

SPORTS AND COPY RIGHT LAW: AN OVERVIEW ON THE INDIAN PERSPECTIVE

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Abstract

Innovation and creativity are key drivers in the world of sport. In every sporting field, inventors and creators are working behind the scenes to push the boundaries, creating new opportunities for enjoyment and for athletes to better their performance. - WIPO¹

The Sports business in India is booming continuously and has globally become one of the gigantic sector carrying together entertainments, games, tradition and monetary business. There was a time where sports was just a game but from last few decades commercial activity in the sports has increased and with that there is a need for some sort of protection to get the commercial benefit. With the increase in the commercialization of Sports industry, various issues pertaining to Intellectual Property has increase. The present research explores the relationship between intellectual property and Sports business, the article here focuses on the sports and the copyright law. The Copy Right law in sports plays a vital part in the protection of various components of sports which includes logos, promotions, slogan, and images. All these things are protected in India under the Copy Right Act, 1957. The copyright law also protects broadcasting and performers' rights.

The Copyright law in India is very much flexible and gives enough scope to the author and the society to explore the creativity. If we compare the copyright law of India with other countries of the world, Indian law is not at all rigid but very much flexible unlike other countries of the world. The article further proceeds with the discussing the importance of copyright law in the sports industry. It has been dealt with the comparison with the other countries of the world with judicial intervention. The judicial comparison is made of sports in copyright law between India, U.S.A, Australia and China. All over the world the importance of copyright in the sports industry has increased tremendously. The article also further gives a backdrop of sports transmit piracy in India, undertakes a relative analysis of the protection extended to live sports telecasts under the copyright legislation. The article concludes with the suggestion to bring some strong legislation in the copyright law for the sports sector.

Keywords: Sports, Copyright, Broadcast, Piracy, Legislation

“The right to be attributed as Associate in Nursing an author of a work is not merely a copyright, it’s each author’s basic human right”- Kaylan C. Kankanala, Fun IP, Fundamentals of Intellectual Property

INTRODUCTION

Sports and sports business is booming sector everywhere the Planet. Asian nation and more specifically India having varied culture and heritage is additionally thought about as Unity in diversity and is base to vied population keen on Sports. More and More people are joining sports either as a game or as a business. The work of administration and funding of sports is inside the hands of the Ministry of Youth Affairs and Sports that is headed by a cabinet minister and managed by the National Sports Federations². Indian sports business has created its mark within the international Sports Industry. There was time once Sports was considered as a recreational activity however with the passage of time sports is taken into account as major, vital and important sources of income for the business man and entertainment for the viewer. All the sports are increasing its popularity, growth in viewership and participation. With the rise in the popularity of sports and sports industry in India, it has also become the vital sector for the upliftment of Economy. Sporting tournaments has become the integral part of sport activity and it’s a key element behind the success of the business. In India, also the industry of sports is becoming bigger and bigger over the years with certain sports getting unimaginable mileage over others due to the commercialization and investment interest³. All the sports that were played in a conventional pattern have now taken a leap and are played for a pure commercial purpose. All ancient and traditional games are now played in a different format and have become more

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¹ <https://www.wipo.int/ip-sport/en/>, Access on June 21, 2020 at 11:50 am.

² Sylvie, The emerging sports Law in India - July 29, 2016

³ Vijay pal dalmia, Intellectual Property Rights in sports – Indian Perspective, <https://vaishlaw.com>

commercial. The player are representing the nation, therewith exploitation and commercialization has increased and with all this new laws have emerged.

The sports business has currently become multimillion-dollar industry all over the globe. Whether or not it's through buying sports instruments to purchasing tickets to the "game of the week," fans spend giant sums of money in an attempt to witness, as well as to identify themselves with the seemingly magical moves of their favorite athletes⁴.

INTELLECTUAL PROPERTY AND SPORTS

Intellectual Property is an emerging law and has created a great impact in our day to day life. With the passage of time importance of intellectual property Law, in sports has increased tremendously. Since two decades Intellectual Property rights had emerged into the chief sources of financial gain within the sports industry. Sports and Intellectual property are the two sides of the same coin. Sports cannot become a commercially productive asset without IP rights and incentives⁵. Historically and traditionally sports were related to Trademark and Copy right, however currently it is connected with all the types of Intellectual property i.e. patent, Design, Trade Secret. Innovation and artistic thinking are key drivers inside the world of sport. In all the Sports, innovation and Creation is found and the creators are pushing all the boundaries creating new opportunities for enjoyment and for athletes to better their performance. Marketing and promotions through franchising, advertising, brand building of Sports as well as Sportsmen have gain tremendous importance surpassing all other traditional techniques of sports. The Sports business has continuously been a vast sector across the globe along with recreational games. The sports industry has always been a massive sector across the world bringing together entertainment, games, culture and monetary business, right from the barbaric era through the glorious days of Caesar to the twenty first century cash creator sports business. In the age of globalization and Competition World Sports and Intellectual Property go hand in hand. Innovation and creative thinking are key drivers within the world of sport⁶. Intellectual property being an intangible property is the zone of law that deals with legal rights to protect the original owner for their creative works and inventions. The purpose of intellectual property law is to allow the people who create and invent things to make profit from their work. Intellectual Property in the form of Trade mark, Patent, Copy Right, Design play tremendous important role when it comes to Sports.

World Intellectual Property Organization (WIPO), a Geneva based specialized agency of the United Nations promotes innovation and creativity for the economic, social and cultural development of all countries through a balanced and effective Intellectual Property system.⁷ While revenues are the major draw for sports rights owners, the intangible benefits gained from association with a sporting event or team such as brand recognition in the market and goodwill generated cannot be overlooked⁸. IP infringements and free riding by unaffiliated parties have a negative impact not only on the integrity of the sports rights owners' rights but also on the sporting event as a whole⁹. The sports industry has an increasing effect on the global economy, and it generates tremendous jobs, investing in public infrastructure and mobilizing resources. In early 2016, a new bill known as the National Sports Ethics Commission Bill, 2016 was introduced in the parliament which aims to bring about legislative reform to help improve the integrity of sports in India which if becomes a reality will be able to control the management of sports to some extent¹⁰.

CONSTITUTIONAL PERSPECTIVE

The Indian Constitution that is the rulebook and life line of India assures various fundamental rights to its citizen. When the constitution came in force on 26th January 1950 it had stated 7 fundamental rights in part III of the Constitution. These rights are right to life, right to equality and non-discrimination right to primary education, freedom of speech, association, movement, the right to business, trade, commerce and Right to acquire property. Property rights were deleted from the Chapter of Fundamental Rights of the Constitution in 1978; they are now legal right. Nevertheless, the Supreme Court in the case of K.T. Plantations v. State of Karnataka¹¹ holds that intellectual property enjoys a high degree of protection. "The expression 'Property' in

⁴The Copyrightability of Sports Celebration Moves: Dance Fever or Just Plain Sick? Marquette Sports Law Review, Volume 14 Issue 2 Spring

⁵www.theglobalipcenter.com . Leveraging intellectual property in the global sports economy

⁶<https://www.wipo.int/ip-sport/en/> . Access on May 3, 2019

⁷Aswathy Sujith, SPORTS AND INTELLECTUAL PROPERTY RIGHTS – AN OVERVIEW ON THE INDIAN STANDARDS, <http://jlsr.thelawbrigade.com>, JOURNAL OF LEGAL STUDIES AND RESEARCH [VOL. 2 ISSUE 5] ISSN 2455-2437

⁸ www.lawinsport.com

⁹Supra note 7

¹⁰Aswathy Sujith, SPORTS AND INTELLECTUAL PROPERTY RIGHTS – AN OVERVIEW ON THE INDIAN STANDARDS

¹¹2011 (9) SCC 01.

Art.300A confined not to immovable property like land alone, it includes intangible properties like copyrights, trademark, patent and other intellectual property and embraces every possible interest recognized by law". Directive Principles of State policy though not enforceable within the courts, but Part IV of the Constitution, is very important as it imposes obligation to the state. In the case of *Syndicate of the Press of Cambridge University v. B.D. Bhandari*¹² the courts held that it is imperative to give full effect to the rights of IPR owners, equally the law plays an important role in balancing the public interest between the property rights of the IPR owner and the public interest in permitting creativity and innovation. The growth of traditional sports in the virtual and digital sectors has opened up new avenues for IPR in sports¹³.

COPY RIGHT LAW AND SPORTS

Copy Right law is one of it kind of Intellectual Property Right which gives protection to the Original owner for the literally, Dramatic, Artistic Work, photographs, sound recordings, and cinematographic films. Copyright law protects the original Owners, from the moment the work is created and published. There is no concept of International Copy Right, Those countries which are the member of Berne Convention, get protection of its work in all the member countries. The original owner has the right to even relinquish the work. This right allows the owner to reproduce, make copies, sell, make derivative works, adapt the work, license, and assign their own work. In the process of sporting events and its promotions, the maximum amount of IP that is created is Copyright¹⁴. The artwork in the logos, the literature in the promotional material, the merchandise, and so on is all subject matter of Copyright¹⁵. The advancement and publicizing of competitions and sporting dealings, the creative schemes of the symbols of sports teams and sports competitions, the works contained in game-day agendas sold to admirers and followers, the range, and the different computer software and virtual games are all protected under the copyrightable subject matter. As per Copy right act 1957, the copy right protection subsist in all the type of original work and includes literary, dramatic, musical and artistic works, cinematographic films and sound recordings. With the passage of time protection under Copy right law also covers rights pertaining to distribution and recitalists. The Protection under the Copyright can occur, with respect to sports, in recorded visual images or commentaries of sports events, photographs of events, teams, athletes, and materials used in administration and promotion of the sport and the team/franchise. In reference of the event itself, the fixtures, programs, result which are published, and computer programs are also subject to copyright protection. Signs are protected as "artistic works" whereas jingles and other slogans are secured under the "literary works".

The Copy Right law in sports plays a vital part in the protection of various components of sports which includes logos, promotions, slogan, and images. All these things are protected in India under the Copy Right Act, 1957. The Indian Law pertaining to copy Right is not rigid and is much flexible compared to other countries of the world. The registration in India is not mandatory or obligatory but preferable. The moment the work is created and published it is protected under the Copy Right Act. Any work used, copied without the license, Assignment or relinquishment from the Original Owner will be termed as Infringement of Copy Right, Hence the Protection of Copy Righted work is much easy compared to other countries. India is the member of Berne Convention and Universal Copy Right Convention and hence even international copy rights are protected in India. when there are national law embodying international conventions, or treaties, the courts do take into consideration their provisions, rulings of foreign courts in the area,¹⁶The law of copyright in India protects the original owners from the infringement of copy Right and has civil as well as criminal remedy in case of infringement. In case of an infringement claim, the Register of Copyrights is a prima facie evidence of the particulars entered therein and is admissible as evidence in all courts without further proof or production of the original¹⁷. This is a major benefit, if the work though not compulsory, but registered. As an example, Kolkata Knight Riders, a team participating in the Indian Premier League has registered the team's logo as an artistic work and the logo is now registered as a copyright protected work. An infringement of the logo can therefore be countered without difficulty by producing the registration certificate as evidence before the court, if the need arises. In the process of Sporting event and its promotion, the maximum amount of IP that is created is Copy right.¹⁸

The issue pertaining to branding, sponsorship and Broadcasting has emerged with the evolution of sport business in India. Broadcasting right is a very important right which is created while broadcast and screening of any sports. Broadcasting rights is another set of IP that is created during screening of the sporting events. Broadcasting rights are a separate set of rights recognized by the Indian Copyright Act, 1957. Without

¹²2011 Division Bench, Delhi High Court

¹³www.theflute.in

¹⁴Vineet Chaudhary ,SPORTS AND INTELLECTUAL PROPERTY RIGHTS <http://www.legaleraonline.com>

¹⁵Supra note 13

¹⁶Novartis AG v. Union of India & Others 2013 (6) SCC 1.

¹⁷RoshanGopala Krishna, ShibumiRaje How sports rights holders protect against IP infringements in India: Part 1 - overview of IP laws www.lawinsport.com.

¹⁸SharadaKalamadi,Intellectual Property and Business of Sports management

permission from a sporting league or organization, no one individual has the right to broadcast or stream professional sporting events that are copyrighted and licensed¹⁹. Broadcasting rights are with the broadcasting companies and once they take the right the companies are the owner and can rebroadcast it any number of times. According to the Indian Copyright Act, 1957, any person without the license from the original owner broadcast the work which is already broadcasted or which is already published, reproduce the work without assignment, reproduce the sound or reproduce it by visual recording or sells or hires to the public or offers for such sale or hire, any such sound recording or visual recording is said to have infringed broadcasting rights. In addition to this, for cases of unauthorized downloading, Section 43 of the Information Technology Act, 2000, provides for a penalty up to `1 crore.

There is always a debate as to whether sports can be protected under Copy right. Some argues that sports cannot be “works” under the Copyright Law, as copy right protection is for the literally work, it is also contended that sports and creative do not go hand in hand, sports is performance base and copy right protection is for creativity. All the players in all the sports are performance base not an intellectual creation of mind. Their performance is not similar in all situation and Matches, so performance cannot be copy righted. There are people who consider that in the Globalization sports and copy right go hand in hand. The broadcasting right of live event and the media coverage of live broadcast of any event are different and the copyright aspect of both the work fall under different category.

There are certain sports which comes under the definition of designed sports like artistic swimming, calisthenics, artistic and symbolic skating, ice skating and ballet sport, which are unique and reproducible and can be branded as “works” should be comprised in alterations to the Copyright Law as “sports works” or “distinct sports works”, or incorporated into the group of “choreographic and flexible works”. Those who organize such events than procure copyright by entering into copyright agreements or even transferring or the rights of copyright agreement for any type of Sports Work. By entering into such agreement the organizer of the events get the right to broadcast the above mentioned sports work. In the Sports events there is no question of Ownership or authorship. For each game there is different techniques, and way for the preparation of game depending on the other side of the game. Sports are very much different to literally work, dramatic work, photography, choreography etc. Sports events are very competitive and have no fixed lineup. Everything depends and differs from game to game.

If we see the judicial interpretation done by the Indian courts, till date no Indian courts has decided the issues of live telecast of sports and copyright law. In the case of ESPN Star Sports v. Global Broadcast News Ltd²⁰, the Delhi High Court held that both copyright and broadcast reproduction right under Section 37 of the Indian Copyright Act (the Act) were independent of each other. The Court, while recognizing the broadcast reproduction right of broadcasters, held: It is thus evident that there could be both copyright and broadcasting reproduction right which could separately co-exist.

INTERNATIONAL PERSPECTIVE

As Sports Industry has become one of the vital part all around the world, the courts in different countries of the world has view the provisions in different manner.

Canada:

In the case of **FWS Joint Sports Claimants v. Canada (Copyright Bd.)**²¹It was held by the Copy right Board of Canada thatcopyright protection over sports is not granted on the choreographic work, and it cannot be granted to any type of random event.

Europe:

In the case of **Premier League v. QC Leisure and Murphy v. Media Protection Services Ltd**²², it was held that protection under the copyright will be given to only those type of work where there is creativity and intellectual work. In the said case football match is not subject to protect under the copyright act.

United States:

Copyright ability of purposive sports has never been litigatedbefore the court. ²³Buthowever, in the case of **Baltimore Orioles, Inc v. Major League Baseball Players Association**²⁴ it was stated that games which has artistic merit will be copyrighted and games like baseball cannot be The player performs better and better with each game and experience.

¹⁹Rights to Broadcast Live Sports, <https://www.dacast.com/blog/rights-to-broadcast-live-sports-advice-tips> July 30,2019.

²⁰ ESPN Star Sports v. Global Broadcast News Ltd. & Ors., RFA (OS) No. 25/2008 INDLHC 2683.

²¹ [1992] 1 F.C. 487, 501 (C.A).

²²[2012] 1 CMRL 29.

²³www.abu.org.my

²⁴805 F. 2d 663 (7th Cir. 1986)

It was stated in the case of **National Basketball Association v Motorola Inc**²⁵, that Basketball games was not copyrightable subject matter under Section 102 (a)²⁶ of the Copyright Act. The issue which the court had to decide whether the unauthorized transmission of "real-time" information on matches in progress constituted an infringement of the event organizer's copyright or property right.

China

In China the law pertaining to copyright and Sports is yet not clear. Majority of the people in china is of the view that Sports events should not be copyrighted. Number of proposals has been came that sports events should be protected under the Copyright law.

Australia

In the case of Australian Olympic Committee v. Big Fights Inc it was held that any film made of the sporting event will not fall under the category of dramatic work.

CONCLUSION

To conclude with, we tend to take into account that there is a need of the time to have special laws, rules and regulations pertaining to Sports and it is necessary to have special rights for the organizer for the. This will promote the sports. There is a need strengthen the Intellectual Property Rights in the Sports sector.

Even though India has ratified the WIPO Treaty on Performers Rights, there still exists lacunae as to what all performers rights do come under the ambit of S.38 of the Copyright Act. The paper discussed the issues with the right to sports moves, but still, there are many more performers who are not included under the ambit of the Act. The Copyright Act fails to contemplate intangible rights – distinct mannerism and elegance with the proper sports moves. This should be resolved so that more performers would have the incentive to show off their talent and skill.

It is recommended that some sort of substitute dispute determination techniques for enforcement of rights involving sports disputes is required to be developed in the coming years, with the increase in the disputes. As a developing country and having a serious intent to attract and sustain investments, India needs to enact a law to protect confidential information particularly in sports industry so to act as an adequate deterrent for prospective offenders. In spite of all the obstacles, government of India must try to pass the National Sports Ethics Commission Bill, 2016, which promises to improve the integrity of sports in India. Protecting and enforcing Intellectual property in sports industry is an essential component so as to ensure that sporting events remain a possible financial actuality in India.

²⁵105 F.3d 841 (2d Cir. 1997) 480 US 941 (1987)

²⁶ Section 102 (a) deals with the subject matter of Copyright