

**THE COALITION OF MAJOR PROFESSIONAL AND PARTICIPATION SPORTS
INCORPORATED**

**SUBMISSION IN RESPONSE TO THE AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY'S CONSULTATION PAPER ON THE 'DRAFT ONLINE CONTENT
SERVICE PROVIDER RULES - GAMBLING PROMOTIONAL CONTENT PROVIDED IN
CONJUNCTION WITH LIVE COVERAGE OF A SPORTING EVENT'**

10 MAY 2018



INTRODUCTION

COMPPS consists of the following organisations:

- Australian Football League (**AFL**);
- Cricket Australia (**CA**);
- Football Federation Australia (**FFA**);
- National Rugby League (**NRL**);
- Netball Australia (**NA**);
- Rugby Australia (**RA**) and
- Tennis Australia (**TA**).

These sports play a significant role in developing, promoting and presenting sport in Australia from the grass roots through to the professional and international level. They are not-for-profit bodies and are responsible for the long-term development and sustainability of their sports.

Each of these organisations is the governing body and custodian of a major professional sport in Australia. They are mass participation sports - between them, they have over 9 million participants and 16,000 clubs.

COMPPS members provide a wide range of public benefits through a self-funding business model. A large portion of the revenue of COMPPS members is devoted to enhancing, promoting and developing sport for all Australians both at national and 'grassroots' level.

Each of the COMPPS' members conduct events that are communicated via live streaming and have commercial arrangements with gambling organisations. COMPPS and its members welcome the opportunity to comment on aspects of the ACMA's draft Online Content Service Provider Rules (**Online Rules**).

COMPPS' RESPONSE TO THE CONSULTATION PAPER AND ONLINE RULES

General comment

COMPPS supports the intent of the draft Online Rules in seeking to be as consistent as practicable with the codes of practice for the radio and television broadcasting industry registered with the ACMA in March 2018 (**Broadcasting Rules**).

As COMPPS and others have consistently pointed out, any differences between the Online Rules and the Broadcasting Rules should be avoided. Differences between the rules are inconsistent with platform neutrality, and potentially create an incentive for a gambling organisation to prefer advertising and promotion of content in one form of communication over another. While COMPPS appreciates that the operating environment for broadcasting and online content provision are not identical, any differences between the operation of the Online Rules and Broadcasting Rules to live coverage of sporting content must be minimised to avoid market distortion.

Further, to the extent that any differences arise as a result of amendments to the Broadcasting Rules in the future, the Online Rules must be able to be promptly updated and amended to remove or minimise any differences.

Specific issues

The Consultation Paper raises various issues, some of which COMPPS has previously made submissions about in the context of the Broadcasting Codes and the Senate Standing Committee on Environment and Communications inquiry regarding the *Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017*.¹ COMPPS does not believe it is necessary to restate its previous submissions and comments as part of this submission.

Rather, COMPPS seeks to limit its comments in the current consultation to the following specific issues:

- references to time;
- international publishers;
- exemption for services limited to adults; and
- exemption for small online content services.

References to time

The proposal that references to time in the Online Rules are references to the time where the end-user of the content is located is inappropriate and practically unreasonable given the relevant communication of national feeds of sporting content on online content services across the different time zones in Australia.

COMPPS believes that references to time should be to Australian Eastern Standard Time or Australian Eastern Daylight Time (as applicable) no matter where the actual sporting event is taking place. This is consistent with the treatment of references to time under clause 19 of Appendix A of the Subscription Television Broadcast Code of Practice (other than in respect of the specified circumstances in sub-clauses 19 (a) and (b)).

¹ <http://www.compps.com.au/submissions/COMPPS-2018-01-Communications-Legislation-Amendment-Bill.pdf>
<http://www.compps.com.au/submissions/COMPPS-2017-12-ASTRA--Gambling-Provisions.pdf>
<http://www.compps.com.au/submissions/COMPPS-2017-12-Free-TV.pdf>

International publishers

Sports in Australia, including the sports and events conducted by COMPPS's members, are subject to ongoing and substantial competitive pressure from well resourced, high profile international publishers, for example Facebook, Google, Amazon, the NBA and the Premier League. Each of these international publishers is involved in the live streaming of sports into the Australian market.

While the new Online Rules will regulate aspects of these services, COMPPS wishes to ensure that international publishers of this kind are not able to unfairly avail themselves of any exemptions under the Online Rules that will unfairly give those organisations a competitive advantage over Australian content and sporting organisations.

In particular, COMPPS does not believe that international publishers of the kind referred to above should be able to avail themselves of the exemption for small online content services (see COMPPS submissions on this exemption below). If this was to occur, it could lead to the commercial activities of gambling organisations migrating to the streaming coverage of international sports and publishers, which would ultimately be at the cost of Australian based sports.

For the avoidance of doubt, COMPPS does not object to the limited proposed exemption for sporting events that originate outside Australia set out in section 19(2) of the Online Rules.

Exemption for services limited to adults

COMPPS supports the inclusion of a class exemption from the Online Rules for services limited to adults.

COMPPS believes that an exemption of this kind appropriately recognises that, if a service is being provided to adults only, then the policy rationale for reducing the exposure of children to gambling promotions in live sports coverage does not apply in respect of that service. In such circumstances gambling promotional content should be possible on such a service at any time during live sports coverage.

An exemption of this kind is also consistent with COMPPS' previous discussions with representatives of the Department of Communications and the Arts and the Government.

COMPPS believes that the criteria for the operation of the age based exemption set out in section 26(1)(a)-(d) of the Online Rules are reasonable, however is concerned about the requirement in sub-section 26(e) that providers, upon receipt of a declaration that a prospective end-user is at least 18 years of age, must take 'reasonable steps' to confirm the end-user is at least 18 years of age. No guidance is given in the Online Rules as to what constitutes 'reasonable steps' and COMPPS is concerned any such steps will be administratively cumbersome, difficult to comply with and costly. COMPPS requests that the criterion in section 26(1)(e) be removed.

Further if a more efficient means of confirming that end-users are 18 years or over becomes available, then the Online Rules should be flexible to accommodate a change to the criteria.

Exemption for small online content services

COMPPS has previously submitted that an exemption for small online content services should not be part of any new regime.² This remains the position of COMPPS and its members.

Section 25 of the Online Rules sets out an exemption for 'small' online content services. The consultation paper does not disclose the policy justification for an exemption of this kind.

COMPPS is concerned that such an exemption artificially and unfairly distorts the playing field between streaming services offering live sporting coverage. Why should a service not have to comply with Part 4 of the Online Rules simply because the service communicating the content is a 'small' service? It would be perverse and unfair if a large, well-resourced organisation (based in Australia or overseas) was able to utilise this exemption.

The consultation paper refers to the similarity between the small services exemption in the Online Rules and the small audience share channel exemption in the Subscription Broadcast Television Code (which was also opposed by COMPPS). COMPPS submits there is a material difference between the two platforms: a subscription broadcaster provides content as part of a paid subscription service, however an online streaming provider can provide content at no cost to the end-user. Therefore the number and nature of end-users of those services may be materially different.

It is not clear why the ACMA believes 100,000 unique end-users per month is an appropriate threshold for the application of the proposed small services exemption. Identifying the number of end-users in an online environment is difficult. As noted above, a criterion of this kind only measures the end-users of a particular service, which may be different to the total number of viewers of a sporting event if there are multiple services communicating the same coverage.

Further, COMPPS position is that the proposed threshold of 100,000 unique end-users (for a small online content service) is too high. COMPPS believes that 5,000 unique end-users or less is the appropriate criteria for this exemption.

Also, COMPPS believes that if a particular sporting competition (not just a specific event in that competition) is broadcast on television in Australia, then a content service provider should not be able to utilise the small services exemption to avoid live streaming of the content from the same sporting competition being outside the scope of the Online Rules. For example, if NBA matches are broadcast live on Australian television and therefore

² COMPPS submission to the Senate Committee inquiry into the *Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017*, page 3.

subject to the Broadcast Rules, then an online content service that communicates live coverage of the same type of matches should not be exempt from the Online Rules under a class exemption based on the number of end-users of that service. Accordingly, if a small services exemption is to be adopted it should be re-cast to avoid inconsistent treatment of content from the same sporting competition on different platforms.

OTHER COMMENTS

As a key stakeholder in relation to the regulation of live streaming of sports events, COMPPS wishes to be consulted if the ACMA proposes to introduce Online Rules that are materially different to the draft rules proposed under the current consultation, and to be involved in any future amendments to the draft Online Rules.

CONTACT DETAILS

Should the ACMA have any questions in relation to this submission or require any further information from COMPPS or its members please contact Malcolm Speed at mspeed@compps.com.au or at:

Mr Malcolm Speed AO
Executive Director
The Coalition of Major Professional and Participation Sports
Suite 607
530 Little Collins Street
Melbourne VIC 3000

Yours sincerely



Malcolm Speed AO
Executive Director