Legal aspects  Friday, May 25, 2012  20-minute oral presentation (including questions)  (Salon B)

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When Pittsburgh radio station KQV positioned paid observers just outside the walls of Forbes Field in the 1930s and retransmitted the play-by-play of games on its airwaves, it changed the way sports viewed its media rights. At the time, the Pittsburgh Pirates baseball club was involved in a rights agreement with KDKA radio. The Pirates successfully sued KQV for copyright infringement and KQV was forced to stop the practice. Subsequently, the court’s ruling established the club’s broadcast right, creating a valuable property right (Wong, 2002).

Since that 1938 court decision, the world of media rights in sports has experienced many significant legal challenges which have evolved as technology has changed from radio to television to streaming to social media. Most of these challenges can be synthesized into the areas of content, copyright, and transmission. The purpose of this paper, therefore, is to review the relevant legal challenges in each of those areas as they have played out in the court system in the past 75 years, and hypothesize about future legal challenges to sport media rights.

In the area of content, the Southeastern Conference (SEC) faced a firestorm of criticism from the digital world when it announced its social media policy in August 2009, prior to the start of the football season. Although the SEC quickly relaxed the too restrictive policy, the incident was the another example of a sport governing body seeking to protect the rights of its television and media partners, while having the consequence of restricting usage by other organizational stakeholders. The National Football League (NFL) initiated a similar restriction in 2007 when it imposed a 45-second cap on the amount of video media web sites could use per day (Fry, 2007).

In the area of copyright, the Copyright Act of 1976 extended copyright protection to live sports broadcasts because each sport broadcast is a unique script, with an unknown result. The camera angles and commentary represent an original interpretation (Garmire, 2000). However, some case law, such as the decision of the circuit judge in NBA v. Motorola, Inc. (1997), suggests web sites may be permitted to provide real-time updates without infringing upon copyrights (Wong, 2002). The NFL created a social media policy similar to the SEC’s, one which “focused almost entirely on protecting its lucrative television contracts” (Ostrow, 2009). Both policies attempted to tackle emerging communication channels such as Twitter, which could allow for real-time play-by-play updates. However, those policies seemed destined to be ineffective since, as Roberts (2004, p. 167) noted, “once the promoter has intentionally put the real-time data into the public domain, either by broadcast, the web, or other media, its ability to limit further disseminations is limited.”

As evidence of the challenge with streaming video, a high profile copyright battle occurred in 2007 when the English Premier League (EPL) sued Google, Inc., owners of YouTube, for $1 billion, alleging copyright infringement. The EPL alleged YouTube aided in the dissemination of copyrightable materials. Google argued it was protected under a “safe harbor” in the Digital Millennium Copyright Act (DMCA) of 1998. The Citizen Media Law Project, a joint resource affiliated with Harvard Law School’s Berkman Center for Internet and Society and the Center for Citizen Media at Arizona State University, has noted the challenges associated with copyright infringement and fair use provisions in the digital age precipitated the DMCA as way to protect the interests of copyright owners (Citizen Media Law Project, n.d.). Summary judgment was awarded in Google’s favor in 2010.

Finally, issues of copyright and the Internet can be found in the area of fantasy sports. CBC Distribution and Marketing, Inc. brought suit against Major League Baseball Advanced Media, L.P. (MLBAM) to establish its right to use without license the names of statistics of MLB players, while MLBAM counterclaimed CBC’s fantasy products violated MLB players’ rights of publicity, protected under the 1976 Copyright Act. In 2007, the district court awarded summary judgment to CBC (Kaburakis, 2008).

In the area of transmission, legal challenges have arisen in the areas of blackouts and carriage. One of the earliest...
cases involving blackout rules was NFL v. McBe & Bruno's Inc. (1985) in which the defendant, a St. Louis restaurant, used a satellite dish to receive the signal of blacked out St. Louis Cardinals football games and show them to patrons inside the establishment. The courts ruled the defendant had violated the NFL's copyrighted broadcast (Mitten, Davis, Smith & Berry, 2005). Additional transmission disputes have occurred in the area of carriage, with sports networks not being distributed through certain cable outlets. One notable case involved Cablevision, the dominant cable provider in the New York City metro area, refusing to carry the New York Yankee-owned YES Network throughout the 2002 MLB season (Sandomir, 2003).

This presentation will analyze these issues of content, copyright, and transmission in sports media rights, focusing on the financial interests of the rightsholder. Prospects for future areas of conflict in the digital rights area will be presented, with emphasis placed on the impact of digital streaming rights and exclusivity deals.