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Legal Nature of TV Broadcasting Right, Protection and Limitations

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Abstract: *Determination of legal stance of the broadcasting institution in countries, where the main media (radio and TV) are managed in national form, is one of the most complicated legal and even cultural issues. Media's refusal of paying the broadcasting right fee on the one hand, and the insistence of sports organizations and clubs on the existence and necessity of such a right on the other hand, are against each other. However, it is necessary to determine the legal stance of national broadcasting company about the sports broadcasting right fee. The objective of this study was assaying the legal nature of TV broadcasting right and its support and limitations. Since those sports events, which have numerous fans, are held in organized form, proper contracts are required to be sealed by various clubs and organizations in charge of sport in order to determine the share of every institution. Also, an organization must be determined to interact with the broadcasting company.*

Keywords: *TV Broadcasting Right, Media, Sport.*

INTRODUCTION

The issue of broadcasting right fee of the sports events due to the scope of involved interests that simultaneously include the clubs, journalists and financial sponsors has always enjoyed a specific importance. For example, in professional football TV broadcasting, right fee is one of the most serious resources of clubs that includes more than 60 percent of the overall revenue. Now in some clubs, we see that there are other beneficiaries around this huge resource who seek to have larger share of it via exertion of political and economic power and even legislation. In the current essay it was struggled to reach a legal and economic balance among the media, clubs and financial sponsors. In Iran, National Broadcasting Company is an independent institution enjoying exclusive broadcasting right. Moreover, its budget is completely independent. As to broadcasting right fee, which is paid to sports leagues by IRIB, we should say that TV broadcasting right fee is an amount that must be paid by IRIB in return of airing sports events to league organization. This amount is determined via exact evaluation of the value of TV advertisement which is broadcasted during the coverage of the events as well as the profits resulted from these programs. After it, League Organization based on the number of covered events and also the times of broadcasting of the same event and other factors, evaluates the value of the events and pays the fee to the beneficiaries.

As to the broadcasting right fee of sports events in the constitution of IRIB and also in the law, the general instructions and principles have been proposed. In the abroad, the issue of broadcasting right fee has been discussed in the book entitled *Sport Law*. However, given the exclusive right of IRIB in broadcasting the

sports events, though this issue is one of the urgent issues of the sports society in the country, no comprehensive legal study has been conducted regarding the broadcasting right fee of the sports events.

Theoretical Foundations of Research

Nature of TV Broadcasting Right

When we speak of the nature of TV broadcasting, we are indeed referring to its legal nature and not the commercial nature. Moreover, due to its direct relationship with the intellectual property right, here it was sought to explain the place of the TV and Radio broadcasting right of sports` events in the framework of the intellectual property rights.

In common law, illegal possession of properties, revocation of the permission and unfair competition have been taken into account as legal strategies for the explanation of the nature of this right (Robert, 1993: 713). The doctrine of illegitimate commercial possession which has its origin in the property law has considered the provider of facilities for holding the sports competitions to be the owner of the information regarding the event, which endows him with the exclusive and comprehensive right of use of the event. It is noteworthy that in this theory, the game complex is taken to be an intellectual and financial work.

In most countries, the broadcasting right fee of sports events stands alongside other rights. The French Law of 12 July 1992 has allocated an exclusive right for the coordinators of sports events which is similar to the twin brothers of Hover Law in literary and intelletucal property law (Clombe, 2006).

In Brazil, the terms of sports grounds rights or sports stadium rights have been used in this regard. Accordingly, sports institutions have the right to prohibit the viewers from recording, sending and airing the sports events. This can be done in return of an amount of money that is distributed among the athletes.

However, the issue of TV broadcasting right in the intellectual property rights can be studied from two aspects. First of all, the TV broadcasting of a sports event seems to be a matter of copy right protection. In most countries and in the copyright laws, the broadcasting right of sports events has been considered as part of the material rights of copyright and can be studied from this perspective. But on the other hand, copyright laws also protect the moving pictures which have been recorded.

TV Broadcasting Right as Material Copyright

First condition for protection of a work is its originality, i.e. existence of minimum creativity has been accepted as a precondition of all these systems. Generally speaking, one should say that a sports event enjoys authenticity because in every competition, an exclusive game of the athletes is represented. The viewer does not know the final result until the end of the match and every game includes an exclusive creativity on the behalf of the players and sports officials (Garmire, 2000: 127).

Moreover, the arrangement of the teams changes in every match and even if it remains the same, the methods used in the game would vary dependening on the strategy adopted by the rival and this causes an exclusive state to be brought about. In some countries, the recording of a game is the precondition of the copyright. In live coverage always a recording of the match is prepared and kept in the archive.

After demonstration of the possibility of the protection of the game under compyright law, the material rights are reserved for it. The article 106 of US Copyright Law (1976) has delineated the material rights of the owner of the copyright and in it, the right of copying, adoption, distribution, and public performance has been given to the copyright owner. The clause 4 of article 5 of the Law of Protection of the Rights of Iranian Authors and Artists has also considered the Radio and TV Broadcasting Right among the material rights of the author.

Sports Audio and Video Work under Coypright Protection

On the other hand, when a match is filmed and its voice is recorded, a type of audio and video work is created which has been stipulated as works under copyright protection in the laws of most countries. As to the conditions of copyright protection of these works, one should say that in addition to the precondition of

authenticity or originality which was explained earlier in this study, the filming of every event is done in an exclusive way and from certain angles, which contributes to its originality (Garmire, 2000).

It is needless to say that one of the material rights of the holder of copyright in such works is the right to public broadcasting via radio or TV.

Sports Skill and Legal Protection

Non-inclusion of the ideas in the domain of copyright and literary and artistic property has been accepted as a maxim. Article 1 of the law of protection of the rights of authors, creators and artists of Iran adopted in 1969 like the clause 6 of the article 102 of US copyright law adopted in 1976 have stipulated this point. In fact, copyright protects the form in which the ideas are presented and the categoricity of the protection of expression form enjoys similar theoretical unity in the legal systems (Clombe, 2006: 29).

Some legal experts have denied the latter view based on the involvement of chance in most sports movement as compared to dance which is based on certain plans (Kukkonen, 1998: 811).

Furthermore, it might be claimed that copyright protects the presented system, but it doesn't protect what is done on the ground by the players. In other words, the movement of a player in a game is merely an idea and when it is combined with the movements of other players, it constitutes a complex which is considered as one expression and is protected by copyright.

The movements of athletes which are performed in individual form and outside the competition ground and in public places are taken as expression. Though it is not clear that why the actions of the players together create an expression while the individual movements are not considered as expression.

As it was mentioned earlier, the discussion of the protection of sports movements is always concerned with the protection of creative and innovative actions of the athletes; therefore, the issue of protection of sports movements will necessarily have authenticity.

The condition of recording, that is stipulated in some of the legal systems is not faced with any problem in the discussion of the protection of sports movements. Those films that are recorded from the sports performances can be concerned with the observation of this condition. As to the live broadcasting a copy of the match is kept in the archive.

Athletes as the creators of sports movements are the main owners of the rights resulted from them. On the other hand, the efforts of trainers in creation of sports work are undeniable and perhaps it is one of the reasons that in England after the transfer of players from amateur leagues to premier league, the destination club was obliged to pay the price of the player to the basic club.

When a player signs a contract with a club, he turns to the employee of the club and the club as the employer is the owner of the effects created by the player though the intellectual rights of the work belong to the athlete himself (Weber, 2000: 328).

The debate of the protection of sports movements via copyright due to its newness has not succeeded to find its place among the works protected by the copyright. Even some of the authors consider the performance of sports movements as part of the relevant area and introduce the athlete as the performing artist (Sterling, 2003: 230). Protection of sports movements via invention right has increased today to vast proportions. For protection of sports movements via invention right, some conditions must be met in advance. The conditions of newness, having innovative step, and having industrial application of the invention have undergone through certain developments following the expansion of technology and scientific developments. For example, having industrial use for invention has turned to the concept of usefulness (Bambauer, 2005: 416).

Although in the discussions of sports skill, the demonstration of newness is faced with numerous problems, it is easy to prove the usefulness of the sports skills. Some of the researchers despite acceptance of protection of sports skills via copyright, at the end they consider the sports skills useless and as a result they do not take them to be under the protection of invention right (Mohammed, 2008: 7).

Although it might be thought that the movements of human body like shooting the golf ball are natural phenomena, we need to take it into account that if this movement is made with utmost precision, it may reach

to a useful outcome as expected. Moreover, in some countries patent offices are registering the body movements; legal protection of sports skills takes place in other ways including protection via commercial brand. Sometimes the name of particular sports movements is registered as commercial brand; other methods like using the right of fame, traditional knowledge and technical knowledge can be useful in the protection of sports skills.

Legal Protection of Personality and Fame

If we think of unfair competition as the basis of protection of fame, we need to take it into consideration that one of the principles of this vision is the existence of the competition between two commercial or industrial institutions, products or activities and it does not seem that an athlete's fame can be similar to commercial and industrial activities; in other words, no athlete can prevent from using his picture on a gum resorting to the principle of unfair competition; for there is no competition between the producing company and the athlete (Nimmer, 1954: 210).

The use of contractual rights due to the relativity of the contracts cannot be a suitable method for protection of fame. Protection of copyright is also useful in some cases according to a number of scholars (Rothaman, 2002: 199). However, the fundamental problem here is that the latter claim is not to say that famous individual is the owner of copyright rather for example the recorder of voice or photographer is the holder of copyright.

Protection of the extension of fame via the law of commercial brand is faced with the same problem because these extensions must be used as commercial brands, although they are sometimes used in the commercials (Mostert and Apolzon, 2007: 111).

In Iranian law due to the lack of a suitable solution for the protection of fame, some of the judges have referred to the principle which is stipulated in some of the articles of the Civil Law including the articles 301 and 306 and protected the fame of people. Economic value of the fame and using them have proved the ineffectiveness of various views regarding the protection of privacy, unfair competition and contractual rights and show the necessity of establishment of particular rights in this area.

The ambiguity that exists in the current discussion is concerned with the conflict between the rights of the holder of copyright, and rights of fame in a sports picture. The question is that if the photographer who has taken the photo of a famous athlete can enjoy the copyright or this is conditional upon the permission of the athlete?

It needs to be mentioned that the protection of photographic works in most cases is limited to the original photos and only in some countries like Germany and Austria this covers the ordinary photos either (Sterling, 2003: 232). Therefore, as to original sports photos and provided that they are used for commercial causes, the famous person can prevent the photographer from using the photos.

Ownership of TV Broadcasting Right

The issue of ownership of radio and TV broadcasting right starts in this way, no matter we take TV broadcasting as protected under copyright law as an independent work or we consider the TV Broadcasting as part of the material rights of the game as a whole. In both cases the owner of the work is recognized as the holder of the material and intellectual rights. Therefore, determination of the owner of work is of particular importance.

The factors involved in sports events and as a result in TV broadcasting of the match can be considered as the owners of the right in creation of such a complex. Accordingly, we continue to discuss the owners of right and the way these elements and TV broadcasting are related and the possibility and impossibility of endowing the ownership.

1- Athletes (Players)

The athletes involved in the match who are known as players represent the most effective factor in creation of the totality of match. Since the time immemorial, the discussion of the share and amount of the participation of the players involved in a sports event from the TV broadcasting right fee has been of great importance.

But some countries based on their specific laws, pay a certain percent of the TV broadcasting right fee to the players. In Brazil, 20 percent of the TV broadcasting right fee is paid to the players who are involved in a sports event. Of course this right of the athlete depends on his presence in the course of competition and it is different from the creative movements that he makes during the match (Sterling, 2003).

It is noteworthy that according to the article 28 of the aforementioned law, the player is defined as the employee who is hired by the club as the employer via a legal contract. Therefore, according to what was mentioned earlier in this paper, on the one hand, one can conclude that player as the fundamental element of the creation of the product of competition despite his obligations has his own legal rights. On the other hand, one can refer to the notion of legislators of the totality of a match as an independent work.

2- Clubs and League Organization

After the industrialization of sport and the arrival of investors in this sector, the owners of clubs are the most serious option for the owners of the TV broadcasting right fee. The high numbers of the transfer of this right to broadcasters cause even the amateur clubs to have claims regarding these rights. For this reason, the clubs decided to establish a union called league organization in order to protect their own rights in a more effective way. However, this should be mentioned that this is more in the interest of the amateur teams, although there are doubts regarding the large renowned clubs (Berry and Wony, 1993: 748).

To put it otherwise, the owners of the clubs have been considered as the employers of the athletes and there is no doubt that they are the owners of the product created by them. On the other hand, providing the ground for arranging the matches and their management can be considered as another reason for this claim.

However, the question that can be raised in this regard is that whether the broadcasting right belongs to the hosting team or the guest. In fact, the court gives the right to the hosting team based on the facilities required for arranging such an event. The role of the bilateral contracts in this regard can be considered as the most suitable legal solution. Moreover, regulations regarding the TV broadcasting can solve the existing problems. In these regulations it must be sought to create a relative balance between the rights of the hosting teams and the guest. For example, in the rules of the US West Football Conference, it is noted that the hosting team owns the economic rights of the live broadcasting of the event.

In Iran despite practical problems that exist in the path of implementation of the TV broadcasting right, articles 2, 1 and 3 of the instructions of professional league of Iran have delineated the distribution of the TV broadcasting right fee as follows (Ramezani, 2008: 250):

10 percent of the share of National Football Federation belongs to the development of football in the country;

5 percent belongs to the councils that have teams in the league organization;

5 percent is the share of league organization;

40 percent is distributed in equal way among the teams;

20 percent is distributed at the end of the league based on the rank;

20 percent belongs to the clubs that have had more broadcasting;

3- Owners of Sports Facilities

The owners of stadiums and sports facilities due to their involvement in the arrangement of the competitions interfere in the TV broadcasting right. In this case the clubs do not own the facilities and other provider arrange them. It seems that the existence of contractual conditions cannot be a basis for owning the TV broadcasting right because facilities are not essentially involved in the emergence of a sports event.

4- Radio and TV Broadcasters

On the other hand, radio and TV broadcasters are one of the groups who are related with these rights. These institutions are not only supported by the governments, but they are also under the international protection of Rome Treaty. Although radio and TV broadcasters do not have any direct share in this right, when this right is transferred to one of these institutions, we can raise some issues regarding the re-broadcasting of the matches based on these rights (Sadeqi, 2007: 127).

Conditions of TV Broadcasting Right in Iran

The lack of an economic perspective of sport in Iran has caused this potential industry to continue to waste its potencies. Whenever the issue of sport and its economic interests are discussed, in most cases the wonderful records and statistics of industrialized countries in this field are mentioned and the discussion is ended with negative feelings.

If we consider TV broadcasting right as an example of material rights or we consider the audio and visual sports work as an independent work, how governmental nature of IRIB can be a pretext for refusing to pay this right fee. It is needless to say that IRIB, every year, pays heavy amount of money to the right owners for other programs and there is no reason for refusal of doing the same about the sports events.

According to the laws and regulations, although the law of protection of the rights of authors, creators and artists adopted in 2005 does not have many of the global standards, we can take advantage of it based on certain principles. According to the articles of this law, whatever is created via innovation in arts or sciences is considered as a work that must be protected. The clause 3 of article 2 of the aforementioned law regards the visual and audio work among the works that must be protected. Moreover, the clause 4 of article 5 of the same code considers the TV and radio broadcasting as one of the material rights.

Therefore, although there is no comprehensive regulation in this regard, it seems that legal understanding of the TV broadcasting right is the fundamental problem in this broadcasting. This causes the problem to be solved by the mediation of the President in 2008, while this legal problem needs to be solved by the Judiciary. In short, we must say that in Iran, TV broadcasting right not only is not evaluated based on the legal measures, but also due to the absence of a competitive market in this field, the existence of a commercial perspective in this regard is doubted.

Conclusion

In current conditions, i.e. given the governmental state of IRIB, one of the strategies that can be adopted in the contract of sports broadcasting is the participation of the sports clubs in the profits of commercials which are broadcasted before, during and after the broadcasting of the event by IRIB. This is to say that IRIB must reach an agreement with the clubs of premier league to pay part of the profits of the commercials to the hosting club or the federation that arranges the game.

This method has the advantage that it prevents paying a higher fee than the income of the IRIB out of commercials and broadcasting the sports event. Moreover, a fair balance is established between the public fame of the clubs and their share of the income. If the latter strategy is accepted, the IRIB can sign contracts with its counterparts based on the estimated amount of the income of broadcasting sports events. This strategy renders the formalities of the calculation of the exact profits of the parties pointless and in this way the possible conflicts would overcome.

It is needless to say that the prerequisite of signing the contract of sports broadcasting contract by the IRIB is the allocation of a budget for this purpose in the form of long term plans, otherwise given the high price that must be paid as right fee, its payment would be difficult.

In the domain of intellectual property, on the one hand, the creative movements of the athletes are taken into consideration as original actions and on the other hand, given the fact that in protection of a work under copyright law the form of emergence of the work is not significant, the aforementioned movements can enjoy the protection of copyright. Some other legal experts by discussing the conditions of protection of the invention have considered sports skills deserving the protection of the copyright based on the invention right. Development of concepts depends on the strategy that is adopted by this group.

In protection of the extension of fame of athlete, it is concluded that for comprehensive protection of sportsmen, an independent legal code must be defined around the notion of fame. Protection of radio and TV broadcasting right can be handled in two ways. On the one hand, if the totality of a match is regarded as a

work protected by copyright law, the intended right would be among the material rights of the author. Moreover, the totality of the recorded match can be considered as an audio and visual work protected by the copyright. The current study can be a basis for further discussions of the intellectual property rights in sports industry.

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