essential that public interest considerations continue to be applied to large media mergers.

All mergers are presently subject to general competition law, in the form of the ACCC's power under s 50 of the Trade Practices Act (TPA) to prevent an acquisition if it is likely to lead to 'a substantial lessening of competition' in a market. On its own, this would bear no resemblance to a cross media law because the ACCC would be likely to define the newspaper, magazine, radio and television industries as discrete markets. Neither would s 50 operate as a de facto substitute for the present laws, which seek to maintain a diversity of voices. Because the ACCC defines markets in primarily economic terms, a media merger would probably not breach s 50 solely because it reduced diversity of voice in a market.

A regulatory scheme which continued to consider issues of diversity

within markets would need to apply s 50 in conjunction with one of the following:

- a revised version of the cross media laws;
- 'industry specific' trade practices legislation; or
- other public interest legislation.

In a speech to the National Press Club on 31 July, ACCC Chairman, Professor Allan Fels, argued that any new laws which require individual evaluation of significant mergers should require the relevant party to give advance notice to the ACCC. It could then determine firstly, whether the transaction would breach s 50, and secondly, either decide for itself or gain advice from a separately constituted body as to whether it was permissible on public interest grounds.

Of course, any thorough consideration of cross-media issues will need to consider whether telecommunications facilities should be included in any future regulatory regime. While an examination of traditional forms of print and electronic media is, by any standards, a major task, some would argue that the public interest issues concerning cross ownership of these forms of media will ultimately be dwarfed by those associated with the convergence of content and carriage ownership.

Whatever its scope, however, the first major application of any new regime may involve a mix of traditional outlets: newspaper and television. At present, PBL's interest in the Nine Network prevents it from seeking to acquire the lucrative but rudderless Fairfax. A new regime may clear the path. □ AG