



Science Arena Publications
Specialty Journal of Politics and Law

ISSN: 2520-3282

Available online at www.sciarena.com

2019, Vol, 4 (1): 76-83

An Analysis of the Principles and Concepts of the Rights of Broadcasting Sports Events

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Abstract: *The current research has studied the principles and concepts of rights of broadcasting sport events. Legally speaking, contract of sports broadcasting creates rights for the club and other beneficiaries to ask for broadcasting rights in return of broadcasting their sport programs on radio and TV. The findings of our research indicate that in Iran broadcasting rights are exclusively reserved for IRIB and the broadcasting rights fee is paid to the organization of sport leagues for broadcasting sport competitions. The amount of broadcasting right fee of sporting events that must be paid to the league organization is determined based on the exact evaluations of the experts in view of the scale of competition and the number of broadcasting of competitions, number of viewers, the profits of broadcasting and advertisements during the broadcasting. Since according to the principle 44 of the Constitution of Islamic Republic of Iran, Radio and TV broadcasting is exclusively controlled by the governmental sector; in other words, in Iran private sector is not allowed to be involved in the TV and Radio broadcasting activities. For solving this problem in the light of the experiences of other countries we can recognize the broadcasting rights in the form of an intellectual right/property for sport like other areas and industries produces products and services that are based on skill, thought or fame. Like other industries, it has a product that might be based on skill, thought or even fame.*

Keywords: *Broadcasting Rights, Sport, Broadcaster.*

INTRODUCTION

Sports competitions, events and ceremonies are part of exclusive productions of sports clubs that the broadcasters (including IRIB) must buy the broadcasting right for covering them in the same way that they are buying the broadcasting rights of Korean or Japanese series. According to the experts, televised broadcasting rights fee in most countries which have professional sports leagues constitutes a number between 45 to 70 percent of the overall revenue of the clubs. According to the principles 46, 47 and 22 and clause 5 of principle 43 of Iranian Constitution, we can argue that the outlines of this right have been endorsed in the Constitution of Islamic Republic of Iran.

In practical procedure of IRIB this right is relatively recognized and in recent years a small amount of fee was paid for broadcasting these events and of course this amount has not been proportionate to the true value of them; while, a huge amount of money was made by IRIB from broadcasting TV advertisement before, during and after broadcasting the sporting events.

The main problem which is faced by Iranian sports as regards TV broadcasting rights is the lack of a comprehensive legal, sports and media regime. Lack of such a regime can be traced back to persons and factors:

- 1- Islamic Consultative Assembly has not had the required seriousness for adoption a law that can force the IRIB to pay the broadcasting rights fee within a determinate legal framework.

- 2- Government in general and Ministry of Sports and Youth in particular are not practically committed to explain TV broadcasting rights and do not support the professional sports federations and leagues before IRIB.
- 3- Sports federations do not still pay the required attention to the importance and role of TV broadcasting rights as a vital financial source and have not made any substantial effort for their fulfillment.
- 4- IRIB has not expectedly interacted with the sports clubs for making decisions regarding the broadcasting rights.
- 5- Media activists have not taken effective steps towards introduction and explanation of TV broadcasting rights for the public.
- 6- Sports managers in governmental and private sectors do not have sufficient information with regard to all financial revenues of professional sports and in some cases they are not serious enough for protection of this right.

TV broadcasting rights of sports events in most legal, sports and media regimes and international institutions like international committee of Olympics and FIFA and also in many countries are recognized and wholly implemented. Therefore, in this study we evaluate the state of TV broadcasting rights based on a comparative approach.

Theoretical Foundations of Research

Sports Events Broadcasting Rights

Today, it is an established fact that nothing but sports can gather millions of viewers in front of TV at the same time. For example, even in the time when sport had not been commercialized in this scale, the number of viewers of live broadcasting of football match England vs. Argentina on 30 of June 1998 that ended with the tragic elimination of England in penalty kicks from World Cup was estimated in England to be 27 millions (Beloff, 1998: 33).

Despite the commercial importance and public interest of/in sports, one of the key concerns about sports broadcasting right fee contract is the issue of contract. The question is that if sport can be protected as an intellectual work?

No analysis based on the intellectual property right has been proposed yet. In fact, sport is an activity independent from art which of course has many similarities with artistic activities which are legally protected. It is argued that when an organization manages a sports activity by investing a considerable amount of money and it has numerous audiences, it should have the right to earn the due fee (Rumphorst, 1999).

The analysis that is provided is in most cases that Radio and TV use live sports events as prepared programs and since there is a global interest in sports events they broadcast advertisements and earn a considerable profit in this way. This is the same analysis that was suggested during the debates of the rights of performers. The treaty of World Organization of Intellectual Property recognizes the exclusive rights of the performers in the field of copying, distributing, leasing and public supply and these measures are used as a means for financial support of the value of artistic activities which do not create any copyright.

Intellectual Property:

Some experts are of the belief that intellectual property is better to be rendered as mental property because intellectual is often used versus material while here we are dealing with products of human thinking and mind. Then, mental property is a better term (Emami, 1992).

This type of property refers the rights that have their origin in human thinking, ideas and faculty of intellection. Professor Naser Katoozian defines intellectual rights as follows: Those rights that allow the

owner of these rights to be benefitted from his own intellectual activity (Katoozian, 1999: 23). The subject which is protected by these rights is the intellectual works and creative products.

Intellectual property rights represent a set of specific rights that belongs to a person based on the results, findings and effects of his own thought. Intellectual property rights enjoy an extensive domain and include everything that is born out of human mind. The mental creature of human mind belongs to such areas as science, art, industry or commerce.

Therefore, intellectual property system supports not only the intellectual entities rather the commercial and industrial achievements too even if they do not have their origin in human mind. The protection of intellectual property system from intellectual properties in most cases is in the form that it allows the owner to be benefitted from the material interests related to his rights in an exclusive way. However, protection of secret information takes place in different form and the owner of this information without having an exclusive right of benefitting does only have the possibility to prevent others from having access to this information without permission and in a way that is in conflict with honest commercial procedures.

Sport is a developed form of movement in human being. Most important feature of sport is the existence of order and organization and acquisition of skill and its application in sport are among its pillars (Khuli, 2004: 32). Today the role of sport in economy is of paramount importance. In a study that has been conducted regarding the role of sport in national economy this share has a direct relationship with the amount of investment that has been done in sport and in industrial countries like Italy, England and Germany it is estimated that sports economy constitutes respectivel 2, 75.1 and 4.1 percent of GDP. Unfortunately, this is less than 0.00038 in Iran (Razavi, 2005: 8).

The capability of sport for creation of an independent economic system has caused sport to turn to an industry today. Professional sport is itself a product of sports industry and media tools like TV and press have contributed to the stability of economic system of sports industry.

Sports industry like other industries has its own product and goods and sports events are considered to be its most important product (Askarian, 2005: 26). Nevertheless, management of sports economy is always associated with certain developments and here the role of intellectual property rights seem to be vital.

For analysis of various aspects of intellectual property in sports industry one needs to analyze the extensions of sport and their relationship with the structure of intellectual property and the way that this structure is compared with the extensions is evaluated and specific features of sport are taken into account. Thus, the method of analysis of intellectual property in sports industry is based on three elements of extensional analysis in sports industry and conceptual analysis of intellectual property and the way that concept is compared with the extension.

Features of Sports Broadcasting Rights

1. From the point of view of TV, sports broadcasting is a means for attraction of audience and as a result advertisement and increasing the advertisement prices depends on the significance of the sports competitions and events and from the perspective of sports clubs and organizations this is the easiest way for making money. Existence of mutual interests provides the ground for reaching a contractual agreement over the details and if the space is competitive and there are private broadcasters the broadcasting right is for the company that pays the highest price.
2. Purchase of broadcasting right can be in annual or periodical form (four years term, for example) or based on sports events (for example, Olympics or football world cup). Moreover, sports broadcasting right contract can be internal or international.
3. In the contract of sports broadcasting right in most cases the content is sports events in live form. It is needless to say that the more attractive is the program for the viewers and audience of TV and radio the higher will be the price paid for the contract. The broadcasting right fee for football matches is higher than other sports activities.

4. Duration and periodical state of sports programs determines the price of contract. For this reason, broadcasting rights of sports events like Olympics or World Cup have higher value and are sold indeed via auctions.
5. Every sport has its own audience and financial value. In fact, the interest in buying the sports broadcasting rights is at issue when TV is private and due to the existence of numerous radio and TV channels there is competition between them and accordingly in those countries that government owns radio and TV channels in exclusive way the quarrel over the existence of broadcasting right by sports organizations reaches nowhere or an unreal price is determined as the fee.

Principles and Essence of Sports Broadcasting Rights

The organization, management and execution of sports events require heavy financial resources. There are various approaches to the issue of rights of sports clubs and organizations as regards broadcasting sports events and the essence of these rights.

In the US a type of semi-financial right has been defined for sports events and protection of these rights has been analyzed based on the ban of illegal commercial possession. In Italy judicial procedure has allocated a right for the people who manage and arrange the sports events but it has not determined the type of it. In Germany and Japan the rules of prohibition of unfair competition have been used for protection of the rights of sports organizations and clubs before the broadcasters (Wise, 1997: 462).

Before 1977 American intellectual property rights did not recognize the property rights resulted of a live sports event. As a result, divisions emerged regarding radio and TV broadcasting of these events and they could not be tackled based on the normal intellectual property regulations and decisions in most cases were made based on the common rules of unfair competition. Early rules of property rights allowed every owner including the clubs prevent from the entrance of the illegal persons including those broadcasters who had no contract with the clubs and sports organizations. Accordingly, courts gradually became convinced to recognize the intellectual property based on unfair competition and industrial property.

In England despite the existence of severe resistance before recognition of sports events as property and judicial procedure did not recognize any transferable right in such cases, a new analysis was used for recognition of the rights of sports clubs; thus, since sports clubs and pitches are private, the broadcasters and journalists require permission in order to bring their broadcasting apparatuses to these places and the owner of these places can ask for an amount of money for giving this permission.

Therefore, one can clearly see that the issue of broadcasting right for sports organizations has passed through the stage of "competition" and entered the competitive world and turned to a right (Beloff, 1999: 135).

Comparative Study of Broadcasting Rights of Sports Events

In French law, according to the law adopted on 16 July 1984 and amended in 1992, football federation owns the broadcasting right of official matches which are held under its management. The right of French Football Federation is justified based on the article 1382 of French Civil Code that insists on fighting the unfair competition. French Supreme Court has also endorsed the amended law of 1992 regarding the exclusive broadcasting rights of football federation (Beloff, 1992: 123).

In the law of Netherlands there is a different condition as regards sports broadcasting rights. In this country there is an independent sports channel called 7 Sports. In 1996 Dutch Football Federation was struggling to give the broadcasting right to a commercial radio and TV channel which was partly owned by it but the auction announcement of this sale was annulled by the appeal court. (Hof Amsterdam 8 Nov. 1996, Rvd W/KG 1996, No. 448- Feynoord/ KNVB). The court believed that the broadcasting right of these matches does not merely belong to Dutch football federation rather the football clubs also have their own share from this broadcasting right because it is the clubs that with their fans and public prestige bring attraction to the sport and increase the economic value of the sports broadcasting. As a result, Dutch Football Federation did not succeed to have exclusive broadcasting right in 1996 (Rumphorst, 1999).

In the law of Germany, based on the verdict issued by Supreme Court of this country on December 1997, German Football Federation was banned from owning the exclusive right of broadcasting UEFA and Champions League. This was found in fact in contradiction with competition rights.

In a judicial case the issue that whether UEFA has any share of the broadcasting the events or not. The argument was that recognition of this right for UEFA has a logical and rational basis though in that case UEFA was not involved in the conflict and for this reason no verdict was issued. As a procedure in the matches that are arranged directly by UEFA the national federations of member states of UEFA play the role of supervisor and have their own share of the broadcasting rights.

As to the matches that are held in national level there are generally two global approaches regarding sports broadcasting rights. According to the first approach, the Federation receives its fee from the contracting broadcaster and divides part of it among the clubs based on their rank and fame. This is called concentrated system. In the second approach sports clubs have this right in an independent form and they can sign contracts with the broadcasting companies and other sports organizations. This approach is adopted particularly in those countries that have private radio and TV and powerful international broadcasting companies.

In most of EU members states a hybrid approach is adopted in the sense that since in those competitions that are held in the scale of EU the competitiveness regulations must be observed and federations and football clubs cannot violate these regulations that have been adopted by EU and sign any contract with a broadcaster outside this framework. However, in these countries and in their national leagues the federation is allowed to arrange broadcasting according to its own particular rules.

The procedure of courts and organizational authorities of EU, UEFA and FIFA has its own specific regulations for the management of sports broadcasting rights. At the beginning it is said that recognition and determination of the owner of the broadcasting rights of sports events and competitions in national competitions is done based on national regulations and no country can interfere in this regard and there is no difference concerning the broadcasting of various sports events.

Of course, this issue's belonging to internal law does not mean that it is denied as such and one cannot claim that since broadcasting is governmental no broadcasting right fee should be paid to any sports organizations or institutions. In fact, any decision regarding the way that this right fee must be calculated has to be taken based on the assumption of recognition of this right for sports organizations.

FIFA based on the broadcasting right fee that receives from radio, TV and satellites and also the tickets that are sold as well as other media activities has rights within the framework of international financial institutions. As to FIFA World Cup, FIFA owns broadcasting right and usually signs a contract with a broadcaster which must be based in the host country (Malkawi, 2006: 593).

In those countries that clubs do not enjoy financial capability and global fame concentration of allocation of broadcasting right under the supervision of relevant sports federation can be the best solution for protection of the rights of various clubs. Of course, as an opposing view it is said that giving the freedom of negotiation to the clubs provides the ground for selling the broadcasting right for higher price and after signing the contract the broadcasting right fee money is paid to the club after reducing the share of federation.

As to such events as Asian, regional, Olympic and World Cup competitions the federation of hosting country owns the broadcasting right. This decision is logical because the host has spent a heavy amount of money for preparation of the infrastructures, camps, stadiums, security issues, accommodation of teams and fans. For returning part of these costs and even revenue for the hosting country broadcasting right can serve as an effective means in this regard.

Approaches regarding the Allocation of Sports Broadcasting Right

One of the major approaches as regards selling the sports broadcasting right is concentrationism in sports broadcasting. It is argued that concentrationism in this context refers to allocation of the broadcasting right to a unique institution which is in charge of arranging these competitions. This is not exclusivism because

without consulting and coordination with the clubs this act of selling the broadcasting right is truly hard. Moreover, when in one day several matches are held in Premier League there is no possibility for covering all matches by the same broadcaster and in practice there should be several channels that become involved in broadcasting. Economically speaking, it is argued that the broadcasting right of the matches of Premier League can be sold for real price only if the buyer is one person. Only in this way we can prevent from the individual actions that would be in contradiction with the competitiveness principles.

Acceptance of concentration in broadcasting of sports events has the basic problem that particularly in such competitions as World Cup or Olympics one single radio or TV broadcaster cannot cover all football matches and even the most important marginal events and in practice there is no other solution but signing several contracts with different contracts. This issue can be an indication of discrimination as to the individuals or teams that spend on their teams in order to reach profit in these matches. Therefore, more precise solutions have to be found for securing the interests of all parties as regards the broadcasting rights of sports events.

No matter which strategy is adopted as regards the allocation of broadcasting right it should be in a way that no discrimination to occur. At the same time, observation of the public interests in sports broadcasting as we studied earlier has been taken into account in the judicial procedure of some countries.

In other words, analyses related to the broadcasting rights are not proposed without paying attention to the influence of sports in culture and social relations and critics of judicial procedure have struggled to add these analyses to the concepts that are of more commercial and economic aspects (Hilchens, 2004).

The other issue that is of higher importance is the conflict between the allocation of sports broadcasting right to a company or organization and commercial and sometimes social interests of the clubs.

In the legal system of such countries as Germany the idea is established that hosting team can have certain rights regarding the broadcasting of a match that has been arranged by it and within its sports facilities. According to an analysis based on the private law, the hosting club is the only owner that can be recognized as having the broadcasting right based on the investment and facilities that it has provided for arranging the competition.

In England by combining these two theories the right of all clubs and federations for shared sale of broadcasting right is recognized. This strategy is adopted based on the idea that realization of a sports event in a way that it has many audience and commercial interests requires the existence of at least two competing teams. Here the hosting team is not the focal point and it is very likely that the other team to be more famous and the live coverage of the event are arranged for the fans of this latter team. Furthermore, the value of the league or cup under the name of which the match is held plays a key role in the attraction of audience and viewers. This value is not necessarily resulted from the fame of participating teams and depends on the facilities and advertisement that are provided by the arranging federations.

The Supreme Courts of Germany and England have frequently voiced their disagreement with the increase of the price of broadcasting of sports events in private channels that can deprive the poor people from viewing these sports competitions (Rumphorst, 1999). Then, in the strategy that is adopted the public and national interests must be taken into earnest account even in local scale.

In British broadcasting law of 1996 the Ministry of Interior is endowed with the jurisdiction to classify the matches in view of their importance. In the first class those competitions stand that must be covered by free channels like BBC and ITV 1. This list includes Olympic games, World Cup Final, as the class A under the category of football and some other sports like Finals of tennis like Wimbledon and London Derby (Gardiner, 2001: 417).

Types of TV Broadcasting Right

In this part TV broadcasting right is studied from the perspective of intellectual property rights as one of the extensions relevant to sports institutions. Following the expansion of technology in various fields of broadcasting a number of concepts and terms have been coined each one of which represents a specific type of

broadcasting with exclusive legal regulations in national and international levels. For this reason we shortly discuss these concepts.

Standard broadcasting is a type of TV broadcasting that is handled by local TV stations and the general public can receive the programs via simple air antenna. The programs of this type of TV broadcasting are shown based on VHF and UHF (Molem, 1994: 565). The other type of broadcasting is based on satellite. Satellite broadcasting is handled via coverage of the programs that can be received by standard TVs.

In the cable TV broadcasting the programs are not received via waves rather by means of cables. For this reason they are known as cable TV. The subscribers of this type of TVs besides the earnest-money pay an amount every month to the station of cable broadcasting. Sometimes the programs of this type of networks are broadcasted by satellite. In other words, instead of broadcasting the programs via cable and from local station they are transferred from one point to another via satellite and the viewers receive them through cable who are connected to superstations (Kahn, 2004: 566).

In Iran shallow mindedness has permeated into the issue of TV broadcasting right and whenever the debate is made about TV broadcasting rights some people are referring to the principles 44, 110 and 175 of the Constitution and the possibility of TV broadcasting rights is challenged. According to the aforementioned principles, Radio and TV along with the mother industries belong to the public and is owned by the government. Moreover, appointment and removal of the head of broadcasting are considered to be among the jurisdictions of Supreme Leader.

Moreover, sports federations have referred to the broadcasting right in their memorandums and consider themselves as its owner. The other problem that exists in Iran as an impediment before the path of TV broadcasting right is the fact that most of sports clubs are owned by the government and since their budgets are provided from national resources they do not have any concern of receiving thi right. Lack of a serious will in revival of broadcasting right causes private sector not to be interested in having an active presence in the field of sports industry in Iran.

Conclusion

The study of existing legal codes and regulations particularly regarding the jurisdictions of IRIB we can conclude that contrary to existing notions there is no conflict between paying the broadcasting right fee and the constitution. In no point of the constitution of IRIB and also the general strategies and principles of the programs of IRIB the payment of broadcasting right fee in return of broadcasting sports events via radio, TV or satellite has been denied. On the other hand, the general legal principles including the principle of respect of ownership and individual rights require the broadcasting right of sports federations and clubs to be protected and taken into account in the light of national and international measures and standards.

If IRIB is ready to pay the sports broadcasting right fee, federations and sports clubs cannot give this right to national or international companies or institutions. Since no particular regulation has been adopted for private sector in the domain of audio and video broadcasting for public via radio and TV the activity of private sector in this area is in conflict with the specific jurisdictions of IRIB. At the same time this truth must be accepted that if IRIB refuses to pay the sports broadcasting right fee, the probability of success of the case that is taken to the court (provided the court is independent and impartial) will be high; because broadcasting right as described above is defensible and legitimate and does not have anything in conflict with the constitution and jurisdictions of IRIB.

In current situation in which Iran is taking steps towards the industrialization of sports and privatization, the aforementioned issues can earn many economic interests for the national sports industry. Although some gaps can be seen in the field of legislation, as we mentioned earlier in this essay, even with the existing legal codes Iran's sports industry can fill the gap in the issues of intellectual property. However, for maximum efficiency the authorities of the national sports must adopt complementary laws and regulations.

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