

## Photography of Young Sports People - By Jessica Zikman

Rapid advances in digital camera, mobile phone and internet technologies have led to increased concerns for the privacy of young sports participants, who may inadvertently become the objects of unauthorised photography. Regulation of unauthorised photography presents a significant challenge for sports venue managers and sporting organisations.

This issue has attracted widespread media coverage since early 2002, when a voyeuristic website published unauthorised photographs of a 16 year old male surf life saver[1]. This prompted revelations of other websites featuring surreptitious photographs of male students participating in other sports, such as rowing and football[2]. In most of these cases, authorities were powerless to prevent the publications because the photographs did not violate any laws.

### The law

Generally, people do not have a right to control their own image. Australian courts have confirmed in many recent cases that individuals do not have a right not to be photographed[3]. Nevertheless, many Commonwealth, state and territory laws prevent the taking of photographs that are offensive, classified as child pornography or taken for the purposes of sexual gratification. There are obvious public policy reasons for criminalising this sort of behaviour.

What is more problematic is trying to distinguish between photographs taken for an innocuous purpose, and those taken for an inappropriate purpose. Unauthorised photographs of young sportspersons may be taken for a variety of innocent reasons: parents taking photographs of their children in a group, amateur photographers shooting a crowd scene, or tourists photographing a packed beach. Criminalising these photographs would limit freedom of expression and artistic creativity, and would invoke community outrage.

However, it is an unfortunate reality that young sportspeople might also be photographed for improper purposes.

A recent parliamentary review of the legislation in this area found that it would be inherently impossible to distinguish between photographs taken for innocent and inappropriate purposes, and any blanket ban on unauthorised photography would be unenforceable[4].

Accordingly, if venue managers and sporting organisations want to impose a blanket ban on unauthorised photography of their young sportspeople, they must do this by way of their own policies and regulations.

### What can venue managers do?

Venue managers of private premises are able to regulate the terms and conditions on which persons agree to enter their premises. Accordingly, venue managers may prevent unauthorised photography in several ways, including making it a condition of entry that:

photographic equipment is prohibited in the venue;  
persons wanting to take photographs in the venue must sign a form indicating that they have the subject's consent and the photographs will not be used for an inappropriate purpose; and/or  
venue staff have the power to ask patrons to leave the venue if they are taking photographs in breach of any conditions of entry.

### What can sporting organisations do?

There are three key ways a sporting organisation can attempt to prevent unauthorised photographs of its young sportspeople:

they can regulate the behaviour of their own members, for instance, by making it a condition of membership that members must not take photographs of young sportspeople without their consent;

they can require all official photographers for events to be accredited; and/or if the event is being held at a private venue, the sporting organisation can ensure that venue manager implements conditions of entry such as those discussed above.

#### **Legal limits - public areas**

It is not legally possible to prevent people from taking photographs in public areas. Further, it is not possible to prevent people from taking photographs of private premises, from within public areas[5].

This is a cause of great concern for sporting organisations that primarily operate from public areas, such as surf life saving or triathlon clubs. The only legal option for such bodies is to maintain a policy of vigilance. For example, Surf Life Saving Australia (SLSA) have recently implemented a “photography policy” asking SLSA officials to be aware of non-accredited persons taking photographs at events, and if necessary, to report any suspicious behaviour to local authorities.

This is a complex and developing area of the law, and sporting organisations and venue managers should consult a legal practitioner if they require more detailed advice.

#### **Further Information**

Contact a member of our [Sports & Entertainment Team](#) or phone +61 3 9672 9325.