

Ms Kay Collins
Director
Intellectual Property & Competition Review Committee Secretariat
Attorney-General's Department
Robert Garran Offices
BARTON ACT 2600

Dear Ms Collins

On behalf of officers and staff of the Australian Sports Commission I would like to submit comments relating to the intellectual property and competition review announced by the Parliamentary Secretary to the Minister for Industry, Science and Resources on 24 June 1999. Our comments are not necessarily technical, but raise some of the issues that arise in the sport industry as a result of current arrangements for intellectual property protection.

Copyright Act

It is our understanding that Australian law does not currently recognise the existence of broadcasting rights other than indirectly as a result of some other recognised interest held by the event organiser. With the increase in the number of broadcasts and the value of broadcasting rights, conflicts have started to arise and need to be clarified through appropriate legislation.

Technology makes it possible for a broadcaster to replace local venue advertisement with virtual advertisements, therefore affecting the value of venue sponsorship arrangements.

It is possible for other agents to re-broadcast events without payment or acknowledgement of the broadcaster. For example, a 'live' radio show can be called by watching television coverage. This obviously affects the value of broadcasting rights because exclusivity can not be guaranteed.

A related issue is ownership of a sporting performance, in particular an individual's or team's performance. If an event is televised the images are owned by the agency who broadcast it and not by the athlete/team or the sport. It is not common for these events or individual performances within an event to be made commercially available so it is illegal to reproduce or use those images without permission of the broadcaster. The subject of these images (individuals or teams) frequently needs these images for motivation or research purposes. It is impractical for them to seek permission each time. It is common practice for events to be videotaped although strictly speaking this is not legal.

The status of video images of performances taken by coaches at events such as the Commonwealth Games is also similarly unclear. On the other hand, ownership of photographed images is clear but sometimes unfair to the subject of the image. We question whether it is appropriate for athletes to have to purchase the rights to a photograph of their own performance. It could be argued that an individual owns his performance and is entitled to some rights in respect of the use of the image. A clarification of the rights of the subject of images in such circumstances is needed.

The practice of caching Internet sites has the potential to impact on advertising revenue and is a concern that sport shares with other industries.

The status of sport has never been clear within the definition of the current categories of rights and subject matter embodied in the Copyright Act. We would support replacing them with broader, simpler categories. However, there may still be a need to spell out specific examples so that people are aware of what is and what is not legal to reproduce. We are also concerned that the fair-dealing provisions for copying material be retained and extended to other areas, such as Internet sites. We acknowledge that there are practical problems in defining fair-dealing in these other mediums but have no comment on this.

Protecting the intellectual content of material on web-sites is a concern that sport shares with other industries. With increasing use of on-line publishing and the reproduction of images on web sites, the potential for copyright breach is increased and difficult to monitor. We are aware of the increasing use of technological, rather than legal, means to protect intellectual property, but still see a need for legal protection to keep up with the rapid changes in technology.

Circuit Layouts Act

No comments

Patents Act

There is a question about whether the Patents Act should be extended to protect new and innovative sporting techniques such as the Fosbury Flop (a manoeuvre in high jump). However, we don't see that such protection would be in the long-term interests of the development of sport because our objective is in seeing that overall sporting performances improve.

Comments from staff involved in patenting innovations suggest that the Patents Act and current administrative arrangements are adequate.

Designs Act

Ownership of design is regarded as a grey area. When a client pays a company to develop a design it is argued that ownership of that design should rest with the client and not with the agency that produced the original artwork under contract. Clarification of rights in this area would be beneficial.

Trade Marks Act

We are aware that the question has been asked as to whether athletes should be able to register their image or likeness as a trade mark. However, we have no view as to the advantages or disadvantages of such a move, noting that already athletes can register nick-names.

Although we are aware of issues relating to domain names and business names, no specific sport related issues have been raised.

Thank you for the opportunity for providing our views to the review committee. We would like to receive a copy of the draft report when it is released in April and to have another opportunity to comment more specifically on the issues raised in it.

Yours sincerely

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