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Intellectual property rights:
driving global sports

p. 2



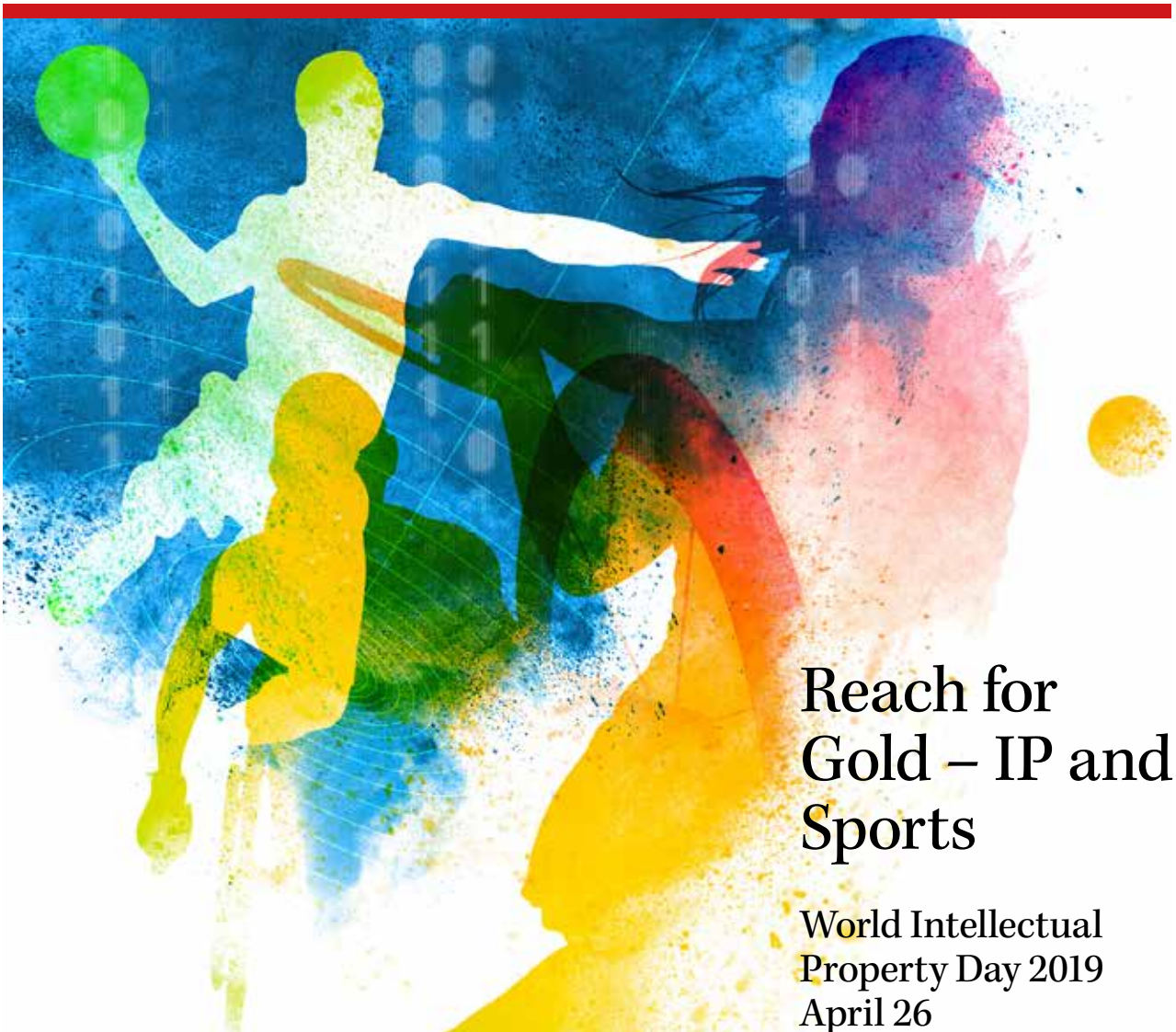
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Reach for Gold – IP and Sports

World Intellectual
Property Day 2019
April 26



This year's World Intellectual Property Day campaign delves into the world of sports and takes a closer look at how intellectual property (IP) rights support the global sports ecosystem, a unique landscape that brings together multiple players with overlapping interests.

IP rights lie at the heart of the huge commercial opportunities offered by sports. They encourage innovation and creativity in all areas, including in sports. More innovation and creativity in the sports sector means access to a continuous flow of new technologies to enhance athletic performance and our enjoyment of sports, bringing better equipment, new business opportunities, new jobs and a fabulous fan experience.

IP rights underpin the commercial relationships that make sports events happen from technology licensing and merchandizing to commercial sponsorship and broadcast coverage of live sports events.

This special focus issue of the *WIPO Magazine* explores the many links between IP and sports and considers some of the opportunities and challenges arising from a rapidly evolving and increasingly technology-driven global sports landscape.

For more on World Intellectual Property Day, see www.wipo.int/ip-outreach/en/ipday. Join us on Twitter ([#worldipday](https://twitter.com/worldipday)) and Facebook (www.facebook.com/worldipday).

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Editor: **Catherine Jewell**

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Intellectual property rights: driving global sports

By **Mark Lichtenhein**, Chairman of the
Sports Rights Owners' Coalition (SROC)

Sports rights owners rely heavily on the protection afforded by copyright law to protect competitions from infringement and to preserve their value. As sports are a valuable contributor to the global economy and the enjoyment and wellbeing of people, it is imperative that the sector continues to thrive. To do so, requires that the sector's IP rights and the revenues flowing from them are protected.



Photo: Courtesy of the Sports Rights Owners' Coalition

“Everyone’s doing it.” “It does not do any harm.” These are common refrains when discussing the issue of illegal online streaming of sports content. There is a widespread perception among the general public that intellectual property (IP) infringement is a victimless crime, but this is not the case. As we look towards World Intellectual Property Day on April 26, it is important to consider the real value that IP rights bring to the sports sector and why we need to protect them effectively.

As the Sports Rights Owners’ Coalition (SROC), we represent more than 50 international, European and national sports bodies across a diverse range of sports. As such, individually and collectively, we represent a majority of international sports and competitions. Therefore, we are well placed to underline the importance of protecting our IP rights so we can best serve our fans and the sports community as a whole.

IP PROTECTION BECOMES EVER MORE CHALLENGING

With every passing year comes new challenges in terms of how our IP rights can be infringed, making the task of protecting them ever more difficult. In large part, this is because of the major technological advances of recent years, which are transforming the way people consume entertainment content. The expansion of high-speed Internet around the world, the proliferation of portable devices and the rise of online streaming platforms and IPTV technologies, have made tackling the illegal exploitation of our rights much more difficult. We must now confront thousands of websites that illegally stream content in real time. These sites are accessible to everyone with an Internet connection and almost as quickly as they are taken down, they can be put back up in a different form. Add to this the significant advertising revenues these sites and related intermediaries generate from the huge volumes of traffic they receive, and it is easy to understand why illegal streaming has become so lucrative. The hosting of these illegal websites in multiple locations around the world requires a harmonized international approach.

INVESTING IN GRASSROOTS

News headlines often highlight the significant sums that broadcasters are paying to secure the rights to broadcast sports competitions. However, what the money from the sale of these rights enables the sports sector to achieve often goes unmentioned.

The sale of the media rights for sports competitions is the life-blood of sports at all levels, from the elite athletes down to amateur grassroots participants. In several communications, the European Commission has underlined that “the exploitation of intellectual property rights in the area of sport, such as licensing of retransmission of sport events or merchandising, represents important sources of income for professional sports. Revenue derived from these sources is often partly redistributed to lower levels of the sports chain.”

“The sale of the media rights for sports competitions is the life-blood of sports at all levels, from the elite athletes down to amateur grassroots participants.”

Photo: Courtesy of the Sports Rights Owners' Coalition



Investment in grassroots sports is directly dependent on the value of sports IP rights.

Across the markets in which our members operate, investment in grassroots sports is directly and proportionately dependent upon the value of sports IP rights, particularly media rights. A 2011 study by the European Commission and partner organizations revealed that grassroots sports in Europe receive some EUR 500 million every year from the sale of media rights. It concluded that “the effective protection of these sources of revenue is important in guaranteeing independent financing of sports activities in Europe.”

Securing the value of those media rights is not only important for organizers of professional sports competitions, it is also fundamentally important to the sustainability of grassroots sports and the significant positive contribution that sports bring to people’s health and well-being. Without the full revenue redistribution from organizers of commercially successful sporting events, the development of grassroots sports would suffer the loss of a critical source of financing. That is why SROC is supporting on-going negotiations at WIPO to update the rights of broadcasting organizations.

INVESTMENT IN TECHNOLOGY AND INNOVATION

Our members attract millions of spectators and seek to engage sports fans across multiple technological platforms and to ensure that they can access the content of their choice and at the highest quality on offer. For the viewing public, the money they pay to watch premium sports content goes towards a whole host of services around the match or game they want to see.

Beyond the athletes themselves, there is a huge network of individuals working behind the scenes, and a broad range of technologies deployed to ensure delivery of content of the highest possible quality. All of this needs to be paid for. Our members pride themselves on providing a polished and modern viewing experience for fans both attending live events and watching on TV or online. This includes using the latest high-definition cameras, developing advanced graphics to display analysis around



Members of SROC attract millions of spectators and seek to engage fans across multiple technological platforms to ensure they can access the content of their choice and at the highest quality on offer. The money viewers pay to watch premium sports content pays for a host of services around the match and game they want to see.

the sports event and employing experts and pundits to discuss what is happening on and off the field. If the IP rights of sports organizers are infringed, this valuable source of revenue could all but disappear, diminishing the quality of the content that we are able to produce.

COUNTERFEITING

Beyond the challenges we face in protecting our broadcasting rights, the rise in counterfeiting and the ease and speed with which items can be copied also has a significant impact on our members' revenues. A recent study published by the European Union Intellectual Property Office (EUIPO) estimated that 6.5 percent of sales and EUR 500 million (approximately USD 560 million) of revenue are lost annually by the sports goods industry due to counterfeiting. Those figures correspond to 5,800 direct and indirect jobs lost.

POTENTIAL POLICY SOLUTIONS

As clearly outlined above, sports rights owners rely heavily on the protection afforded by copyright law to protect competitions from infringement and to preserve their value. That is why there is a clear need for a robust, updated and enforceable copyright framework, both offline and online, to ensure that the revenues of sports IP rights owners are not put at risk. In the European Union, we recently saw legislative efforts to achieve this through the proposal for a Directive on Copyright in the Digital Single Market. The European Parliament initially put forward a positive position in support of creators and rights holders, including a suggestion to create a neighboring right for organizers of sports events. This would have fundamentally strengthened the way in which we protect our IP rights. However, this effort was undermined and did not appear in the text



Photo: Courtesy of the Sports Rights Owners' Coalition

“Sports rights owners rely heavily on the protection afforded by copyright law to protect competitions from infringement and to preserve their value.”

of the Directive that was finally agreed. We feel this was a missed opportunity and we hope that legislators will continue to work to address the imbalances in our sector in the future. We also hope that efforts to protect the organizers of sports events will be mirrored elsewhere. In similar vein, SROC members strongly support ongoing efforts at the European Union and at WIPO to address the issue of advertising on IP infringing websites and mobile apps.

PROTECTION OF IP RIGHTS IS CRITICAL FOR THE FUTURE OF SPORTS

According to the European Commission, “around 2 percent of global GDP is generated by the sports sector.” Moreover, sporting competitions have an important economic impact at the national level. For instance, according to a recent study from Ernst & Young, the Premier League

supports 100,000 jobs in the United Kingdom, generates GBP 3.3 billion (approximately USD 3.7 billion) in tax revenues, and encourages community work at club level. It also provides a platform for towns and cities to engage with the rest of the world and boosts tourism.

As sports are a valuable contributor to the global economy and the enjoyment and well-being of people, it is imperative that the sports sector can continue to thrive. In order to do so, and to invest in the current and next generation of sporting heroes, whether in front of 90,000 fans at Wembley Stadium in London or in your local youth team, we need to ensure that the sector’s IP rights and the revenues that flow from them are protected. That is why members of the SROC are seeking proper recognition of the value of sports and effective protection of our IP rights under the law from governments around the world.

Beyond the signal: a view from China on the copyright protection of live sports programming



Photo: Alamy Stock Photo / James Boardman

Television broadcasting has played a central role in promoting sports events and in enabling them to generate income.

Over the years, television broadcasting has been the catalyst for the development of the sports economy. Indeed, as noted by Juan Antonio Samaranch, the former President of the International Olympic Committee (IOC), sports and TV are “a match made in heaven.”

The Olympic Movement is a very good example of the significant economic contribution of broadcasters to the development of sports. As noted by Michael Payne, author of *Olympic Turnaround*, the revival of the Olympic Movement in the 1980s and its long-term financial sustainability were closely linked to television. Thanks to broadcasting, heart-quaking moments of Olympic action have translated into mass audience ratings and advertising revenue.

Television broadcasting has been the prominent factor in promoting sports events and generating income from top-tier sports events such as the Olympic Games, in particular. Televised broadcast of the Olympic Games in Beijing in 2008, London in

By **Yan Bo**, Deputy Director, Copyright and Legal Office, China Central Television (CCTV), Beijing, People's Republic of China

2012 and Rio de Janeiro in 2016 each exceeded 3 billion viewers, nearly half of the world's population. Moreover, the sale of rights to broadcast the Olympic Games from 2013 to 2016, accounted for 73 percent of the IOC's total revenue (see p.13). As noted by the IOC in its *Olympic Marketing Fact File 2019*, Olympic broadcast partnerships have provided the Olympic Movement with "a secure financial base" and have been its "single greatest source of revenue" for more than three decades.

Sports and television are also "a match made in China." While the 1936 Olympic Games in Berlin marked the first live television coverage of an international sports event in history, it was more than four decades before live sports broadcasts took place in China. In 1978, China Central Television (CCTV) recorded and broadcast the last four matches of the 1978 Argentina FIFA World Cup for the first time. And in 1982, at the request of Chinese viewers, CCTV succeeded in broadcasting live the World Cup final between Italy and the Federal Republic of Germany (as it was then known) in Spain for the first time. The first live broadcast of the Olympic Games to viewers in China took place during the 1984 Olympic Games in Los Angeles (USA). Thereafter, CCTV obtained licenses to broadcast subsequent Olympic Games and World Cup tournaments live and to provide free viewing to the majority of Chinese viewers.

CCTV's sports channel, CCTV5, also covered other international sports events, including the UEFA European Championships, the Champions League, and other major European football leagues in the United Kingdom, France and Italy. It also broadcast Grand Slam tennis tournaments, the Asian Games, NBA (National Basketball Association) in the United States and so on. Of course, the World Table Tennis Championships, the Artistic Gymnastics World Championships, and the World Figure Skating Championships are also strong favorites among Chinese audiences.

Broadcasters have helped to promote the popularity of important international sports brands in China while bringing spectacular sports events to Chinese sports fans. The live broadcast of these major international sports events has significantly boosted television ratings. For example, according to the CSM ratings survey, CCTV's ratings share for sports events in China in 2018 was 52 percent higher than that in 2017 due to its success in broadcasting of the World Cup in Russia, the Winter Olympic Games in PyeongChang (Republic of Korea) and the Asian Games in Jakarta (Indonesia). This is a great result, but the cost of the license and the investment involved in producing a live broadcast are immense. Unofficial reports suggest that a fee of around USD 400 million has been paid to secure TV broadcasting rights for the 2024 Olympic Games in Paris.

**“Television
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Photo: Courtesy of CCTV

For many years, broadcasters have been highlighting the urgent need to update the rights of broadcasting organizations amid high levels of signal piracy which are threatening the live sports broadcasting business and the transformation of the sports broadcasting landscape.



Photo: grinvalds / iStock / Getty Images Plus

BROADCAST SIGNALS UNDER THREAT IN THE DIGITAL ENVIRONMENT

Although higher ratings for major sports events have generated increased advertising revenue, the soaring cost of sports broadcasting rights for media companies in recent years has put significant operational pressure on broadcasting organizations.

As noted by the Asia-Pacific Broadcasting Union (ABU), the world's biggest broadcasting union in terms of membership, high levels of signal piracy are seriously threatening the survival and development of the live sports broadcasting business. The most common forms of broadcast signal piracy as outlined in *The World Broadcasting Unions and the WIPO Broadcasters' Treaty*, are:

- “Unauthorized retransmission of broadcasts by re-transmitters operating in neighboring countries;
- Unauthorized retransmission and other use of broadcasts via the Internet, either simultaneously or at some time after the broadcast;
- Distribution of unlawfully recorded broadcasts, including those program-carrying live sports events;
- Broadcast or cable distribution of pre-broadcast satellite signals, which carry sports and other types of programs; and
- Unauthorized manufacture, importation and distribution of decoders and other equipment that permit unauthorized access to, and distribution of, television services.”

Data from cybersecurity company, Irdeto, show that “content theft by pirates has become a fully-fledged business and a formidable competitor to established pay TV operators.” In 2016, Irdeto reported that it had found more than 2.7 million advertisements on e-commerce websites, including Amazon, eBay and Alibaba, for illicit streaming devices. Data from leading data analytics service, SimilarWeb, show that the growth in global traffic resulted in more than 16 million visits per month to the top 100 pirate IPTV supplier websites. Rampant signal piracy is a disaster for the exclusive TV rights holders of sports events. As pointed out by Christopher Shouten, Senior Product Marketing Director of NAGRA Kudelski, a global leader in digital security and convergent media solutions, “the bright lights of televised sports are also drawing in an ever growing number of pirates. And TV rights holders are seeing their returns eaten away as it becomes easier than ever to disregard the law. Case in point: Sky, the largest English Premier League rights holder, has seen profits fall 11 percent in the last nine months alone.”

Similarly, in China, signal piracy poses a big threat to live sports broadcasting. Data from Bright Media Technologies show that during the 2018 FIFA World Cup in Russia, 1,043 signal piracy links were found across multiple platforms, including audiovisual websites, live broadcasting apps and OTT boxes. Without adequate protection of the live sports “signal,” the piracy that takes place undermines the interests of broadcasters who pay vast sums for the exclusive right to broadcast an event. This, in turn, threatens the main source of revenue for organizers of major sports events.

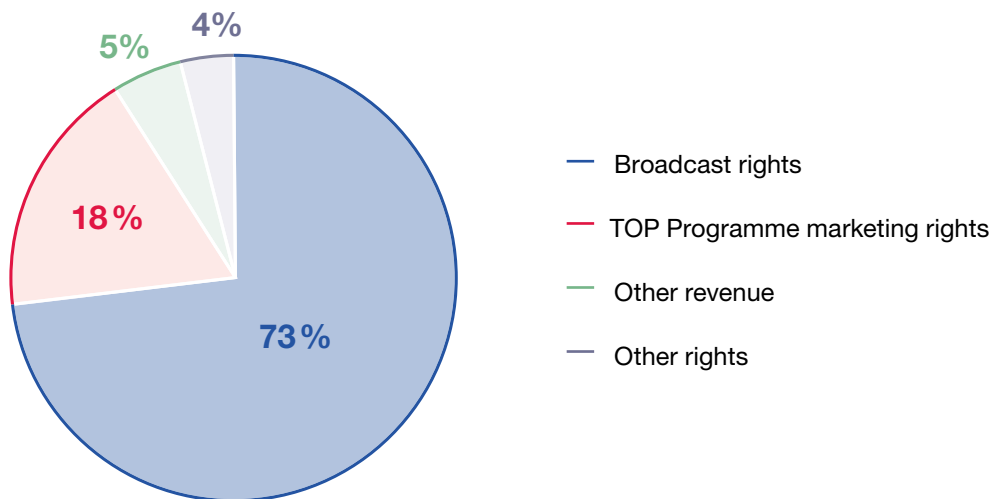
The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), concluded in 1961 and 1994, respectively, do little to address the realities of present-day digital broadcasting, nor do they adequately protect the broadcast signal in the digital environment. This puts the global broadcasting industry in a difficult situation when it comes to fighting online piracy. For many years, broadcasters have appealed to the international community, underlining the growing challenges of signal piracy and the urgent need to update their neighboring right. WIPO's Standing Committee on Copyright and Related Rights (SCCR) recognized the need to address this question over two decades ago in 1998. Moreover, the rapid evolution of broadcast technologies in recent years means that the way in which broadcast signals are delivered and consumed bears little resemblance to the situation that existed in 1961, when the Rome Convention was concluded. This is the case for sports broadcasting and all other types of programming. That is why it is imperative to address all forms of signal piracy properly. For CCTV, and colleagues in the Asian region, it is vital that the ongoing negotiations at WIPO are concluded and that an international agreement on updating the rights of broadcasting organizations is finalized swiftly.

Television broadcasting has been the prominent factor in promoting and generating income from top-tier sports events such as the Olympic Games.



Photo: Courtesy of CCTV

IOC revenue sources (2013-2016)



Source: *Olympic Marketing Fact File 2019*.

HOW TO JUDGE WHETHER LIVE SPORTS PROGRAMS QUALIFY FOR COPYRIGHT PROTECTION?

Another hotly debated issue in China is the question of whether or not a live sports “signal” – here signal means the audiovisual program of live sports carried on the broadcasting signal – can be considered an audiovisual work rather than an audiovisual recording, and qualify for protection as such. The issue of how to determine the originality of an audiovisual work by the expression of camera shots and montage sequences is an interesting question about which, I have written in some depth in *A Study on Copyright Protection of Live Broadcasting Programs*. However, there is still no clear answer and this issue has been the subject of a long dispute in China. Under Chinese Copyright Law, the definition of an audiovisual recording is similar to that found in German Copyright Law (paragraph 95). In both cases, such a work relates to a moving image, or sequence of images, which qualifies for protection as a neighboring right, rather than copyright in the narrow sense. However, the scope of the right in each law is different.

Under Chinese law, the owner of rights in an audiovisual recording does not have an exclusive right or the right to forbid the retransmission of the audiovisual recording on the Internet. In China, this debate was triggered by a famous lawsuit before the Beijing Chaoyang District People’s Court (No. 40334 Chao Min (IP) Chu (2014)), which heard arguments relating to the nature of live sports programs under copyright law. In that case, the court declared that, although there are no criteria for originality regulated by law, the act of choosing and editing audiovisual images of sports events constituted an act of creating. As such, the court held that the audiovisual images (of live sports broadcasting) attained a degree of originality, and qualified for copyright protection under Chinese Copyright Law. This high-profile case is now widely known among China’s legal community as “The First Trial Regarding Copyrightability of Sports (Live) Program (FTRCSP).”

Meanwhile, a number of other courts have declared that the audiovisual images of live sports were not sufficiently original to qualify for protection as audiovisual works (cinematography works) and should be regarded as “audiovisual recordings,” protected by neighboring rights (see No. 752 Shi Min (IP) Chu (2015); No.174 Shen Fu Fa Zhi Min Chu (2015)). The argument is still raging and the FTRCSP currently is the subject of a retrial by the Beijing Superior People’s Court.

The protection of the broadcasters’ neighboring right is independent from the protection of the program content carried by the signal. For example, regardless of whether a live TV show is considered an audiovisual work or only a recording of moving images, the broadcaster of that TV show enjoys the exclusive right to protect the program-carrying signal. The latter is based on the broadcaster’s intellectual and financial investment, and its contribution to society, and is separate from the rights a broadcaster may enjoy in programming content. It is widely understood and an entirely accepted practice in copyright law for several categories of right-holder to be associated with a work. Take a musical recording, for example, which can have three different types of right holder: the producer of the recording or phonogram, the author(s) of the recorded musical work, and the performers of the work. Each enjoys separate and independent rights in that work. The phonogram producer is protected irrespective of whether the recorded musical work is in the public domain or the performance is protected.

Rejecting the copyrightability of live sports programs simply to bolster the significance of broadcasters’ rights does a disservice to the production teams responsible for developing sports programming, including, but not limited to, the director of the live sports program, cameraman, cutter, recording director, slow-motion director, the designer and producer of special effects, subtitles, and others. And, if live sports programs are only protected by the broadcaster’s right, then it is possible that another loophole is created in relation to the protection of the exclusive rights of new media operators.

Solutions to these emerging challenges are not beyond our reach. Since its birth, copyright law has evolved in response to technological developments. Today, the production of live sports programming is much more sophisticated than in the past. New audiovisual media are entering the live sports market and these players also need to be able to protect the live sports programs they produce. However, as yet, there are no clear-cut answers. In Europe, for example, the question of whether a live television program qualifies for copyright protection remains unresolved. The reason for this may be related to the dearth of court decisions on the matter.

It is high time to reinforce the protection of broadcast signals of live sports in the broadcasters’ neighboring right in the digital environment. And amid the ongoing transformation of the sports broadcasting landscape, the time is certainly ripe to start thinking about moving beyond protecting the broadcast signal and to consider protecting live sports coverage itself under copyright law.

ASICS: creating quality lifestyle through intelligent sports technology*

Koji Saito, General Manager, Intellectual Property Department, ASICS Corporation, Kobe, Japan.



Photo: Courtesy of ASICS

Many of the inventions developed by ASICS over the years have contributed to record-breaking sporting performances. However, as for other sports brands, its products are targeted by counterfeiters. Counterfeiting of sports goods remains a significant challenge for the sporting goods industry.

The well-known Japanese sports brand, ASICS, began operations in 1977, but its roots date from 1949, when a former military officer, Kihachiro Onitsuka, established Onitsuka Co. in Kobe, Japan. Mr. Onitsuka had a great passion for sports and health and, in the 1950s, he set out to provide the youth of Japan with appropriate shoes to encourage participation in sports.

In the late 1970s, the company changed its name to ASICS. The name consists of the acronym of the Latin expression, *Anima Sana In Corpore Sano*, meaning “a sound mind in a sound body.” It is the philosophy under which the company operates, and the fundamental platform on which it still stands. ASICS’ long-standing corporate vision is to “create quality lifestyle through intelligent sport technology.”

*An adaptation of this article entitled *Intellectual Property Supporting Sports* first published in *Patent*, the magazine of the Japan Patent Attorneys Association (JPAA), (Vol. 71, No. 14, 2018).

A COMMITMENT TO HUMAN-CENTRIC DESIGN

Since its inception, ASICS has developed a number of innovations and inventions. Many of these inventions have contributed to record-breaking performances at sports events across the globe. Since the 1960s, the company's focus has been on developing high-performance running shoes, among other types of footwear (see https://corp.asics.com/en/about_asics/history). Over the years, the company has developed a variety of unique running shoe models to accommodate different conditions and ensure athletes have a comfortable running experience. Each generation of shoe reflects the strong commitment of the company's founder, Mr. Onitsuka, to marrying technology and design with comfort and performance. An early example of this is the "Magic Runner" marathon line launched in 1960. The "Magic Runner's" air ventilation system helped prevent long-distance marathon runners from developing blisters. ASICS has patented many of its inventions in Japan and elsewhere.

In 1985, ASICS established the ASICS Institute of Sport Science in Kobe, Japan. The Institute is the company's research and development (R&D) center and is responsible for developing a range of technologies in line with the company's commitment to human-centric science and cutting-edge sports innovation. Through analyses of natural movements and actions, the Institute develops unique materials and structures to meet the needs of athletes. In recent years, ASICS has expanded the scope of the Institute's work and thereby strengthened its R&D capacity.

Today, ASICS continues to develop technologies to improve the quality and performance of sports shoes. For example, a core R&D focus is the development of the soles of sports shoes. R&D efforts also emphasize innovative solutions for fit, cushioning, stability, flexibility, grip, ventilation and durability. The company owns a sizeable portfolio of intellectual property (IP) rights both to protect its investment in these technologies and to fund future R&D activities.

INTELLIGENT SPORTS TECHNOLOGY SUPPORTS ATHLETIC PERFORMANCE

ASICS is perhaps best known for its highly cushioned GEL™ brand technology and shoes launched in 1986. The technology and shoe range continue to progress. The latest advances in GEL™ technology are embedded in the GEL-QUANTUM INFINITY™ model, which features a full-length GEL™ technology-infused midsole offering athletes greater comfort and a visually impressive pair of sneakers.

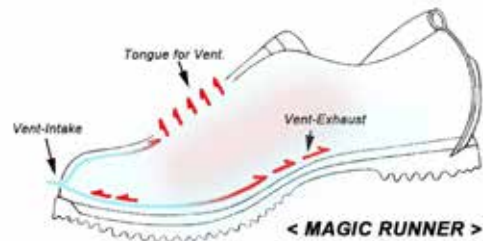
ASICS has also developed a light and stable foam technology branded as FLYTEFOAM™, which is featured in the midsole of mainstay running shoe collections. The technology's excellent shape-recovering properties means that ASICS footwear with FLYTEFOAM™ technology bounces back to its original shape after every stride. This light-weight technology is formed using a polymer foam containing "organic fibers" that make for a long-lasting cushioning experience. The shoe's high-quality adaptive cushioning offers runners a more comfortable, resilient and durable trainer.

ASICS' FLYTEFOAM™ Propel and GEL™ technologies can be found in the latest version of the legendary GEL NIMBUS™ model, launched in 2018, which built on the company's highly successful FLYTEFOAM™ technology. Once again, the shoe reflects ASICS'

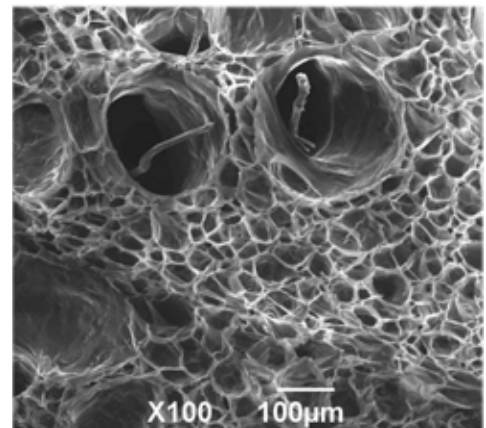
The ASICS Institute of Sport Science in Kobe, Japan, is the company's research and development center.



All photos: Courtesy of ASICS



Developed in 1960, the Magic Runner's innovative ventilation system helped prevent long-distance runners from developing blisters.



ASICS FLYTEFOAM™ technology has excellent shape-recovering properties that make for a long-lasting cushioning experience.



commitment to continuous improvement and offers runners superior comfort. These cushioning technologies create a spring-like feel for a more energetic and lighter run.

The company's most recent and much-heralded METARIDE™ model, launched in February 2019, features multiple proprietary technologies encompassed in a radical new design. Billed as one of ASICS' most important technologies in 70 years, the METARIDE™ model embedded with GUIDESOLE™ technology is an advanced sports shoe designed to make long-distance running easier. Its precision engineering minimizes movement in the ankle joint where most energy is expended, making for improved running efficiency. The shoe's precision-shaped curved sole shifts body weight forward to give runners the feeling of effortless motion.

ASICS has always been alongside runners working to develop the technologies required for more comfortable and efficient sports footwear. Further evidence of this is the ASICS Running Lab, a running store that specializes in technically advanced running apparel, equipment and footwear. The ASICS Running Lab helps athletes match the right shoe to their foot type and gait, helping them to maximize their running performance and reduce the risk of injury.

As a successful global brand, ASICS' product range and attendant IP are widely associated with high quality and high performance. Indeed, the company has received a number of national awards, such as the Good Design Award in Japan, for its achievements in the areas of innovation and design.

ASICS' much-heralded METARIDE™ model, launched in February 2019, features multiple proprietary technologies encompassed in a radical new design.





A core ASICS trademark.

Photo: Courtesy of ASICS



Baseball protector (above). ASICS has received a number of national awards for its achievements in the areas of innovation and design.



TACKLING IP INFRINGEMENT

Like other sporting goods brands, ASICS has built an extensive IP portfolio around the products it delivers to athletes. It includes patents, design rights and trademarks, which are used according to strict corporate guidelines. ASICS recognizes the value of its IP and is vigilant in protecting and enforcing its portfolio of rights against infringement. However, in a world where fake sports products represent a significant portion of the illicit trade in counterfeit goods, this is a challenge.

ASICS is committed to taking the necessary action to identify and remove counterfeit products from authentic markets. The challenge is so great that anti-counterfeiting efforts have become an integral part of the branding activities of many sporting goods manufacturers. Companies across the sector and government authorities around the globe have undertaken vast anti-counterfeiting initiatives to protect consumers and the public from low quality and potentially harmful imposter goods. After all, for consumers, brands and the IP rights that underpin their reputation represent a guarantee of genuine quality. Counterfeiters, however, are becoming ever more savvy in the way they infringe the rights of IP owners and free-ride on their hard-won commercial reputation. That is why more effective and efficient measures are required to combat the growing sophistication of counterfeiters.

In these circumstances, ASICS has identified three counterfeiting categories that reflect the evolution of the illegal trade in counterfeit goods and has devised a strategic response to each of these categories in accordance with their impact on its business. The first category includes unknown poor-quality products bearing ASICS trademarks without authorization. The second category includes copycat goods – products and trademarks that strongly resemble authentic goods, which are made from low-quality materials and are poorly finished. For brand owners, enforcing their IP rights against such “free-riding” activities in typical counterfeit marketplaces can be an unfortunate common occurrence.



First Category
partially copied



Second Category
fully copied in appearance



Third Category
fully copied with altered trademark

Photo: Courtesy of ASICS

ASICS Classification of Counterfeit Shoes

However, the third category represents a more insidious challenge for sports rights owners. In this category, we see the effective hijacking of genuine products. The offending products are conceptually similar to the genuine product and bear a slightly modified trademark. A growing number of “bad faith” trademarks for these products are being registered in a variety of jurisdictions. ASICS refers to this type of counterfeit activity as brand hijacking. The activity is increasingly common, and the number of consumers duped by these goods continues to rise.

By actively enforcing their rights against counterfeiters, companies are effectively preserving the integrity of their brand values. That is why ASICS has adopted additional and more unconventional strategies to tackle brand hijackers, beyond trademark oppositions and lawsuits. These include:

- working with local agents and attorneys to improve their understanding of these issues;
- lobbying enforcement authorities to raise awareness about good trademark practice among the business community to discourage unauthorized use of trademarks;
- promoting the company’s trademarks through, for example, cover page advertisements and IP publications;
- engaging with authorities to improve the quality of trademark examination to minimize registrations of bad-faith filings; and
- working with national authorities to pursue massive enforcement actions. Some have already issued record penalties and fines. This is already helping to reduce the level of counterfeit goods in the market.

Many brand owners across the globe face similar challenges and, like ASICS, are keen for governments to establish and maintain robust trademark laws across jurisdictions to help ensure that brand hijackers are unable to exploit loopholes in national trademark systems.

THE MARKETING POWER OF SPONSORSHIP

Global sporting goods manufacturers such as ASICS play an active role in sports events around the world, either as official suppliers of sportswear (shoes, apparel, accessories and equipment) or as event sponsors. The sporting goods industry develops and delivers quality products to support

athletic performance within the parameters of the evolving rules and regulations of competitive sports.

The almost universal appeal of sports and the far-reaching benefits that flow from physical activity – in terms of health, well-being and building a sense of community – make sports events very powerful marketing platforms. As an official sponsor of a sports event that is broadcast live, a sports brand has an opportunity to promote its products and associated cutting-edge technologies and designs to sports fans around the world.

Broadcast coverage of sports events transforms them into very powerful marketing platforms that have the potential to reach billions of consumers via television or online streaming platforms. Accordingly, sponsors pay much more attention to the way in which their brands (underpinned by trademark rights) are used. They also take steps to ensure an effective IP strategy is in place when developing and launching any new products during such events.

ASICS is honored to be an official sponsor in the “Sporting Goods” category of the 2020 Olympic and Paralympic Games in Tokyo. As such, the company will make every effort to ensure the proper use and protection of its IP – and that of other sponsors – to prevent ambush marketing, in particular. The 2020 Olympic and Paralympic Games will be an ideal opportunity for the company to market the ASICS brand to a global audience, and to underline the company’s commitment to contributing to healthy and sustainable societies by creating quality lifestyles through intelligent sports technology. In this way, we will contribute to the success of the world’s most iconic celebration of sports.

Ambush marketing: when sponsors cry “foul”

Kathryn Park, Strategic Trademark Consulting,
formerly General Counsel for Brand Management,
GE, Connecticut, United States

Ads bombard us daily – television, billboards, search engines and websites, apps, print and radio. Brands seek ways to break through this noise, to create a buzz and drive consumer demand for their products. In this pursuit, advertisers sometimes invest in sponsoring a big event, a famous individual or a team to leverage fans' excitement to promote the sponsor's brand. Events like the Olympic Games, the World Cup and the Super Bowl, to name a few, attract corporate sponsors that pay large sums, often in the hundreds of millions of dollars, to gain greater exposure for their brands. Sponsorships typically confer exclusive rights in a category to the sponsor, which can advertise itself as the official sponsor in that category, e.g., the official soft drink of the event.

These marketing investments are imperiled when the sponsor's event-related advertising is ambushed by a competitor's advertising that makes that same association, even though not an official sponsor.

DIRECT AMBUSHES VERSUS INDIRECT AMBUSHES

The easy cases to spot are direct ambushes – ones in which the actual trademarks of the event organizer are used to create the false impression that they are associated with an event; for example, if the use is of the distinctive symbol comprising five interlocking rings of the International Olympic Committee.

The more difficult cases are indirect ambushes, ones in which the ambush marketer capitalizes on the event without misuse of the event's trademarks or without making a direct false claim of affiliation with the event. A myriad of approaches can accomplish this, from buying advertising space near the event, branding transportation to the venue, featuring individuals participating in the event, and using a color scheme and words that imply the event, to name a few.

Indirect ambush marketing is best illustrated by examples. During the London 2012 Olympic Games, Nike launched the *Find Your Greatness* campaign featuring regular individuals doing all manner of sports, filmed in locations called London, other than London, England – for example, London, Nigeria. In another example, Puma, which sponsors Usain Bolt, flooded the media with images of the athlete holding his golden Puma shoes after he won gold medals in the 2016 Rio Olympic Games and filled social



Photo: Getty Images / © Dmytro Aksorov

Investments in sports sponsorship are endangered when an official sponsor's event-related advertising is ambushed by a competitor's advertising that makes the same association, even though not an official sponsor.

“Events like the Olympic Games, the World Cup and the Super Bowl, to name a few, attract corporate sponsors that pay large sums, often in the hundreds of millions of dollars, to gain greater exposure for their brands.”

“The single most important step a sponsor can take in anticipation of ambush marketing is to address it as a critical part of the sponsorship negotiation.”

media with the post “When you are @Usain Bolt, you are #ForeverFaster,” which tied Usain Bolt’s gold medal performance with Puma’s *Forever Faster* slogan. These examples did not encroach upon any sponsor rights, notwithstanding the obvious implicit connection to the Olympic Games.

During the Winter Olympic Games in 2018 in PyeongChang, SK Telecom created a series of three broadcast ads using two South Korean Olympic athletes and the phrases “See you in PyeongChang” and “See you in 5G Korea.” Although the advertisements appeared carefully crafted not to make a direct association between SK Telecom’s services and the Olympic Games, the Korean Intellectual Property Office found that the campaign violated the rights of the official sponsor, KT Corporation.

Indirect ambush marketing campaigns also occur when the non-sponsored brand physically intrudes on the event. For example, Beats Electronics has executed campaigns during World Cup games and the Olympic Games in London and Rio, providing free Beats headphones to athletes who wore them in the event venue and in some cases tweeted about them. In another example, at an Indian Premier League match in 2017, Reliance Jio, a mobile network operator, engineered a daring ambush. It had certain game attendees wear black and white shirts in a pattern that spelled out JIO and was clearly visible to those in the stadium and, even more importantly, to the many viewing the match on television, thereby successfully ambushing the official sponsor, and Reliance Jio’s rival, Vodafone.

ENFORCERS BEWARE OF A POTENTIAL BACKLASH

Taking action against such intrusive ambushes comes with the peril of a viral backlash. In the 2010 World Cup, 36 attractive women all wearing orange mini dresses provided by Bavaria, a beer maker without a sponsorship deal, showed up to cheer the Dutch team. The women were ejected by FIFA, which asserted that this activity ambushed the rights of the official sponsor, Budweiser. Although the sponsor won in the short run,

the enforcement of these rights backfired, as studies show that press coverage effectively cemented the association between Bavaria and the World Cup in the minds of consumers.

When a sponsor has paid dearly for exclusive advertising rights, it will want an immediate solution to prevent or stop a competitor from stealing that benefit and will look to the owner of the rights, the event organizer, to step in. The organizer may be reluctant to take aggressive action for fear of setting an unfavorable precedent that could encourage others to be bold in creating ambush advertising around the event. Moreover, when the ambushes occur during an event, the organizer may have many pressing issues to address. What may be of urgent concern to a sponsor facing an ambush may be less critical to an organizer dealing with the production of the event in its entirety.

The single most important step a sponsor can take in anticipation of ambush marketing is to address it as a critical part of the sponsorship negotiation. While the business team may have other pressing concerns, the lawyer on the team needs to ensure that ambush marketing is addressed, with strict and measurable requirements, by the event organizer. The following is a list of suggestions for the sponsor, although often the facts of the event may dictate additional considerations.

PRACTICAL STEPS IN NEGOTIATING A SPONSORSHIP DEAL

First, agree upon a specific set of steps that will be taken in response to ambush marketing, up to and including litigation, in what time frame and at whose expense. One of the great challenges for a sponsor is that when an ambush is effective, a cease-and-desist letter, after the fact, will not repair the damage caused. Determining in advance what steps will be taken can improve the relationship between the parties during the critical time a sponsor is demanding action. Such steps can include:

- a) pre-event publicity by the organizer stating that ambush marketing will not be tolerated; proactive sweeps of media and the physical venue, up to and during the event, for potential infringements of the sponsor's rights; designated personnel, including security and legal counsel, to address ambushes and the preparation of draft court papers.
- b) identification of competitors that the sponsor knows are likely to ambush an event. Often, a sponsor will have examples of past occurrences and even press clippings that show the ambusher was reported mistakenly as an official sponsor. Such documentation should be shared with the event organizer to support requests that the organizer issues advance warnings and prepares for immediate enforcement activity against the competitor as required.
- c) requiring the event organizer to establish clean zones around the arena or concert hall, working with the local municipality to establish a perimeter within which non-sponsor advertising is not permitted. This is often something the event organizer will have done,



When a sponsor has paid dearly for exclusive advertising rights, it will want an immediate solution to prevent or stop a competitor from stealing that benefit and will look to the owner of the rights, the event organizer, to step in.

but nonetheless the guarantee of a clean zone should be specifically included in the agreement. A wily competitor could host a party near or on the day of the event in a building that falls within the clean zone, featuring invited guests and celebrities associated with the event, to build a subtle association with the event. A clear obligation to provide a clean zone will help the sponsor in that circumstance.

d) the sponsorship agreement should specifically impose obligations on the event organizer to ensure the organizer will have:

- adequate language on the back of tickets stating that certain actions will be grounds for ejection from the event and that tickets may not be used in promotional activities;
- rules for individual athletes or performers on how and when non-sponsor brands can be used within the venue; and
- terms in supply agreements with suppliers which haven't also obtained a sponsorship, that expressly prohibit promotional activities or advertising in conjunction with the mere fact of supplying the event.

e) focusing on the product category and making sure it is comprehensive and anticipates future product developments in the category, if possible. Broad category definitions may make it easier to convince the organizer to take action, even against other sponsors, where there is some question about where the product of the ambusher falls. In an early ambush case, Mastercard, the official sponsor of the 1992 World Cup for “all card-based payment systems and account access devices,” successfully enjoined Sprint, which was marketing pre-paid telephone calls with the event logo. However, category specificity is an issue that continues to lurk, particularly in categories where technology and social media have created new products and services.

To attract top sponsors, event organizers will often take proactive measures on behalf of all sponsors. Ensuring clean zones, as mentioned above, is one. Another is obtaining enhanced legal protections in the jurisdiction hosting the event, often as a condition of bringing the event to a specific country. Nonetheless, governmental response to enacting special legislation and needed implementing rules can be slow. Thus, sponsors should continue to raise these issues with the event organizer.

A BALANCING ACT

Of course, non-sponsors will always try to compete, despite their lack of official rights. To be fair, if there is only one sponsor per category, some – even those willing to pay the sponsorship fee – will be left out. Free speech rights, such as those defined by the First Amendment in the United States and by common law in other jurisdictions can be implicated if restrictions are too broad. Where to draw the line is not black or white, but gray. Both the event organizer and the sponsor should be sensitive to taking steps that are perceived as an over-reaction, particularly in this day of social media.

Trademark bullying, a concept that has gained traction in the United States, among other places, is shorthand for the overreaction of a big brand to an alleged encroachment by a smaller one. The assertion that one’s free speech has been abridged or that one has been targeted by a bully, can be a very effective way to color public perception about the issue, and can work against the sponsor and the event. Yet, the organizer may have to weigh this concern against the fact that ambush marketing is a serious legal issue and that turning the proverbial blind eye against one ambusher may weaken a future legal action against a more serious ambush. Even more importantly, the organizer will know that a failure to act may have a negative impact on the value proposition of a sponsorship.

Despite the best efforts on the part of the sponsor and the event organizer, ambush marketers may well pull off a heist, and grab the spotlight sought by the sponsor. Planning clever marketing in advance to respond to an ambusher, or at a minimum, having a marketing team poised to take action at a moment’s notice to shift attention robustly back to the sponsor, may be the best option. Lawyers can help ensure that in the tit-for-tat, the sponsor does not itself stumble into trouble, by helping it avoid infringement, unfair competition and product disparagement claims.

Intellectual property and sports and tourism: a perfect match

By **Carole Beckford**, Sports Marketer,
Kingston, Jamaica

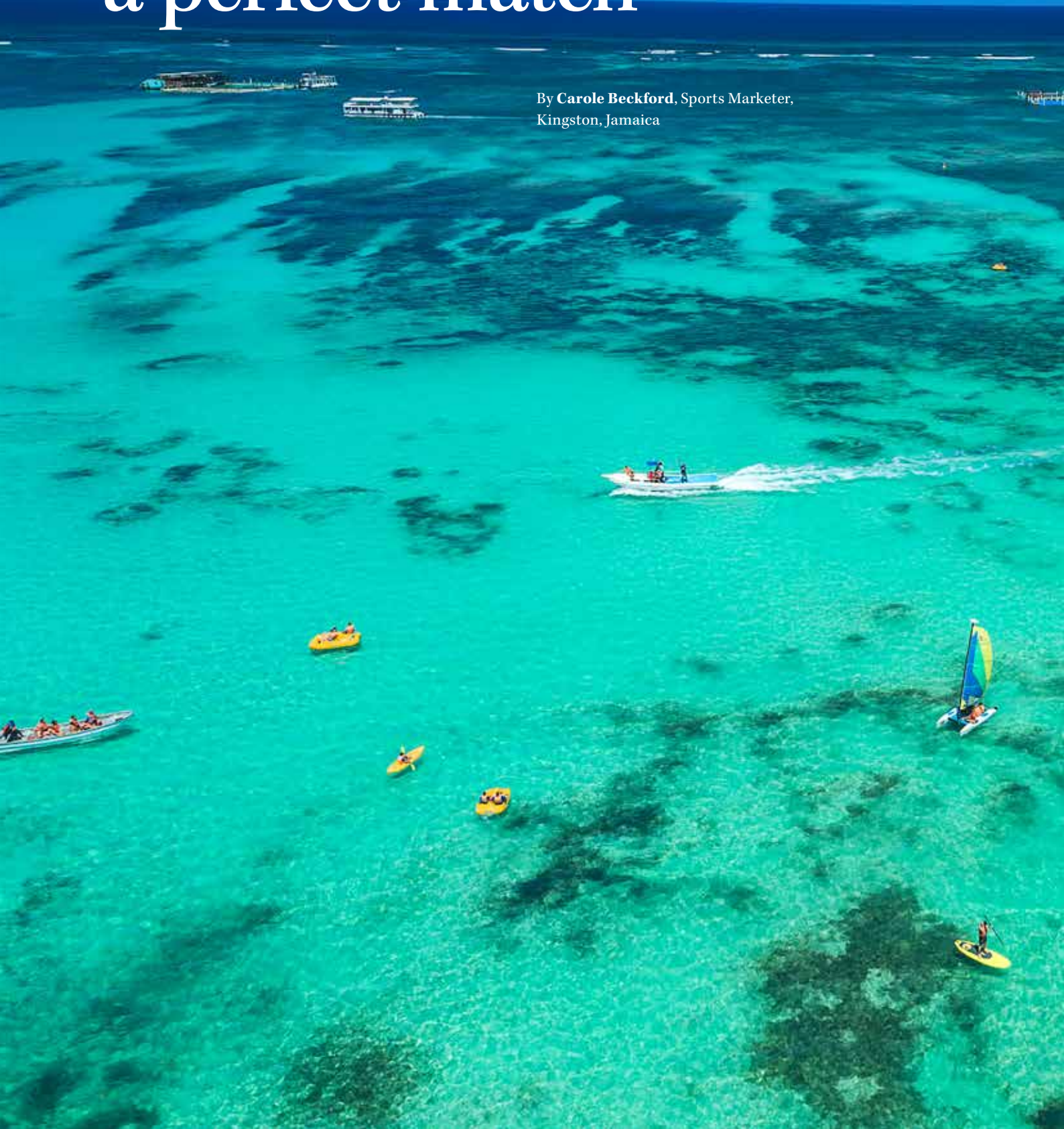




Photo: Getty Images / © vallo34sl

Small countries like Jamaica, whose athletes have dominated in so many sports, can benefit from sports tourism built around strategic use of IP rights.

Sports events are becoming a major driver of economic development globally.

Global management consultants, AT Kearney, have estimated that the industry is worth around USD 620 billion. That figure represents a significant share of the USD 4.5 trillion estimated value of the tourism industry as a whole.

Sports and related sectors, ranging from infrastructure, training, and events to manufacturing and retail of sports equipment and hospitality, make up a significant share of what goes on in the tourism industry. Research by management consultants, KPMG Peat Marwick, suggests that the global sports industry will experience steady annual growth of between 7 and 11 percent up to 2023. The web of commercial relationships that enable the sector to deliver sports to fans around the world are underpinned, in large part, by intellectual property (IP) rights, from patents and designs to trademarks and media rights.

These data point to one thing – IP, sports and tourism combined make a significant direct contribution to the global economy and generate far-reaching indirect benefits in terms of promoting physical well-being, developing notions of fair play and mutual respect, and cultivating social cohesion and a sense of community.

A LASTING LEGACY

When a destination, such as Kingston, Jamaica, recognizes the potential of sports events to boost tourism, and incorporates such events into its economic planning process, it must also have a well-defined IP strategy. Strategic use of the IP rights held by organizers of sports events can create significant opportunities for wealth creation, employment and development of urban infrastructure. Through the sale of broadcasting rights, commercial sponsorship and merchandizing deals (underpinned by trademark rights), organizers of sports events can secure the funds needed to stage these events, including the cost of creating or upgrading sports stadia and other physical infrastructure to ensure the event runs smoothly and sports fans have a comfortable and safe experience. In this way, the combination of IP, sports and tourism creates opportunities for public and private investment in urban infrastructure and services, and a lasting legacy for the host country or city and its inhabitants.

From a tourism perspective, a high-profile sports event can draw people from across the globe. Sports fans will travel from far-and-wide to watch their sporting heroes compete and to soak up the atmosphere of a sports fixture. Effective marketing and promotion of an event and a destination will both enhance the support of fans and attract tourists from around the world.

Many will buy memorabilia – a commemorative T-shirt, cap or other sports apparel, key rings, and other accessories associated with the event – all produced under a merchandizing agreement – and will purchase other services available at the venue. IP rights underpin all of the commercial relationships that make these offerings possible and are an important source of income for sports event organizers.



With every passing decade, the incentives embedded within the IP system (i.e. to recognize and reward inventors and creators for their efforts while also ensuring broad public access to their outputs) have fostered technological developments in sports equipment, track and field measuring equipment, broadcasting and information technologies. These innovations have helped enhance athletic performance and have fueled the global popularity of sports by bringing fans ever closer to sports action.

THE ECONOMIC INCENTIVES OF IP

Similarly, the IP system, through trademark rights, in particular, has enabled organizers of sports events at all levels, national, regional and international, to strengthen their brand value, create additional revenue streams from sponsorship deals and licensing agreements with commercial partners and attract fans and media attention to their event.

Media rights are another form of IP that are at the top of event organizers' agendas. In recent decades, these rights have been a lucrative source of income for them. For example, in the United

IP, sports and tourism combined make a significant direct contribution to the global economy and generate far-reaching indirect benefits in terms of promoting physical well-being and social cohesion.



Photo: Alamy Stock Photo / © WorldFoto



The Kingston City Marathon, one of two marathons held in Jamaica every year, attracts large numbers of sports tourists and has the potential to generate significant revenues for the city.



States, the National Football League (NFL) media rights are astronomical, equivalent to each team being paid USD 225 million annually. The NFL, the highest value sport in the United States, has also managed to sell its broadcast rights across four networks, namely, Fox, CBS, NBC and ESPN. The estimated value of these rights is close to USD 6 billion. For the 2017/2018 season, these networks invested between USD 600 million and USD 1.95 billion for Thursday, Sunday and Monday night packages. The Sunday night package broadcast by Fox, CBS and NBC is the highest value, worth around USD 3 billion, according to sportspromedia.com.

Over the years, the Summer and Winter Olympic Games, as well as the FIFA World Cup, have all attracted ever-bigger media rights deals. For example, FIFA was able to raise USD 1.85 billion from the sale of media rights for the 2018 and 2022 World Cups.

CHANGING LANDSCAPE

However, as consumers develop a taste for bite-size viewing or sports snacking, sports event organizers and, to a growing extent, traditional broadcasters, face the increased influence of and competition from over-the-top (OTT) digital players.

Take, for example, the English Premier League (EPL). A report by Andrew Ryan in August 2018 claimed "*The bubble has burst!*" in response to the outcome of the

Premier League's latest UK broadcast rights tender released in February 2018. The total financial commitments between Sky and BT were approximately GBP 500 million (approximately USD 652 million) lower than the record GBP 5.13 billion (approximately USD 6.6 billion) in fees paid by the two broadcasters in the previous cycle (running from 2016 to 2019).

Similarly, the US-based sports broadcaster, ESPN, has reportedly lost 9 million subscribers over the last three years. The UK's Sky Sports has also reported a 19 percent dip in the EPL viewing figures.

These data reflect a change in the way sports fans consume sporting action. Increasingly, young people favor social media platforms over traditional broadcasting channels to watch sports. In China, mobile phones are the most popular media device for sports viewing.

SPORTS TOURISM

The remarkable achievements of star athletes have helped countries and cities build and develop their reputation as a "must-visit" destination. Following the stellar performances of Usain Bolt at the 2008 Olympic Games in Beijing and 2009 IAAF World Championships in Berlin in 2009, the athlete's hometown of Trelawny in Jamaica and the high school track-and-field event held every Spring in Jamaica, more popularly known as CHAMPS, have attracted a remarkable increase in interest.

More and more destinations are lining up to host major sporting events. Some of these signature events draw travelers to the host city, even when they are not attending the sporting event itself. Take for example, those who visit Wimbledon, home of the Wimbledon (tennis) Championships in London or the US (tennis) Open in New York or NASCAR (motor racing) in Chicago. This means that sports tourism is soaking up an expanding portion of the bigger tourism market.

Even small developing nations like Jamaica, which, since 1948, has dominated the world in so many sports, most notably in track and field and boxing, can benefit from sports tourism built around strategic use of IP rights. Its cameo appearance in world football in 1998 and at the Winter Olympic Games in Calgary later that year, immortalized in the box office hit, *Cool Runnings*, did much to trigger interest in the country and draw tourists to Jamaica's shores. The film continues to run on television networks around the world and the novelty of seeing Jamaicans on ice still draws tourists to Jamaica.

According to the World Tourism Organization (UNWTO) the global travel and tourism industry is worth around USD 7 trillion. Tourism is one of the world's fastest growing industries, enjoying annual growth rates of 6 percent. Around 1.8 billion international tourists are expected to travel by 2030.

And, of particular relevance here, the sports tourism sector is one of the tourism industry's fastest growing areas, generating billions of dollars every year. Sports

tourism is a vast international business attracting investment, political interest, media attention and thousands of traveling participants and spectators. The estimated USD 800 million spend on sports tourism represents close to 10 percent of all tourism-related earnings.

As sport is such a sizeable chunk of the tourism industry, it makes sense to make every effort to leverage a nation's sporting success to attract sports tourists to a destination.

Sports tourism takes a variety of forms. It may consist of top-tier championships, such as the Olympic Games, World Championships, NASCAR, or softer sporting activities, such as hiking, skiing, rowing and sailing. It may also include less formal local, regional or international competitions that also attract large numbers of people. Sports tourism may also include locations where famous athletes live or Sports Halls of Fame.

Destinations that host sports events can enjoy considerable benefits by attracting tourists who may subsequently return for a vacation. Sport tourists are among the biggest spenders in the business.

RECOGNIZING OPPORTUNITY

Focusing efforts on boosting sports tourism presents opportunities to showcase the favorability of a given destination and enhance its profile on the global stage. Sports events also help extend the traditional tourist season, making it possible to appeal to a broader tourist population.

IP, sports and tourism are a potent combination. A coherent approach to sports and tourism underpinned by an effective IP strategy can drive public interest in travelling to a destination, especially if it is the venue for an exciting sporting engagement. An economic development plan that effectively integrates sports into its tourism strategy can have a huge impact on a country's ability to attract visitors and generate local employment opportunities. It can also boost its competitiveness as a tourist destination and its international standing, attracting investment and additional opportunities for business growth.

23 Capital: creating new ways to monetize intellectual property

By **Catherine Jewell**,
Communications Division, WIPO



Photo: Courtesy of 23 Capital

Stephen Duval (left) and Jason Traub (right) launched 23 Capital in 2014, at a time when a changing business and broadcasting landscape offered organizations, brands and individuals, including in the world of sports, new, lucrative opportunities to capitalize on their talent and their intellectual property.

Stephen Duval and Jason Traub, are co-founders of 23 Capital, a capital and solutions provider for the sports, music and entertainment sectors. In a recent interview with *WIPO Magazine*, these visionary entrepreneurs share their insights on how intellectual property (IP) rights are creating value in the rapidly evolving sports sector and talk about 23 Capital's role in the creation and recent launch of OTRO, an innovative global digital fan club that offers fans the opportunity to connect with some of the world's most famous football players.

What is 23 Capital?

Jason: 23 Capital is a capital and solutions provider for the sports, music and entertainment sectors. We are not a traditional lender. We think more like a sports or entertainment company than a bank. We provide finance to entities and individuals across these sectors and across the financial risk spectrum.

Stephen: On the financing side, we monetize IP in the sports, music and entertainment sectors in relation to very top-tier contracts or receivables. On the solutions side, we help structure and create new IP, and find new ways to monetize or exploit existing IP to generate innovative new revenue streams. Creating IP and new ways to monetize existing IP is in our DNA.

What gap are you filling in the market?

Stephen: We bring a bread-and-butter offering to a world that has struggled for decades to access basic financing. We have built 23 Capital around our expertise and understanding of how IP drives value in these sectors. For 23 Capital, IP rights can be more valuable than the tangible, physical assets (e.g. stadia) owned by sports organizations.

Jason: IP is a very difficult asset for traditional institutional markets to fund, and those who trade in or otherwise exploit IP in the sports, media and entertainment sectors have never really had access to financing in the same way as companies operating in other sectors. 23 Capital delivers to the sports, music and entertainment sectors what is a core offering in other sectors, and IP rights are central to that endeavor.

Why are these sectors so poorly financed?

Jason: There are a number of regulatory and risk-related reasons for this. First, banks favor tangible assets, on which they can easily place a market value and trade, over intangibles, which are more difficult to value and trade. For example, it is not so easy to sell a broadcast receivable from a top football club (e.g. the value of a Sky broadcasting payment to Manchester United) if there are problems in the market.

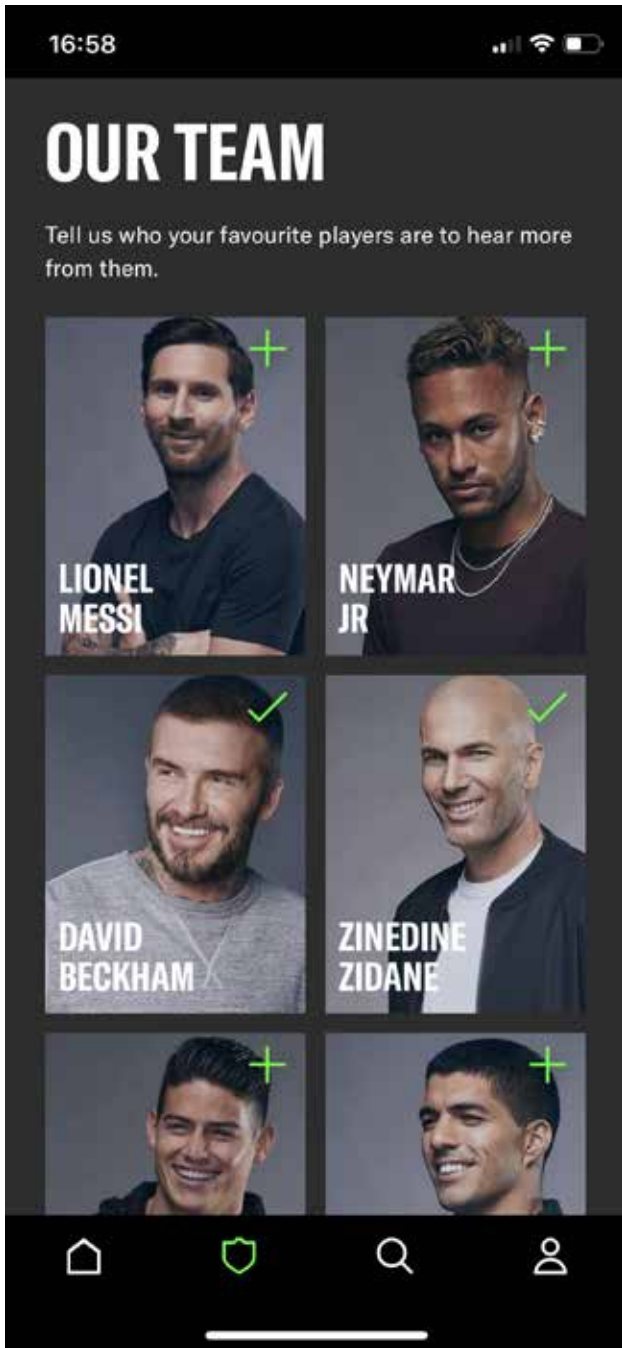
Second, issues around reputation also deter banks from engaging heavily in these sectors. For example, 10 years ago, the British bank, RBS, loaned a hefty sum to Liverpool Football Club. Then, when it all went wrong, the bank was stuck. As a deposit-taking institution, it was reliant on the members of the public, including Liverpool fans, for its day-to-day business and could not afford to be seen as the bank that closed the club down.

Third, generally, banks do not have the footprint to address the global scale of sports. In football, for example, there is no point being an expert in English football, the market is too small. You need to be an expert in Argentinian, Brazilian, English, French, German, Italian and Spanish football to build enough scale to provide a robust offering. Because of the way 23 Capital is set up, we don't face these barriers.

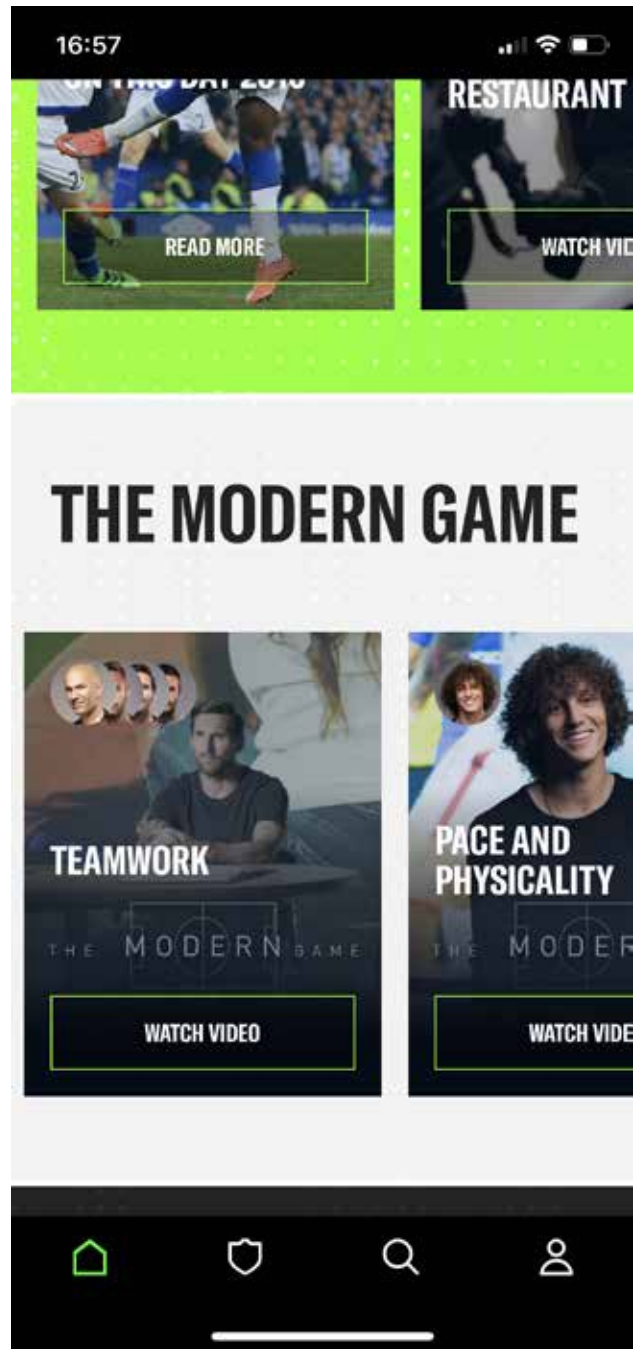
Who are your main clients?

Stephen: Our clients include anyone holding an IP asset with a potential revenue stream. We could be monetizing a broadcast receivable from Sky, a 10-year stadium naming rights deal, or an adidas sponsorship deal.

Jason: In football, that means from FIFA to UEFA, from the football associations to the Premier League, through to the clubs and players. At each level, there is a world of IP rights owners, including broadcasters, sponsors and commercial partners. Our role is to bring forward and



OTRO is an innovative global digital fan club that allows fans to connect with their soccer heroes like never before. It also offers players a new way to monetize their digital rights.



Photos: Courtesy of OTRO

monetize a given receivable to create liquidity. This might involve making it possible for a tennis player entering a five-year sponsorship deal with a big sports brand to receive payment up front.

We only work with the very top-tier across sports, music and entertainment. In sports, that means the top leagues, associations, corporates and rights holders. Their status speaks to their credit quality. That is how we manage our risk. We are not mainstay retail lenders.

Stephen: But top doesn't always mean the biggest deal. Many top deals fall under the radar of the banks. There is a world of top artists, athletes, brands and other rights holders that don't have access to flexible and fair funding from traditional institutional lenders, which is where 23 Capital's sector expertise comes into play.

Can you explain how your capital is used?

Jason: We help our clients build on their IP value. For example, we help football clubs bank roll their activities in the transfer market. Outside a club's brand and the value of its stadium, the most valuable asset on its balance sheet is almost certainly its players. No traditional bank can make sense of lending against a pool of human beings, but we do. We use our capital to create value for our clients – in this instance, by lending against a pool of players with a market value.

A specific example is the work we do for Portugal's Benfica, one of the world's largest clubs. Benfica is very active in the transfer market. We help them manage their balance sheet by providing them with financing to reduce their debt. For example, we purchase from them some of their IP-related receivables, such as broadcasting rights (which they will exploit over the next five years) and with that money they can reduce the debt on their stadium and thereby improve their balance sheet. As a listed company, Benfica holds very valuable IP. Our capital allows them to use their IP rights strategically to improve their balance sheet.

We also help football clubs with liquidity by lending against their players. Similarly, in the music sector, we work with artists to enable them to leverage the value of their catalogues.

“Players and athletes are far more IP savvy today, and are increasingly breaking down what was one macro bundle of IP rights into multiple strands where the sum of the parts is greater than the whole.”

Stephen Duval, Co-founder and Managing Director of
23 Capital

Recently, we played a pivotal role in providing the finance to acquire very valuable IP from the likes of David Beckham, Lionel Messi, Neymar Jr., Zinedine Zidane and others to create OTRO, the digital fan club that Stephen put together.

Can you tell us more about OTRO?

Stephen: OTRO is a global digital fan club. It presents exclusively created content from many of the world's most famous football players. It creates a community where members and players can engage directly, and where fans can connect with their soccer heroes like never before. Membership gives fans access to a range of benefits, including masterclasses and opportunities to meet the players. OTRO also allows players to monetize their digital rights outside of deals with clubs and sponsors in a new way.

I came up with the idea when watching a Champions League just over three years ago. I started thinking about the old fan clubs where you paid USD 2 a month to get coaching tips and other interesting snippets. I extrapolated that out and came up with a new way for players to monetize their digital rights. I wrote the business plan on the plane home after the match and set about making it happen.

We did a soft launch in December 2018. It attracted 370 million unique visitors, and in under a week following its launch in March 2019, we clocked up 80,000 downloads.

How does it generate value?

Stephen: OTRO generates value through a monthly subscription model. The 17 huge names in football – with a collective social media following of close to a billion fans – and the anticipated organic growth of social media means the opportunity for OTRO's development is huge. The platform will continue to grow as new players join. And there are so many different elements that flow from that IP which can be monetized. For example, you can sell footage to other broadcast partners outside of an exclusive window or you can get commissions from e-commerce. There are also multiple micro-payment opportunities within the platform, where fans can pay a small sum to access different benefits. There are so many ways to monetize it.

What were the difficulties you faced in getting OTRO off the ground?

Stephen: The biggest hurdle was convincing people that it was possible to bring these players together in one place, but we did it. It would be almost impossible to replicate this level of aggregation of players. It took close to three years and we faced multiple challenges, but with patience, creativity, skill, dynamism and determination we succeeded.

Are athletes today more switched on to IP rights?

Jason: Yes, definitely. Players and athletes are starting to negotiate better positions with teams to hold on to their IP rights. In the past, they didn't understand the value of their IP and there wasn't really any way for them to exploit it outside a club or a sponsor. But now there are exciting new ways for them to do that. Players and athletes are far more IP savvy today, and are increasingly breaking down what was one macro bundle of IP rights into multiple strands where the sum of the parts is greater than the whole.

Photos: Courtesy of OTRO



OTRO generates value through a monthly subscription model and offers many different opportunities for IP monetization.

“The sports landscape is changing significantly. Many technology companies with very deep pockets are now entering the sports space and are offering players new and different ways to exploit their IP.”

Stephen Duval, Co-founder and Managing Director of 23 Capital

What impact will that have on the sports landscape?

Stephen: That’s a great question, but one that is difficult to answer. At a very high level, the sports landscape is changing significantly. Many technology companies with very deep pockets are now entering the sports space and are offering players new and different ways to exploit their IP.

Digital means more people can watch sports telecasts from anywhere in the world via their mobile phone. They don’t need a television set, they just need a signal. Today, digital rights are pushing more content out to more consumers and as more of them consume that content, digital rights will rise in value.

Millennials are watching less and less live sports and the only way broadcasters can get them to tune in is to offer them footage away from live sports, such as interviews, that allows them to get to know their favorite players better. The only people with the money to buy that footage are the technology companies. So, players will earn ever greater sums of money from their IP. And that dynamic will force change in the broadcasting landscape as technology companies, like DAZN, the live and on-demand sports streaming service, buy up streaming rights. There will be huge changes in the sports broadcasting landscape over the next decade.

What are the next steps for 23 Capital?

Jason: We continue to build up our capital base. Our aim is to deploy USD 15-20 billion dollars over the next five years. Our vision is to be the preeminent capital and solutions company for the sports, music and entertainment sectors.

Stephen: 23 Capital is always looking at new ways to deploy capital, create innovative ways to monetize IP, and to drive value for our clients. New opportunities abound and we are excited about the potential the eSports industry presents, with the competitive gaming industry predicted to break the USD 1 billion mark for the first time. Our team is also ramping up our presence in the United States, having recently opened offices in New York and Los Angeles, so the future looks bright.

Putting sports fans first: insights from Intel

By **James Carwana**, General Manager
Intel Sports, Vice President of Intel Capital,
Santa Clara, California, United States

The evolution of the fan experience within the sports industry is well under way. For the last several decades, technology has brought enhancements to the game itself, but the fan experience hasn't changed significantly. Historically, there has been one version of the game or play delivered to fans. When innovations are introduced, the fan is able to see more views and get access to more data, ultimately resulting in a more customized experience. Take, for example, the iconic yellow line in American football. The first down marker changed the way fans viewed the National Football League (NFL) in the United States so profoundly that it's hard to imagine a time when there wasn't a yellow line. That technology went on to win an Emmy award.

Immersive media technology continues to create more opportunities for sports teams and leagues to put the fan first. Technology promises to completely revolutionize every aspect of sports – from athlete performance and the fan experience to the business and operational successes of major leagues and sporting events. This includes:

- delivering enhanced at-home and in-person experiences to give fans more control of the way they view content;
- providing broadcasters with the ability to share a new level of insight into the game and new ways to tell the story;
- empowering sports organizations to maximize their success on and off the field by boosting their strategic insights and game-day experiences.



Photo: Courtesy of Intel Corp.

Immersive media technologies are creating new opportunities to enhance the way fans experience sports, notes James Carwana, General Manager of Intel Sports.

“Technology promises to completely revolutionize every aspect of sports – from athlete performance and the fan experience to the business and operational successes of major leagues and sporting events.”

PUSHING THE BOUNDARIES OF POSSIBILITY

Intel is at the forefront of pushing the boundaries of what is possible through our cutting-edge designs, features, and capabilities. Our core technologies in volumetric video capture and processing, expertise in immersive productions for live sports, and Intel’s unmatched data processing capabilities, will enable new immersive experiences across all forms of entertainment, including sports, film, television and music.

Intel protects the intellectual property (IP) at the heart of these innovations through its robust patent program. While the immersive media patent applications currently represent a small portion of Intel’s portfolio, which comprises roughly 90,000 patents and patent applications worldwide, Intel believes these patents will punch above their weight class in view of the revolutionary nature of our technologies in this space. IP and its protection remain critical to Intel’s business, and patents are an important part of that protection. We support a strong patent system that generates high quality patents, which means robust examination systems and even post examination systems, such as *Inter Partes* Reviews in the United States, to allow efficient checks on initial patent quality. The focus on technological advancements coupled with shifting consumer behaviors and expectations is creating a perfect storm of opportunity for the entire sports industry.

THE FAN EXPERIENCE

Fans want to watch games on their own terms. They expect to be able to watch anything, anytime, on any screen. Intel’s focus is on giving fans the experience they want across all platforms: mobile, virtual reality (VR), computer (PC) and more. Getting the full experience often means watching on multiple screens simultaneously. Eighty percent of sports viewers say they use a computer or smartphone while watching live sports on TV. They use the devices to search for player stats, live scores, message other fans, and watch related videos. Shifting consumer behaviors, such as engagement on new media platforms (e.g. YouTube), more solo viewing of content, and mobile engagement are driving the evolution.



Fan engagement is a key component for all players in the sports ecosystem and Intel Sports focuses on bringing fans along the journey on game day – allowing users to control the experience from the front row, on the sidelines and even from the player’s perspective. Immersive media technologies are creating new ways to experience sports: immersive highlights, VR, AR and more within a live broadcast, online or in social media.

The next generation of how fans enjoy sports will be more than simply watching a passive view of the game – it will be interactive, immersive, personalized and focused on social interactions. As new technologies evolve, the experiences we create are designed to adapt and grow along with what fans and the industry want to see. We believe that we have reached a point where this nexus between sports and technology is ripe for innovation.

THE ROLE OF TECHNOLOGY

Fans want to be more involved and have more interactive, personalized and data-rich environments to speed up the supply of content and enrich the experience. Creating this flexibility is a very data-intensive process.

Today, we are seeing an accelerated pace of investment in sports technology, from major sports brands to start ups and early seed companies. The next few years will drive the future of how sports content is captured, consumed and distributed – and this will change the ways the games are delivered to the fans in significant ways.

Cloud technologies are getting better. 5G is on the horizon. Modern stadiums are increasingly smart and connected. The delivery technologies around the corner are faster. All of these opportunities, alone and in combination, create valuable IP.

Today, when we create immersive content, we are capturing video from dozens of cameras and processing the video through dozens of servers on premise or in the cloud to produce it. Intel’s investment in the cloud will result in a cloud-based solution that allows us to drive computations from a remote location, thus lowering latency and increasing efficiency and cost effectiveness.

5G will transform industries from all business sectors, including sports. Intel has implemented a series of strategically positioned cameras in NFL stadiums that capture volumetric data to create unique, 360-degree and 3D game action highlights. Each stadium is equipped with 38 5K ultra-high-definition cameras and Intel Core processors to crunch up to 1 terabyte of data per 15 to 30-second clip. The introduction of 5G will reduce latency and create efficiencies in the content delivery from the stadium to the fan sitting at home watching the game on his or her mobile device.

“Immersive media technologies are creating new ways to experience sports: immersive highlights, VR, AR and more within a live broadcast, online or in social media,” says James Carwana.



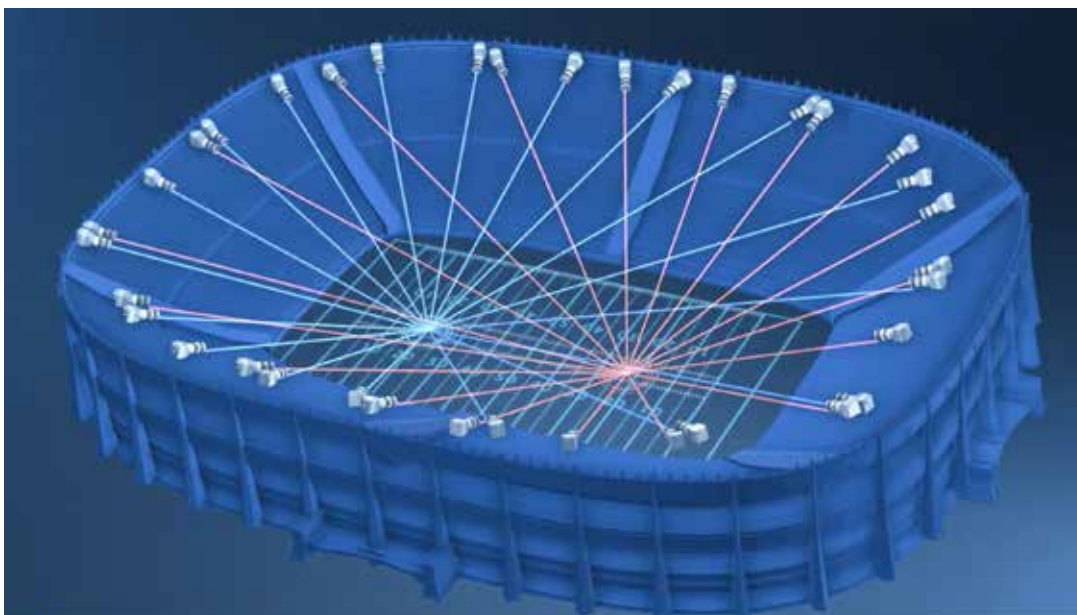
Photos: Courtesy of Intel Corp.

Fans want more interactive, personalized and data-rich environments to speed up the supply of content and enrich the experience. This is a very data-intensive process. With cloud technologies getting better, 5G on the horizon and increasingly smart and connected stadiums, the delivery technologies around the corner are faster, with opportunities to create valuable IP.





Photos: Courtesy of Intel Corp.



Intel has deployed various strategically positioned cameras in NFL stadiums that capture volumetric data to create unique, 360-degree and 3D game action highlights. Each stadium is equipped with 38 5K ultra-high-definition cameras and Intel Core processors to crunch up to 1 terabyte of data per 15 to 30-second clip.



“Immersive media technology continues to create more opportunities for sports teams and leagues to put the fan first.”

VISION OF THE FUTURE

We see three development areas on the horizon. The first is the speed at which we can generate immersive content. We are working to increase exponentially our time to delivery in 2019 and 2020. This immersive media workload produces data at a rate of three terabytes per minute, a volume of data that Intel is well equipped to process. Eventually, we will be able to generate volumetric video in near real-time.

The second area is dynamic player and ball tracking. This is an important feature in sports because it opens up a window of opportunity allowing fans to watch the game from viewpoints that were previously unavailable. For example, a fan could watch the game from the perspective of basketball superstar LeBron James as he is about to dunk and then change views to give the perspective of the defender.

The third area is the content delivery mechanism, which may range from a mobile phone to a tablet/PC to a head-mounted display (HMD). Development of user interfaces to deliver the game to the fans in an instinctive manner is going to be important as fans get accustomed to this emerging technology.

Intellectual property and the specificity of sports

By **Stephen Townley**, Active Rights Management Limited, United Kingdom

Over the last 40 years, I have been involved in the sports industry and have sometimes noticed sports bodies and athletes peering jealously over a fence. On the other side of that fence are the intellectual property (IP) rights afforded to literary, dramatic, musical and artistic works. Athletes have seen protection for actors, singers, musicians, dancers, and others, while performing copyrighted works, but typically, have not themselves benefitted from such protection.

Up until a recent proposal by the European Parliament (discussed below), the reason for that was clear. A sports event *per se* was not a work that qualified for protection under copyright law. Its outcome is unscripted and uncertain. Some have argued, however, that choreographed works do exist in a sports event and athletes have asked why there is a difference in performing an ice dance at the Olympic Games and performing one in an ice dance show (which would ordinarily qualify for copyright protection) when they retire?

REPHRASING THE SPORTS IP QUESTION AROUND ESPORT

As outlined in my February 2018 article in the *WIPO Magazine*, *eSport: everything to play for*, which explores some of the similarities and differences between sport and eSport, I noted that eSports are a broad subset of the video and computer game spectrum. Players may play directly against each other or in parallel against a computer. Some eSports “borrow” a specific set of rules from an existing sport, but for the most popular and financially successful games, the rules and mechanics of play are created by the game’s designer.

The purpose of rulemaking in sports is aligned to promoting fair competition, the capabilities of the human body and ensuring the integrity of the outcome of a sports performance. These rules do not so easily align with video content, which often suspends reality and the limits of the human body to deliver an entertainment experience. Indeed, that tension was apparent in December 2018 at the International Olympic Committee (IOC) summit, where it was widely reported via the Associated Press that the IOC “gets cold on eSports.” It is now widely acknowledged that eSports are not a simple “bolt on” to a sports event.

A further difference between sports and eSports is that copyright is likely to subsist in the development of an eSports game, whereas it does not in sports *per se*.

Stephen Townley is a solicitor, arbitrator and mediator with WIPO, CAS, JAMS and a commercial rights strategist. In April 2019, a music software company that Stephen chairs and part owns (Synchro Arts) won a technical engineering EMMY by the National Academy of Television Arts and Science. On May 6, 2019, Stephen will be moderating at LawAccord, an event he founded in 2003, which will be examining sports IP issues.



Photo: Getty Images / technor

While a sports event *per se* is not a work that qualifies for protection under copyright law because its outcome is unscripted and uncertain, some argue that choreographed works do exist in sports event. For example, athletes are asking why there is a difference between an ice dance performed in a competition (which does not qualify for copyright protection) and one performed in an ice dance show (which does).

SPORTS ARE A GLOBAL INDUSTRY BUT RELIES ON FRAGMENTED IP

It is widely estimated that the sports industry accounts for at least 3 percent of global GDP. The fact that there are more listed members of FIFA than there are countries in the world is indicative of sports' universal appeal. The global nature of the industry and major sports events creates complicated issues, not least because there is no single approach to the way in which content is covered by the IP laws of different countries and associated rights are protected.

Certain countries have recognized neighboring rights for sports events. These include, for illustration only, France, Italy, Mexico, the Netherlands and the United States. Some sports bodies require special protection under domestic legislation as a condition of hosting an event. For example, the International Olympic Committee requires special protection for the word "Olympics," and imposes conditions on advertising in areas in and around the venue. Also, athletes may be afforded rights of privacy in some jurisdictions but not in others. Such rights may provide protection similar to that afforded to actors but without the need to perform a copyrightable work.

Technology has not waited in the wings for clarity and consistency to be provided by governments and nor do sports.

THE EUROPEAN PERSPECTIVE

For some time, the European community, as reflected in its 2007 *White Paper on Sport*, has been aware of the specificity of sport and that it might be afforded further protection. In the joined cases involving *Football Association Premier League v QC Leisure* and *Karen Murphy v Media Protection Services Limited* (C-403/08 and C-429/08), the Court of Justice of the European Union (CJEU) acknowledged that “sports events such as football matches cannot be considered intellectual creations or works and so cannot be protected by copyright.” It was further noted, however, that the unique and individual character of a sports event can transform it into subject matter worthy of protection.

LATEST DEVELOPMENTS ON THE PROPOSED DIGITAL COPYRIGHT DIRECTIVE IN EUROPE

On September 12, 2018, the European Parliament approved amendments to the draft Directive on Copyright in the Digital Single Market (COM (2016) 0593). These included significant new protection for the sports event organizers. Amendment number 76 to the directive reads as follows:

“...
Title IV – Chapter 1a (new) – Article 12a (new)
CHAPTER 1a:
Protection of sport event organizers
Article 12a:
Member states shall provide sport event organisers with the rights provided for in Article 2 and Article 3 (2) of directive 2001/29/EC and Article 7 of directive 2006/115/EC.”

The inclusion of the reference to sports was promoted by European Parliament’s Committee on Legal Affairs. The amendment was in part justified by comments cited above in the *Murphy* case.

Article 2 of the InfoSoc Directive 2001/29/EC confers exclusive authority on designated copyright owners (which include authors, performers and broadcasters) to prevent reproduction of their works, performances and content.

“The current sports industry approach to monetizing its assets relies on an amalgam of contract rights, IP rights, and a basket of analogous and neighboring rights that are often specific to an event or jurisdiction.”

Article 3 (2) of that Directive enables those rights owners to prevent members of the public from accessing content without their prior authorization.

“Triologue” conversations began between representatives of the European Council, European Parliament and the European Commission after the approval of amendments to the Directive on Copyright in the Digital Single Market on September 12, 2018. On September 26, 2018, the General Secretariat of the Council of the European Union failed to carry forward the above amendments. And on the February 20, 2019, the Council of the European Union provided a new text for the directive. All mention of sports had been dropped. That version of the text went to the European Council and European Parliament for adoption. On March 26, 2019, following a debate at a plenary session of the European Parliament, the final version of the directive was passed.

The failure of the European Commission to provide enhanced protection for sports content in a directive

dealing with digital copyright is hardly surprising insofar as sports *per se* is not protectable under copyright law. Enhanced protection for those organizing a sports event and of athletes’ sporting performance is desirable. Certainly if the purpose of the directive is to help ensure that those who use content (such as Internet platforms) contribute to the cost of its production.

HOW THE SPORTS INDUSTRY MONETIZES ITS ASSETS

The current sports industry approach to monetizing its assets relies on an amalgam of contract rights, IP rights, and a basket of analogous and neighboring rights that are often specific to an event or jurisdiction. These rights are first aggregated within a structure that might involve a team, league, competition, game, federation or similar and or any combination thereof.

Commercial income generated by major sports events is underpinned by media rights. The sale of these rights

Although sports and eSports share similarities and differences, it is now widely acknowledged that eSports are not a simple “bolt on” to a sports event.



Photo: Courtesy of Blizzard Entertainment Inc.

contributes eye-watering sums of money to traditional sports. These rights are also the primary means of engaging with a very broad fan base. Media rights for the FIFA World Cup are running at more than half of all commercial revenues according to an analysis by consultants, KPMG.

The media rights chain probably begins with whoever has the key to the door of the venue. The English case of *Sports and General Press Agency v "Our Dogs" Publishing Company, Limited* [1917] (2 KB 125) provides the explanation for the industry model.

Swinfen Eady L.J. commented (at pp 127 to 128) as follows:

"...It is said that [...] had been put to trouble and expense in organizing the show... No doubt ...they had the right of allowing those persons to enter of whom they approved and excluding those of whom they did not, and that right carried with it the right of laying down conditions binding on the parties admitted."

In practice, this has become the adopted approach: first the sports organizer will acquire a clean venue and then impose conditions on the media and others in return for permission to enter. A broadcast or transmission of content from the venue, irrespective of the sports event itself being a copyrightable work, will become a copyrighted work upon recording or transmission. The sports rights owner will usually obtain an assignment of the copyright in the signal from the media company both for archive and anti-piracy purposes, so the sports organizer will end up owning IP rights.

CHALLENGES

Controlling access is not a perfect solution. Where additional jurisdictional protection does not exist, and an event takes place outside controlled venues, such as a yacht race or a city marathon, then a sports organizer's IP weakness is exposed. The industry has nevertheless developed and applied other solutions to tackle this problem, often referred to as ambush marketing (see page 22). Remedies are often jurisdiction or event specific. Some may involve IP rights and others may not. For example, personality and privacy rights, unfair advertising and competition, trademark infringements, trespass, trading standards, and licensing legislation. An evolution of these topics can be found in *Sponsorship Sport Art and Leisure* (1984, Townley and Grayson).

Further challenges have emerged for sports with the Internet. Once a live sports event has finished, its premium value is lost forever. High-quality content can now be generated within a venue on hand-held devices and promptly streamed. The traceability of those who infringe IP in sports content has become a massive problem. Content piracy frequently takes place in jurisdictions where enforcement is not straightforward, and by the time the event has finished the pirate has shut down or moved on. Criminal sanctions are vital. Article 11 and 17 (formerly Article 13) of the European Directive may help where the sports organizer or athlete becomes the copyright owner through an assignment.

Sports continue to need a coordinated global effort to address these issues. The failed intervention of the European Parliament has shone a spotlight on the issue once again.



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