



# Broadcasting: What, Who & When?

by Alicia Hill

Remember Australia's last Davis Cup match in Brisbane where Channel 7 decided that it did not want to broadcast all of the tennis so it handed the televising of some matches to SBS?

The public uproar over the restricted viewing and the complaints of pay-TV organisations who had tried to obtain the broadcasting rights hit media headlines.

However, as the event was 'deemed' of national interest the matches had to be broadcast on free-to-air television to comply with legislation. This legislative framework for broadcasting events requires consideration of who owns the rights to the event, who the rights can be sold to, and who can broadcast it.

## Do you own the rights?

Broadcasting rights will be created where there exists any literary, dramatic musical or artistic work. Also rights can be deemed to exist in subject matter other than works, including television and sound broadcasts under the Copyright Act 1968 (Cth). It is important that an organisation purporting to sell broadcasting rights to an event actually has ownership of them. This will depend on the individual situation including the type of organising body, the type of event and how the event originated.

## Who?

National Free-to-Air TV or Radio, Pay TV, Regional TV or Radio Network, Local Radio or TV, SBS, or an International Broadcaster (CNN, BBC, etc) - the list of who to approach appears long. This article deals primarily with the position of securing television broadcasting.

Several practical factors will limit who will be receptive to your approach. The size and type of event you are promoting, the perceived market for your event and (for



commercial broadcasters) the ability of the broadcaster to interest sponsors in being associated with the event.

Lesser known factors imposed by Commonwealth legislation, will also impact on the possible broadcasting. The Broadcasting Services Act 1994 (Cth) and the Copyright Act 1968 (Cth) contain provisions that impinge on broadcasters ability to broadcast events.

## Broadcasting Services Act 1994 (Cth)

This Act provides the government with the means of regulating the Broadcasting and Communications industry through the issue of a series of different classes of licences which impose varying conditions on the broadcaster.

The Act impacts on the broadcasting of events through the Minister's ability to

determine events considered to be of 'national interest', imposing specific requirements on broadcasters, and the imposition of anti-siphoning provisions.

## Minister's Discretion

Section 115 of the Act allows the Minister to specify events, or the kind of events, of national importance and cultural significance, which in the opinion of the Minister, should be available free to the general public.

Once the Minister nominates an event, or type of events, that should be available free to the public, this is published in an official Notice declaring that it must be broadcast on free-to-air television, unless specific circumstances occur.

The event remains on the list for 168 hours (or seven (7) days) after the end of the event before the declaration lapses and then anyone may broadcast the event.

Under the Act the Minister may also remove an event from the Notice. This may occur where the national and commercial television broadcasters have had a real opportunity to acquire the right to televise the event but none of them has done so within a reasonable time and the Minister considers that removing the Notice will result in the event being televised to a greater extent.

Sporting events comprise the majority of the events listed in Notices including: One-Day and Test Cricket, State of Origin matches, the Melbourne Cup and AFL football matches.

## Anti-Siphoning

The Act imposes conditions on broadcasting licensees. The government grants the licence on the condition that the licensee will not acquire the right to televise an event specified under a section 115 notice unless:

- (a) a national broadcaster has the right to televise the event; or
- (b) the commercial television broadcaster who has the right to televise the event covers a total of more than 50% of the Australian population.

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## Broadcasting

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These anti-siphoning provisions ensure that notified events can be seen by viewers on free-to-air channels at the same time as being available on pay TV channels and prevent pay TV subscribers having an advantage over non-subscribers. This was litigated in the Federal Court between Nine Network Australia Pty Ltd and Australian Broadcasting Authority and Foxtel Cable Television.

When?

You can negotiate with the broadcaster who wishes to acquire your television rights as to when it will be broadcast by them. A broadcaster can acquire your rights and then televise the event three months down the track if the event does not fall into the category of one of the events about which the Minister issues a Notice.

If the event is subject of a Notice under the Broadcasting Services Act there is no provision in the Act that requires the acquirer of the broadcasting rights to broadcast the event at prime time or live-to-air.

Other Considerations

### Copyright Act 1968 (Cth)

Copyright in a television or sound broadcast exists for a period of fifty (50) years. Ownership of copyright in television and sound broadcasts is usually situated with the body making the broadcast.

Through the fair dealing provisions of the Copyright Act a broadcast may for the purposes of criticism or review, reporting news, and for the purpose of research or study be reproduced and not infringe the Copyright Act. This reduces the benefits of any exclusive rights granted to any one broadcaster.

Some events due to their public nature are difficult to provide exclusive rights for broadcast. The 2000 New Year's Eve celebration in Sydney Harbour was the subject of litigation where exclusive rights were granted to the Nine Network to however the Federal Court refused to grant an injunction to Nine to prevent the ABC televising the same coverage of the event.

Currently the Australian Broadcasting Authority (ABA), the body which governs the regulation of broadcasting, is conducting an inquiry into the way events are deemed to be required to be televised free-to-air, and the current system proposed reforms include requirements that certain events be shown live and in full, a plus for all TV viewing sports fans.

# Kangaroo C

by Michael Simpson

One of the former greats of world athletics, Linford Christie, was ordered off all New South Wales Government run sports facilities on 15 February 2000. Christie has been banned from international competition pending an IAAF (International Amateur Athletics Federation) hearing as a result of testing positive to the banned anabolic steroid Nandrolone.

Bill Gillooly, the Director-General of the New South Wales Sports Department, faxed a message to the staff of the Sydney Academy of Sport at Narrabeen, the facility where Christie was coaching, stating - "The suspended or banned athlete may not use any facilities operated by the Department during the period of the suspension or the ban. For the purpose of clarification, the prohibition on the use of facilities includes the use of facilities used for training, or coaching, or any other official capacity."

The prohibition by the New South Wales Government is the most severe world-wide penalty that Christie has faced. This is despite the fact that Christie has never been found guilty of a doping charge. If Christie is



## SPORTS

SHORTS

BY SAM MCNEICE AND LOUISE CONLAN

### Volunteer Power

The New South Wales State Government is planning new laws to give sweeping powers to thousands of volunteers and temporary enforcement officers to keep a tight control over the Sydney CBD and areas where spectators will gather during the games.

Enforcement officers will be empowered to pose fines of up to \$5,000.00 and to restrict entry to the Olympic venue to ticket holders only.

Volunteers will also be empowered to search possessions and obtain names and addresses of persons breaching regulations.

This has caused concern amongst civil liberties groups who argue that the powers proposed exceed those the Police have at present.

As well as the power to control people, the laws will protect sponsors from "ambush marketing". Advertising in and around the Olympic venues will be restricted to official Olympic sponsors or other "friendly" advertisements (ie:

advertisements of goods or services which are not in competition with Olympic sponsors).

### Taxation of Prize Money

A ruling issued by the Australian Taxation Office (TR1999/17) will mean prizes awarded to professional sports people will be taxed. The ATO has said that all income and non-cash payments received by professional sports people must be declared.

Assessable income for the purposes of the ruling include payments received (such as salary, wages, allowances and cash prizes) and benefits received in kind (such as prizes received in the form of a motor vehicle or holiday).

Medals and trophies will be exempt from tax as they are given and received on personal grounds. An award will only be treated as assessable income where it represents an intrinsic form of remuneration to the person rather than merely recognizing

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not cleared at his IAAF upcoming hearing, the ban will also mean that he will not be able to attend the Sydney Olympic Games as a coach, or in any other official capacity whatsoever during the games.

The ban has created a tug-of-war between Athletics Australia (AA), the IAAF, the IOC and Australian Olympic Committee chiefs. AA and the IAAF have called for Christie to be allowed to use Australian facilities as a coach. Simon Allatson, the AA chief, said that there was a danger of invoking a kangaroo court, alerting the Government to the fact that Christie has not been found guilty of any offence. He considered that transposing "the sanction to the next stage of a person's career" is an "entirely inappropriate strategy or way of dealing with doping in sports". Allatson is finding alternative venues for Christie, claiming that privately run venues across Australia have offered their services.

The New South Wales Government's ban was unequivocally embraced by the IOC and the Australian Olympic Committee chiefs though. World Anti-Doping Agency Chair and IOC Vice-President, Dick Pound, said

that Government officials have every right to ban athletes accused of doping. Jacques Rogge, head of the IOC's Co-Ordination Commission for the Sydney Olympic Games, was outspoken on the issue, stating that the decision was a correct application of the law. Embracing the New South Wales Government's decision, he said "my personal view on the law? I think it is an excellent law." He hoped other Governments would adopt similar legislation.

Whilst it is easy to see why Christie has been suspended from competition, a ban from acting in any official capacity may be too severe. If Christie is guilty, then according to prevailing laws, he should be sanctioned accordingly. Any avid sports fan, either competitor or spectator, knows that a coach can make all the difference to an athlete's Olympic campaign. Should the New South Wales Government and the IOC compromise the chance of Christie's eight person squad by disrupting their training schedule and preventing their coaches direct input, at least in an official capacity?

Clearly, they think that Christie's alleged crime is serious enough to impinge on other Olympic hopefuls' campaigns. With the Olympics only a few months away, the debate about whether doping bans should include a prohibition on coaching is something that should be clarified by the IAAF immediately.

a particular achievement. "Recipients" for taxation purposes include both participants and officials in the sporting arena such as a referees or coaches.

The ruling also captures payments made to a trustee for the benefit of the sports person, or payments to an associate, or relative of the sports person.

Sporting grants will also be taxable if they are provided as financial support on a periodic, regular, or recurrent basis, or where the payments are made in substitution of income.

## ■ Testing for E.P.O.'s

Erythropoietin, commonly known as EPO, has emerged as one of the latest artificial substances being used by some athletes in order to enhance performance. In the lead up to the Sydney 2000 Olympics, the race is on to find a test that is capable of detecting the synthetic use of EPO in competing athletes.

Until recently, EPO has been widely thought to be

undetectable, however researchers from the Australian Institute of Sport and the Australian Sports Drug Testing Laboratory completed preliminary



research late last year which has identified markers found in blood samples that appear to indicate the synthetic use of EPO.

In initial trials, results showed that the chance of returning a faulty test was 1 in 100 000. Although these

results are encouraging, the initial trials were carried out on a small sample group.

The IOC has given the AIS \$1.5 million to continue the second stage of testing in order to validate these findings across the elite athlete population. The IOC has requested that an analysis be carried out on a sample of athletes which takes in a wide range of ethnic groups. This is in order to ensure that there are no cross-cultural peculiarities which may show up in testing results.

The second stage of testing is to begin at the AIS this month. The testing will involve the injection of synthetic EPO into volunteer athletes and subsequent testing over a period of 13 weeks. Results are due for release in June.

## Sporting Teams - part of your job?

by Samantha McNeice

Participating in a sporting team organized by your employer is a valuable way to get to know your colleagues, boost team dynamics, increase your fitness level and generally enjoy yourself. However, are you entitled to receive workers' compensation if you sustain an injury?

Many employers provide support to staff sporting teams such as providing clothing, contributing towards registration fees, awarding trophies and arranging insurance, but to name a few. Recent cases focus on scope of an employer's liability where an employee is injured during an employment based sporting activity.

The leading case of *Van Haeften v Caltex Oil (Australia) Pty Limited* involved an employee of Caltex Oil who sustained an injury playing touch football during an annual sporting event hosted by the employer. The Court of Appeal concluded that the injury took place during the course of employment, citing a variety of connecting factors. The crucial elements were that the competition was organized by the employer, the teams were provided with a level of sponsorship and the benefit derived by the employer in the increased morale between employees.

In the more recent 1999 decision of *Robert Eagleton v BHP Steel (AIS) Pty Limited*, it was held the employee was entitled to receive compensation for his injury on the basis that factors pointing to a relationship between the employer and the sporting activity outweighed those which did not.

The following elements were considered indicative of a relationship: sponsorship; trophies; the internal publication of results and game rosters; rotating of shifts to facilitate training; team clothing bearing a company insignia; the encouragement by the employer to participate

Conversely, certain matters weighed against the finding of a relationship, including: the composition of the team (ie: not all from one employer); the supplier of team equipment; the fact that the actual injury was sustained outside working hours; the status of the employee (ie: sub contractor)

These outcomes should not dissuade anyone from taking part in work related sports, but it is important to have some idea of whether the circumstances of your involvement indicate your employer may be liable to cover you in the event of an injury, or whether you should obtain your own medical cover.

## Editorial

by John Mullins



Australia, quite understandably, is being swept up with excitement for the Sydney Olympics. The torch relay has begun, the teams are being selected and it is very much becoming a reality. SOCOG continues to have its problems and Kevan Gosper manages to step in it, whatever direction he goes.

All this is occurring whilst the economy is slowing, interest rates are increasing at a rapid rate, the stock market has had some severe downturns and we are facing a major change in our taxation system.

It is interesting to observe how despite these negative financial issues, the morale of the nation has been kept high largely on the excitement of the forthcoming Olympics and a range of outstanding performances by Australians in sport. The threads of Australian sporting culture are interwoven into our national fabric to such an extent that success and excitement in relation to sporting endeavour can actually overcome our harsh realities of negative economic factors.

To make the Olympic team you must be selected by the Australian Olympic Committee. Each of the relevant sports nominate individuals to the Australian Olympic Committee. There is an established criteria for selection in each of these teams and the players have the opportunity to appeal if they believe the criteria has not been accurately applied in their case. The first case opportunity to appeal is to the sporting body who is required to set up an appeal structure and from there an appeal can be brought to the Court of Arbitration for Sport. We are seeing this occur across a range of sports including softball and triathlon to date.

Whilst it may appear a little un-Australian to appeal against non-selection, I believe it is appropriate that athletes that have sacrificed much and committed greatly over many years to reach the cusp of Olympic selection should be given every opportunity to exhaust their rights to be selected in an Australian Olympic team.



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# The Changing Roles of Controlling Bodies

by Matthew Stapleton

The National Rugby League (NRL), The Australian Rugby Union (ARU) and the Australian Cricket Board (ACB) are all examples of sports controlling bodies that are constantly subject to the scrutiny of players, clubs, the media and fans. The role of controlling bodies has changed significantly in recent times as a result of this scrutiny and the need to be more commercially orientated.

## Role of Controlling Bodies

The traditional notion of a controlling body is an entity formed by affiliates or clubs to operate and control competition or tournaments, often at an elite level. This is generally done by an affiliation of the clubs to form an overall sporting body. The affiliates or clubs impart the controlling body with the authority to make decisions that bind all member clubs as well as dictating the rules under which the competition is to operate.

Affiliation creates both rights and obligations between the affiliates. The controlling body is also often charged with the role of developing the grass roots of a particular sport and ensuring that the future of the sport is assured. The affiliates are also obliged to support the organisation body in this role. This often includes being responsible for certain areas of the sport's junior base or ensuring that the sport is adequately promoted.

## Extent of Control

The interesting point about controlling bodies is that whilst they are essentially given life by affiliates they take on a life of their own. This results in them making decisions that will often be detrimental to particular clubs. This is often in the name of maintaining a certain level of competition or ensuring the survival of weaker clubs.

Examples of these include:

- 1) Salary Cap:** This is designed to ensure an even competition. Clubs are restricted in their player payments to prevent wealthier clubs signing too many high quality players and dominating the competition. It is also aimed at keeping player payments "in check".
- 2) Player Draft:** Although the player draft was the subject to successful legal challenge in Rugby League, it operates very successfully in AFL. Once again this is aimed at spreading the high quality players across the competition

## Commercial Controls

The growth of sport as a commercial industry has resulted in controlling bodies taking a greater interest in the control of the commercial activities of member clubs as well as players. This has resulted in a

number of disputes in recent years.

Examples of these include:

- 1) Television Rights:** These figured as the central issue of the Superleague war in rugby league. They have also been at the heart of a dispute between Carlton and the AFL in recent times. Generally the controlling body will sell the rights for the entire competition and spread the money evenly across the clubs. The more successful clubs see this as unfair as they believe they have a greater drawing power than the lesser clubs.

The important issue to be considered is whether the sale of the television rights by each club individually could reap a greater amount than the collective sale. The result of individual sales would no doubt be the more successful clubs receiving substantially more than they currently do and the weaker clubs substantially less.

- 2) Centralised Sponsorships:** Controlling bodies will often enter into sponsorship deals that will either bind the member clubs or interfere with their potential sponsorship base. These sponsorships will also often bind the representative teams of the sport and lead to disputes when players with individual endorsement contracts are prevented from wearing their sponsors product.

Once again the idea of centralised sponsorships is to ensure that the lesser clubs reap some of the benefits of the sale of the game and not just the individual clubs.

## The Rugby League Example

Perhaps the premier example of changing roles of controlling body is the NRL. As a result of the Superleague war and the resultant "peace deal" with News Limited, the complexion of rugby league has changed forever.

At the height of the war, the ARL as it was at the time fought an emotive fight based on notions of loyalty and tradition. At the time it would be unthinkable to believe that 5 years later clubs such as Norths, Manly, St George, Wests, Illawarra and Balmain would cease to exist as stand alone entities and that the League would be involved in a legal battle to keep Souths out of the competition.

At the centre of this change has been the belief that rationalisation of the competition is vital to ensuring a competitive competition in the future and the economic viability of its participants. The end result is a controlling body that is heavily influenced by commercial considerations when making decisions about the future of the game.