

The Copyright Eligibility of Sports Events and Performances

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Abstract : Apart from being the subject of neighboring rights when broadcasted on TV or of cinematographic work when fixed to a tangible medium including a hard drive, the copyright eligibility of a sports performance, and eventually the sporting event has once again given rise to controversy following the CJEU judgment in the Murphy case. Most of the arguments which deny copyright protection for sports performances focus on the fact that unlike movies, plays, television programs, or operas, athletic events are competitive and have no underlying script. The first part of the paper aims to explain that such rhetoric is rather weak simply for the fact that, several types of performances such as improvised musical or dramatic shows are still protected by copyright despite the fact that they are not based on a script. The second part argues that the core reason for the denial copyright protection was the functionality aiming certain practical results such as winning the game, scoring, eliminating an opponent, obstructing a shot and etc., but no scientific or artistic expression in whatsoever form. The paper further argues that expanding copyright protection to functional performances would give rise to unintended copyright claims by the athletes on tackles, shoots, passes, crosses etc. resulting with further restrictions on reporting and photographing of sporting events. The final part provides a policy analysis of the trend to broaden the scope of copyright to cover sports performances. It is argued that such expansion will clearly undermine the ratio legis of copyright laws since it will give rise to excessive commodification of information beyond the needs of a viable market economy. Therefore, remedies other than copyright protection such as unfair competition and unjust enrichment provides sufficient redress for the damages to be sustained by the investors of sporting events.

Keywords : copyright eligibility, idea-expression dichotomy, sports performance

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