

service providers will establish a complaints body which can ask an independent organisation, perhaps like the OFLC, to investigate the complaints and make a report. The service providers association can take remedial action as set out in the Code if the Code itself is found to be breached.

This is not an extraordinary radical proposal. It has been employed by the service providers on the 0055 and 0051 numbers with considerable success and

there is confidence that the new scheme will be able to work effectively in this way.

If there are however service providers who wish to ignore the code of conduct and any breaches which may occur under it, they will quickly find themselves on the wrong end of State and Territory legislation which will be enacted to pick up those who do not wish to abide by the self regulatory part of the scheme.

But let's not concentrate too much on the gloomy side either of film and video or

on the amazing new technologies. Top films are still top films and they are being made in a much greater quantity than ever before.

The new technologies are stretching our imaginations and intellect and showing us the way of the future. Regulation of the content is only a small part of these great new advances.

We must remember to keep it in perspective.

Thank you for asking me to come here today. It has been a pleasure talking to you

# Pay TV Regulatory Challenges - A Sports Perspective

---

**Dene Moore discusses anti-siphoning rules and other Pay TV issues from the perspective of the sports industry.**

---

**T**he Confederation of Australian Sport is the peak umbrella body for national sporting organisations. It was established in 1976 in response to cuts in Government funding at the time and a realisation by the Australian sporting community that it needed to speak with a united voice if it was to impress upon Government the need for assistance to an industry which contributes economic, social and health benefits to the Australian community.

The Confederation believes that the arrival of Pay TV will provide significant opportunities for many sports to receive coverage. While Australian television has traditionally had a reputation for good sports coverage, the fact is that this has generally extended only to a relatively few of the higher profile sports. The majority of sports have received little air-time.

We are also keen about the potential for generic programs on sport, including administration, coaching, sports medicine, introductory programs on new sports, sports history, major events and so on, which we believe will be of interest to significant numbers of potential viewers.

Despite significant improvements in the quality of sports administration in recent years, most sports administrators have struggled to come to grips with the degree of government regulation involved in the implementation of pay television services and have had difficulty in grasping an ever changing scene with a number of key players.

In fact, the first regulatory difficulty which sport has faced has been the blocking of the introduction of pay television for so many years when it has been a fact of life in most other developed western economies.

The Confederation is not concerned to side with the pay television industry against free-to-air operators or vice-versa. Its major concerns are in promoting maximum exposure for sporting bodies on television and the potential, therefore, for those sports not only to promote their sports but to have opportunities to approach potential sponsors.

Research undertaken so far by the Confederation indicates that Australians want to see more Australian sport on television, particularly more quality women's sport and would be receptive to more generic programs about the sporting industry. We believe it unlikely that cheap fillers from overseas will be attractive to potential subscribers to pay TV services. Certainly they will do nothing to promote Australian sport.

In view of Australia's current push into Asia it is worth noting in this context that, in many significant sports, Australia is part of the Asian zone and regularly plays qualifying and other tournaments with major countries in this region.

We believe there are a number of misconceptions regarding pay television coverage. These include:

1. Australian sport receives good coverage now - this applies only to a chosen few.

2. The public has a 'right' to see traditional events. Why? Do the public all have a right to enter major sporting events free?
3. Free-to-air television is really 'free' - surely viewers pay through the advertising dollar.
4. Pay television will potentially steal all major events if it has a chance - our observations of overseas experience do not support this contention.

The main regulatory aspect of the *Australian Broadcasting Act 1992* relates to section 115 which contains the anti-siphoning provisions.

The Confederation is particularly concerned at the lack of consultation with sports in drawing up the list of sports and events which would be included on this list. Some at first may have seen it as some sort of 'badge of honour' but the penny dropped when they realised that potentially they are disadvantaged by having free-to-air operators have first access to their events.

In submissions to the Government (through the Australian Broadcasting Authority) the Confederation had argued for a system of dual-rights whereby the event organiser/promoter would be required to offer dual-rights for each of free-to-air and pay TV but could not offer either exclusively. It would then be a matter for each television sector to decide whether to avail itself of the rights available and operators would be answerable to their viewers and subscribers. Rights in each

television section (free-to-air and pay) would continue to be allocated competitively within each sector. The Confederation understands that this approach was put to the House of Representatives Standing Committee on Transport, Communications and Infrastructure 1989 Inquiry into Pay Television and Other New Broadcasting Related Services and was favoured by the Standing Committee. We are unclear as to why the concept has not been pursued since.

In essence, the anti-siphoning list gives a position of primacy to free-to-air television, not only over pay TV operators but also over the organisers and promoters of sporting events in their negotiations with free-to-air television. In effect, Australian sporting bodies have been severely curtailed in their ability to negotiate the best rights possible by Government regulation - and without any significant level of consultation.

There are other aspects of section 115 relating to the anti-hoarding provisions which are still unclear to us. How will they work? What is a reasonable time before free-to-air operators should be required to offer rights to the pay television sector. Clearly, free-to-air operators are in a strong position (given the planning time necessary to cover major events) if they have, in effect, first right of refusal.

In fact, by any analysis, it seems more of a political decision to invoke an anti-siphoning list than a broadcasting policy decision. As mentioned earlier the need for such a listing is not supported by overseas experience. In fact, if it were to be argued that sports would potentially offer exclusive rights to pay TV operators, the public pressure on sporting administrators would be intolerable. Sports should have a clear right to offer their product to as wide an audience as possible. It could be argued by a process of reverse logic that the current situation in Rugby League has been brought about because if certain commercial activities cannot have access to traditional sporting events, then they will create their own.

One other problem which we foresee in this area is a need to clarify the difference between delayed television broadcasts and live-coverage. A related issue is also where a single commercial interest has rights to more than one major sporting event which is on at the same time as another. Witness the Test cricket in South Africa and the Winter Olympic dilemma.

The Confederation has approached the Federal Minister for Communications on this matter and has raised a number of implications from section 115 of the *Broadcasting Services Act* including:

1. The obligations of the Australian sporting bodies when television rights are held by an overseas broadcaster and the ability of those sports to effect negotiations with television operators in Australia.
2. What constitutes a reasonable time frame for negotiations with free-to-air operators before pay television operators may have opportunities to consider the broadcast of particular sporting events?
3. How will the list affect those sports whose only access to free-to-air television is currently by way of payments to free-to-air operators for broadcast rights?
4. What constitutes reasonable coverage? Will the coverage need to be 'live', will it need to be the entire event, or can it be packaged highlights?
5. Why should national sporting bodies be prevented from negotiating the most advantageous financial arrangements for their sport by limitations on commercial coverage? It appears likely that the quantum of rights payable to sports for particular events may be reduced through a perceived lack of competition.

These are some of the major concerns which the sporting industry has expressed to date.

The link between sponsorship and television coverage is critical. The Confederation clearly favours sponsorship recognition and perimeter signage as rights for supporters of major sporting events. We are, however, less sure on the introduction of advertising in 3 years time. It seems to us that in pay TV creating a viable market share, one of the greatest attractions to subscribers will be the fact that there will be no advertising. Perhaps the appropriate compromise may be for sponsorships to be recognised in a more fulsome way but for advertising to remain severely restricted.

The Confederation remains less than convinced by media releases from the Minister for Communications that the Government expects the broadcasting industry to act in a mature and responsible manner and not to use the anti-siphoning list as a mechanism for anti-competitive behaviour. We believe there are recent examples which make a mockery of these sorts of pleas.

The whole innovation of new technology brings into the spotlight the legal onus on

sporting bodies to protect their rights to existing and future sporting events and to be alert to new opportunities and challenges in negotiating their rights with new operators. Sport in general has not particularly embraced the new regulations which inhibit its ability to negotiate rights in an exciting new opportunity to bring their sport into the public and commercial domain.

We are, however, willing and able to explore the future in what seems to us at the moment, a 'moveable feast'.

*This paper was presented by Dene Moore, Executive Director, Confederation of Australian Sports at a joint CAMLA/Law Council of Australia Seminar on 'Pay TV - Regulatory Challenges'.*