

**THE INSTITUTE OF PROFESSIONAL SPORT
GOWERS REVIEW OF INTELLECTUAL PROPERTY**

Institute of Professional Sport

The Institute of Professional Sport (IPS) is the association for Professional Players in the UK and as such is pleased to submit views to the Gowers Review of Intellectual Property. The members hope that this submission could be considered in the light of the need for the creation of intellectual property and image rights to assist the country's sporting economic competitiveness.

Intellectual Property and Image Rights

As sport has developed into a global business, so has the importance of sports intellectual and image rights. Companies that sponsor sport do so as a marketing tool to promote their brands and associate themselves with national sports teams, individual sports persons, clubs and major sporting events. This dimension in the sports business has evolved to become a significant player in the multi-billion dollar sports industry around the world.

The issue of image rights has become more contentious in recent years as some professional clubs have sought to take partial control of the image rights of the players they employ. Football has led the way in this area and to date some clubs in Europe such as Real Madrid, Ajax and Juventus require that the players give up a percentage of their image rights. Indian cricketer Sachin Tendulkar signed in May 2006 a £22 million image rights in a three year contract.

This matter should be addressed in UK in order that the sport authorities are provided with the legal basis for resolving such matters.

Case Studies

In 2005 the British middle distance runner David Bedford brought a complaint to the UK communications regulator Ofcom in respect of an advertising campaign featuring a look alike runner and the numbers "118 118." The result did not clarify the law although Ofcom said the case had breached the Advertising Standards Code but banning the commercials would be "disproportionate." The athlete believed that the adverts had copied his appearance down to his vest.

In the United States "personality rights" allow an individual to exploit his "character" and an unauthorised use of these rights is actionable. In the UK there is no such law.

The landmark case for this issue was that for Edmund Irvine @ Tidswell Ltd., v Talksport (2002) but changed little. In this case Talksport had used a photo of Edie Irvine dressed in his Ferrari racing gear in which he held a radio close to his ear appearing to enjoy Talksport's radio programmes. The image then appeared on a brochure and used as part of a promotional pack. Eddie Irvine agreed that the distribution of the brochure was an actionable passing off as it was a case of false or unauthorised endorsement and the Court agreed with him. The Court made it clear that if someone acquired a valuable reputation or goodwill, the law of passing off would protect it from unlicensed use by other parties thus indicating the person's right to reputation and goodwill.

To deal with this problem it is important that when contracts are drawn up between professional players, and clubs who may be the employees, that the shared responsibilities are clearly separated to identify exactly which rights lie with the sports governing body, the clubs and which rights with the players.

The case and several that have followed has become more contentious in recent years.

The British Olympic Association (BOA) and the Olympic Rings

The use of the Olympic rings is governed by the International Olympic Committee (IOC) and its various constituent bodies. In the UK its use together with other Olympic insignia is protected by specific legislation and controlled by the British Olympic Association (BOA). The Olympics have been a topic for debate and discussion in Parliament, including in 1995 when the Olympic Symbol Protection Act gave copyright for the famous '5 Rings' symbol and any other associated words or symbols to the Olympics Association.

**THE INSTITUTE OF PROFESSIONAL SPORT
GOWERS REVIEW OF INTELLECTUAL PROPERTY**

In the UK, on top of the laws of copyright, trademark and passing off, Olympic marks are protected.¹ This prevents unauthorised use of the five-ring symbol, the Olympic motto and the word 'Olympics'. In addition the LOCOG Committee have been granted control and regulation of the intellectual property for the Olympic symbol for the 2102 Olympic Games.

The Collective Sale of Sports TV Rights

The collective bargaining for Sports TV and Media Rights is now an accepted feature of UK legislation. This has brought many positive developments for sport at all levels including an increased funding for community sport at grass roots. Without an acceptance for 'collective selling' in place the sale of sports rights could result in such sales being conducted by "individuals" resulting in windfall gains for a handful of clubs. The Gowers Review should continue to recognise and support the collective selling of sports TV and Media rights. The so called 'crown jewels' of listed events is by some considered an anomaly as it restricts the manner in which the sports governing bodies can sell their events in the open market.

Europe

The UK is the only European country not to have an independent personality or image right. France and Germany have strong image and personality rights laws. Such cases of image rights as those recently brought by footballer Eric Cantona and Marlene Dietrich² highlighted the case law in those countries and have been related to the European privacy rights those enshrined in the European Convention on Human Rights. Precedent has been set therefore by the European Courts and to which UK is a signatory.

Players Rights

There is a concern when sporting bodies endeavour to secure financial gain from the players without consent. Some sports governing bodies lay claim to the ownership of a "players image" rights as a condition of membership. This is unjust and no sporting body should be entitled to lay claim automatically to the ownership of a players image rights without the players express consent, and with an agreement that entitles the players to a share of any proceeds. In that sense professional players should have moral rights in respect of their image rights.

Conclusion and Recommendations

- The significance of a new UK legal basis for personality rights is just. Such a legal agreement would assist the sports authorities and the players in the development of the sport.
- Professional sports players should be recognised as having "moral" ownership in respect of their image rights.
- The collective selling of sports TV Rights recognises the intellectual property rights of the rights-holders of the events and should be endorsed in the review's findings.
- The IPS would be grateful to be kept informed of any future consultation and the final publication of the Gowers report.

**Institute of Professional Sport (IPS)
3rd Floor
10 Bow Lane
London EC4M 9AL**

26th July 2006

¹ Olympic Symbols (Protection) Act 1995

² Managing Intellectual Property's Band Management May 2005