



Legal regulation of intellectual property in sports

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ABSTRACT

Exploitation of intellectual property rights in the field of sports is currently one of the most powerful sources of funding for sports, sports activities, and various sports events. However, unfortunately the sports organizations and individual right holders encounter problems regarding protection issues. There is a strong need to ensure the protection of these rights, and strengthen their potential to generate income from them. The use of intellectual property in modern conditions is a significant financial asset of the sports sphere. When acquiring rights of intellectual property, sports organizations, athletes and other rights holders often feel the need for legal regulation, protection and commercialization of intellectual property, as this is a prerequisite for their further profitable use. Hence, the present research aimed to study peculiarities of legal support, implementation and protection of intellectual property rights in the field of sports.

KEYWORDS

Sports Law; Intellectual Property; Civil law; Copyright.

1. INTRODUCTION

Sports have always been an important part of human social existence by covering every domain of human life. In the present era, sport is no more limited to the zone of entertainment or leisure. It has gained commercial and economic significance all across the world. The phenomenon of modern sports is ambiguous. Multiple contradictions exist in sports. At one point in life, an athlete has high standards of living whereas on the other side the same athlete is strictly bound under certain rules and

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regulations, they undergo exhausting training and rehearsals sessions and sacrifice so much for the fame, success, results, and victories.

Intellectual property (IP) rights stimulate creativity in all aspects of human behavior. Intellectual property is an important platform for individuals to make their innovative ideas into profitable endeavours. Intellectual rights in the field of sports may arise concerned with the objects of intellectual property as: original works of art and sports, coverage of sporting events, and means of individualization. Original works of art and sports, created by the subjects of sports creative activity, is the result of the intellectual activity of the choreographer, athlete, coach, which can be created by either of them or together.

The sports industry has become a massive sector that has brought various cultures and economies together all across the world. Sports industry is one of the biggest industries which include a number of activities often unrelated to each other. One of the most important functions of sports is pleasure and aesthetics (Arnold, 1997). In order to specify the objects of intellectual property, it is necessary to use the concept of aesthetic and creative sports. But unfortunately national legislation does not have a legal framework for intellectual property in sports. Also, the concepts of "artistic and sports works" and "aesthetic and creative sports" are not enshrined in law. Hence, there is no legal protection for such type of work. Legal protection must be given to such type of work. The ultimate basis of sports is the competition between individuals, the competition between teams. Every individual competes with fellow players to win the game. Meanwhile, their training coaches do an in-depth analysis of the performance of the players. In an instance when a team loses the game, the players of both the teams interact on equal terms while playing aesthetic and creative sports like figure skating, rhythmic gymnastics, synchronized swimming, etc. Since the performances of an athlete or team are not protected from copying, the conditions of the competition can be considered unequal, because the opponent can copy the original elements of the work with impunity and even completely, thus reducing the chances of winning another participant.

Intellectual property rights to choreographic works are often associated with violations of the property rights of the owners of musical works. In most cases, choreography is combined with the music. Such violations arise concerned with the work in the field of music whose legal protection has not yet expired. In accordance to the provision of part 2, of article number 28 of the "Law of Ukraine", "On Copyright and Related Rights", copyright is valid throughout the life of the author and 70 years after his death, except as provided in this article. Many researchers have devoted their contribution to the issue of legal relations in the field of sports. However, very few attempts were

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made to analyze the legal relationship that develops directly around the use of intellectual property rights in sports.

2. METHODS

The methodology of the chosen problem is a systematic approach, as well as dialectical, formal-logical and structural-functional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. The methodological basis of the study is theory cognition, and its general method of materialist dialectics. The following were used as general scientific research methods: formal-logical and systematic methods.

3. RESULTS AND DISCUSSION

The sports industry is a massive sector across the world that has brought various cultures and economies together in the past century. The sports industry has a growing impact on society by providing job opportunities to youth, and public investors all across the globe. The protection of intellectual property rights in the field of sports is one of the most important tasks to protect the rights of rights holders and the interests of national and international sports organizations whose activities extend beyond geographical borders. The sports industry is one of the largest global industries. The specificity of the sports industry as a subject-object industry of regulation of protection and enforcement of intellectual property rights is determined by various features which include; intersectionality, i.e. different objects of intellectual property rights intersect and interact in a complex way and extension of intellectual and legal protection to a significant range of objects not related to creative activities and the results of such activities.

On international grounds, intellectual property rights in the field of sports are not protected to a satisfactory extent. Hence, specificity, close cooperation between sports and copyright in the globalization of sports, and a strong international legal regulation is very much required in the field of sports. The main legislative act regulating the sphere of sports in Ukraine is the Law "On Physical Culture and Sports". The law states the principles of sports activities in Ukraine. Simultaneously, in article 23, the law initiated the demand for National Olympic Committee to take necessary measure to ensure the intellectual property rights of the International Olympic Committee. It has also been mentioned that the National Olympic Committee must protect in accordance to the law using their own national Olympic symbol.

In article 47 the law, which defines the sources of financial support for physical culture and sports, it has been stated that extra-budgetary funds are used for the development of physical culture and sports, in particular from the use of intellectual property rights by physical culture and sports institutions, organizers of sports and sports events. The properties of legal relations in the field of intellectual property are; legal equality of their subjects, regulation of public relations mainly by the rules of civil law, and granting the rights of participants in civil relations, civil rights, and obligations. In addition to this, some specific features are also included, which include; special reason i.e. the creation of an object that is protected or able to be protected by intellectual property law, a combination of imperative and dispositive elements to determine the rights and obligations of the subjects of intellectual property relations, the possibility of combining material and binding elements in the relationship of intellectual property, the targeted nature of intellectual property relations ensuring the use of the intellectual property and their legal protection (Kharitonova, 2018).

Another sign of the result of intellectual activity is its objective form. The result of intellectual activity is expressed in external terms (transformed into an objective form) to be available to the participants in legal relations. The objective form is expressed in various ways and is fixed on any material carrier. A strong connection exists between the author-athlete and the work created by an athlete, which determines the possibility of legislative principles governing relations in the field of sports. An indicator of the creative nature of the work, according to most scholars, is its novelty. Novelty can be expressed in a new meaning, in the form of the work, in relation to any new idea, in the form of a new scientific concept, etc. The originality of the work can be attributed to novelty in the field of sports. Thus, one of the signs of the result of intellectual activity is the mental activity of one or many authors who contribute in creating a new piece of work.

Holders of intellectual property rights in the field of sports (and in related fields of public relations) have the right to grant licenses to third parties for commercial (ie paid) use of relevant copyrights, patents, trademarks, etc. Such licenses are permissions to use copyright, not transfer in full, i.e. related to the transfer of ownership of the relevant objects. For example, it may be regarding the use of technology in the sports industry the rights to broadcast sporting events, or the use of trademarks.

In the modern era of technological advancement, a variety of new sports-related technologies, inventions, utility models, industrial designs, techniques of sports training, original training methods, and sports tactical schemes are implemented. However, a sports work performed by the athlete (team of athletes) receives a pronounced objectified form. The strategic use of intellectual property rights in the field of sport opens up ample opportunities to promote economic development in a variety of

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ways, such as; income generation from the sale of goods and services related to the field of sports, supporting innovation, business, and entrepreneurship development, creation of job opportunities, strengthening the reputation of countries and increasing foreign exchange earnings, stimulating international trade, overcoming national differences and affirming universal values such as justice, mutual respect and friendship, strengthening health, social well-being, and social cohesion, as well as promoting discipline, and the teamwork.

Organization of various sports events at local, national or, international levels may enrich the socio-cultural environment of cross-cultural communities increasing their attractiveness to investors and tourists. Commercial activities in the field of sports require a strong legal framework to promote the use of the intellectual property and the training of highly qualified personnel, ensuring a favorable policy and regulatory environment, as well as operational and logistical issues with the organization of sports events (Iasechko, Skomorovskyi, Andronov, et. al., 2020).

Nowadays, many countries have started recognizing the enormous potential of intellectual property in the field of sports and have started incorporating intellectual property rights into their national development strategies. By promoting the sustainable development of a prosperous sports sector and providing favorable conditions for major sporting events, these countries seek to create additional opportunities for socio-economic development and prosperity.

The Nairobi Treaty on the Protection of the Olympic Symbol, adopted by the WIPO administration in Nairobi on September 26, 1981, has an important influence on the legal regulation of relations concerning the use of intellectual property rights in the field of sports. At present treaty has 52 countries including Ukraine. Ukraine joined the treaty in the year 1998. A set of rules and regulations were laid by the Nairobi treaty in order to prevent the use of Olympic symbols for commercial purposes by third-party individuals and legal entities.

In article 1 of the treaty it has been stated that any State Party shall, subject to Articles 2 and 3, refuse to register or invalidate registration as a mark and prohibit by appropriate measures the use of any mark as a mark or other mark for commercial purposes, consisting of or containing the Olympic symbol as defined in the Statutes of the International Olympic Committee, except with the permission of the aforesaid Committee (Iasechko & Zaitsev, 2021). In some countries like Italy, Mexico, the Netherlands, the USA, and France, related rights are recognized in the context of sporting events. Some sports organizations require special protection under domestic law as a precondition. For example, the IOC requires special protection for the concept of the Olympic games and sets certain conditions for advertising at and near the venues of the games. In some jurisdictions,

athletes are given the right to their privacy. The protection provided by them is similar to that applied to various actors, but the performance of a work protected by copyright is not required.

Rule 7 of the Olympic Charter defines the list of "Olympic property" as the one that requires the approval of the IOC, including the Olympic symbol, flag, slogan, anthem, designation including but not limited to "Olympic Games" and "Olympic Games", signs, emblems, fire and torches and any other musical works, audiovisual recordings or other creative works or artifacts created in connection with the Olympic Games by the IOC, NOCs. Thus, it can be stated that today the IOC is the only international sports organization whose legal protection of intellectual property rights is guaranteed by a multilateral international treaty, national legislation of the Olympic movement, and the obligations of national Olympic committees. Sports performances are not subject to protection under the provisions of copyright law if they do not comply with the definitions of a work of art enshrined in relevant international treaties, in particular the Berne Convention for the Protection of Literary and Artistic Works.

Due to the universality of the provisions of the Berne Convention, it is possible to draw the necessary analogies in the presence of legal gaps in the copyright law of specific states. Part 1 of the Berne Convention stipulates that the term "literary and artistic works" covers any product in the field of literature, science, and art, regardless of the manner and form of its expression, including books, brochures and other written works, lectures, addresses, sermons, and other similar works; dramatic and musical-dramatic works; choreographic works and pantomimes; musical works with text or lyrics; cinematographic works to which works expressed in a manner similar to cinematography are equated; drawings, paintings, architecture, sculpture, engraving, and lithography; photographic works, which are equated with works expressed in a manner similar to photography; works of applied art; illustrations, maps, plans, sketches and plastic works relating to geography, topography, architecture or science".

Thus, Part 1 of Art. 3 of the British Copyright, Design and Patents Act 1988 defines a literary work as any work that is not dramatic or musical and that has been written, narrated, or sung, may exist in the form of a table, collection, or computer user program. Hence in order to be considered a literary or textual work, the work does not necessarily have to have any literary value. Based on this, the coupons of football totes, TV sports programs may be subject to copyright.

Under UK law, the result of sporting events is a type of public information that cannot be protected by copyright. But the texts published in the media enclosing information regarding results are subject to be protected. The names of sporting events are generally not considered under literary

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works in order to be protected by copyright, except in combination with the relevant logos are classified as works.

Part 1 of Art. 3 of the UK Copyright, Design and Patent Act defines dramatic work as a work that includes elements of dance or pantomime. Thus, in accordance with this provision, it is possible to require copyright protection of choreographic sequences in such sports performances as gymnastic performances and ice dancing. However, this issue is debatable, as in this case, it is not clear which movements of athletes can be protected by copyright, and what rights do not apply to them as they are limited by performers' rights for theatrical performances, such as dance or pantomime (Gardiner, James, O'Leary, et al., 2001). Although, in one of its rulings, the Federal Court of Germany concluded that an ice show containing operetta elements could reasonably be considered a work of art. This conclusion was reached by the Paris court, which equated the legal status of bullfighters to the legal status of dancers.

In the present study, the researcher pointed out two criteria for defining the work of art in the field of sports-based on which activities can be defined as art and as exclusively sports (and, accordingly, not protected by copyright). The first criterion concerns competition and the second criterion is the intellectual nature of the activity under consideration. Some researchers believed that activities characterized by some degree of art (such as figure skating or sport dancing) should not be protected by copyright when it is carried out at sporting events. When such activities are not carried out for competition purposes, it may well be considered as a creative work. Researchers who hold a different view believe that any sporting event, wherever it takes place, should be protected in accordance with the provisions of copyright law if it is an expression of human opinion and bears the imprint of the author's personality. From this point of view, gymnasts (in rhythmic gymnastics), figure skaters, synchronized swimmers, and athletes in some other sports can defend the copyright to their performances (Śliwa, Saienko, & Kowalski, 2021).

The regime of copyright protection may apply to certain elements of sports performance, provided that there is a certain creative component. "The work can have from one hundred sports elements in a single performance to a thousand, in pairs or even more in the group (for example, synchronized swimming). Many sports elements of these works are defined by the rules of sports competitions and are mandatory for the performance. For example, a single athlete must perform a double axel, casing, and salkh, but in addition to them, there are many other elements that the athlete and coach can turn on or off from the work (Honchar, Derkachova, Shakhrai, Saienko, Hladoshchuk, & Voropayeva, 2021).

There are specific objects of copyright and related rights in the field of sports which are not inherent in other industries, including sports performance and its individual elements, sports movements and methods, as well as their compositions, sporting events, specific schemes of sports, scenarios and broadcasts of sporting events. The specific criteria for the protection of copyright objects in relation to these works have their own specifics, which directly follow from the nature of sports activities, and the issue of protection of individual objects of related rights still remain unambiguous.

4. CONCLUSIONS

With the commercialization of intellectual property in the field of sports, there are many legal problems that coexist in the sports field. For an appropriate solution to this problem, it is necessary to provide legal protection to all creators of the results of intellectual sports activities and to use the results in good faith. A "sports work" must be included in copyright objects. Consolidation of the concept of "sports work" can help the development of sports, but also provide legal protection of the results of intellectual activity, reducing the risk of unfair competition in its "aesthetic and creative" forms. Of course, the protection of sports works and performers of copyright and related rights will undoubtedly develop dynamically. Unfortunately, at present the issues of legal regulation of intellectual property rights and protection of sports works in the field of sports have not yet received an unambiguous solution in theory and in practice. The mechanism of protection of violated intellectual rights in the field of sports has also not been fully studied.

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