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Study on Intellectual Property in Sports Focusing on Radio/Television Broadcasting Patent

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Abstract

The undeniable role of intellectual property in business and industrial revolution has brought the issue into law literature. After accepting intellectual property as the core of literature, related laws and regulations have been passed. Lawyers have tried to explain intellectual property as well. To this end, the nature and the place of intellectual property in sport have been studied. The current study is aimed to explain the role of intellectual property in television broadcasting of sport events which requires the nature and the place of sport laws to be recognized. Sport is among the fields which must be protected in the form of intellectual property. Because sport, like other industries, is a kind of art which is based on skills, originality, thinking and reputation. Protection of intellectual property plays a vital role in economic system. It is claimed that sport events and related issues are products of this industry. Among the outcomes of sport events, we can name radio/television broadcasting of sport events which along with being protected in from of intellectual property are hot issues to debate. Therefore, the current study is aimed to reach desired results by compiling bases of intellectual property related to broadcasting patent in accordance with copyright and regulations.

Keywords: Keywords: sport industry, intellectual property, sport skills, reputation, radio/television broadcasting, copyright components

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Introduction

The importance of sport in terms of political, social and economical aspects has helped sport industry to develop and turn into a science. Law experts have realized the importance of sport and founded "sport law" as a scientific programme to expand common law territory and to impose regulations on sport. To this end, they attempt to regulate relationships among sport agents. Nowadays, sport plays a significant role in economy. In a study on the contribution of sport to national economy, it has indicated that this role is in a direct relation with investment in sport industry. In industrial countries such as Italy, United Kingdom, and Germany, sport economy contribution to national gross production ratio is 2%, 1.75% and 1.4%, respectively while the figure is 0.0038 for Iran (Razavi, 2005:8). The ability of sport industry to establish an independent economy system is the reason why nowadays sport is a kind of industry. Professional sport is an offspring of sport industry. Media including television and press have helped this industry to reinforce its own economy system. Sport industry, like other industries, has its own products the most important of which is sport events. Such sport products as hiring a coach, exchanging players, selling broadcasting patent, selling tickets, advertisement, providing sport facilities, gambling, tourist attraction, and financial sponsors can be mentioned (Asgarian, 2005:26). No intellectual property-based analysis has been reported yet. It is stated that an organization which has and invested a notable amount on an event and has managed it is deserved to have broadcasting patent of an event sport when it (Mirhosseini, 2005:67). Some believe that radio and television deem live sport events as prepared shows to provide audience with advertisements in between sport games and make profit. It is claimed that nothing except sport events can have millions of audience. Considering the importance of sport in business and its popularity, and with regard to the contracts signed by those who are involved in preparation of the sport event, regulations issued by sport federation as well as sport customs and literature on sport contracts Sport contracts can be defined as agreements whose content is directly or indirectly related to sport events. It can be either the sport event or the preparations required for sport event (Fathi, 1998:105). Accordingly, one of the concerns related to sport broadcasting patent may be: *Should sport events be protected as intellectual property*? The question is why broadcasting of live sport events is of economical patent and why radio/television broadcasters tend to pay considerable amount of money to be allowed to broadcast the sport events? The study focuses on law aspect of sport patent based on intellectual property. Also, it studies features, bases and nature of sport patent to scrutinize approaches of delegating sport patent which are required for analysis of intellectual property aspect of sport industry.

1. Nature and territory of intellectual property

Knowledge ownership referred to as intellectual property by some scholars is based on two components: the first one is industrial property and the second one is literary and artistic ownership. Literary and artistic ownership which is "creativity property" is divided into two parts: author's right and related rights. The term "author's right" which was used in Roman-German legislation paid more attention to the authors, and therefore, it is an equivalent term for copyright proposed by common law. Copyright focuses on materialistic aspect of intellectual products. Copyright meaning the right to copy was first introduced by Berne Convention for the Protection of Literary and Artistic works in 186 (Mirhosseini 2005:85). Intellectual property is the right a person has for results, outcomes and intellectual works of his own. Intellectual property is of a wide territory including whatever deemed as intellectual product. Intellectual products may be related to industry, art, science or business. Although the condition for anything to be

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taken as intellectual product is intellectuality, current intellectual property right protects issues which are not produced intellectually. Consequently, intellectual system protects not only intellectual products but also industrial and commercial ones (Mahmoudi, 2012:97).

1-1. Intellectual property right in sport industry

Nowadays, sports law is of a vital status and there are almost no issues related to sport industry which is not focused upon by lawyers. Yet, there is not any proper relationship between sports and law in Iran. Actually, lawyers have not paid attention to sport issues. Sport has various aspects due to its long history and its popularity among people. As a matter of fact, sport plays a significant role in social, economical, cultural and political issues. The importance of sport in political, social and economical fields have made the industry develop quickly and turn into a science. Lawyers have recognized the importance of sport in the mentioned aspects and established a programme named "sport law" to expand the territory of common law. This is how they attempt to adjust the relation between sport agents for which the concept of intellectual property seems to be significant.

2. Manifestation of Intellectual Property in Sports Natural Persons

Although sport natural persons are discriminated by such titles as player, coach, referee, etc., the point here is to find titles in accordance with intellectual property system. The skills and reputation of athletes can be two useful terms in this regard which will be explained in the following sections.

1.2. Sport skills

Since skills are of different types, it is difficult to find a unique definition for all types of skills. A psychologist named Edwin Ray Guthrie (1952) defined skill to enumerate its primary features. According to Guthrie, skill is the ability to bring about some end results with maximum certainty and minimum outlay of energy or of time and energy. Sport skills are also among creative activities whose creators have unique abilities in sports fields.

1.2.1. Understanding of concepts

Sport techniques may be considered special methods of realizing goals (Hornoby, 2002:1334). An athlete requires to rely on his physical and mental abilities as well as creativity potential to achieve success. Additionally, the athlete has to balance out energy intake and consumption. To this end, there are various methods to accomplish this goal. Consequently, sport skills can be divided into sport movements and sport methods. Sport movements are artistic backward or forward movements, individually or in form of a team attempt. On the other hand, in order to be discussed in the context of intellectual property, sport movements are grouped into routines or innovative movements on the basis of the innovation and novelty included in the movement (Weber, 2000:123). As for routine moves, the focus is on the correctness of pre-practiced drills. For instance, 360-degree spinning in gymnastics is a kind of routine moves, while in creative moves, the athlete creates an innovative move composed of creativity and novelty. However, with regard to commercial value of these moves and the popularity of these kinds of moves among people, athletes spend a considerable amount of time on these innovative moves. Michael Jordan's 3-score shooting is an innovative move (Kukkonen, 1998:908). Functional movements form another group of sport moves. The mentioned group being common on competitive sports is for two goals: to acquire

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higher score and to win the game. For instance, in basketball games, all players attempt to shot the ball into the basket. To this end, any kind of short or long shootings are tried. Some sport lawyers believe that the moves which are aimed just to acquire higher score cannot be taken as innovative moves (Weber, 2000: 953). This issue has reached to the point that functional movements are doubted. It must be noted that sport moves, even pre-planned and organized ones, cannot succeed unless there is a plan for energy and time consumption. Accordingly, athletes try some other methods to accomplish the given goals. For instance, specific methods for warming up before the game starts are common nowadays. These warm-up techniques focus on preparing muscles with minimum use of energy. This way, players play with ball instead of concentrating on dynamic or static exercises (Bambauer, 2005: 304). Sport methods have been created by sport professionals. Legal protection of sports methods is a confined aspect of legal protection of sport skills. It is claimed that there is controversial debate on the legal protection of sports methods in the field of protection of sport skills.

2.2.1. Athlete's reputation

Another aspect of intellectual property in the field of sport industry is athlete's personality, especially athlete's reputation which is directly interwoven with natural persons including athletes, referees and coaches. Legal protection of persons and their reputation is of two aspects: intellectual and commercial. Although protection of intellectual property does not face obstacles, to commercialize athlete's reputation is still a controversial issue. Though it is claimed that athlete's reputation is given to him by society and the athlete is not allowed to deem it as a sport patent, other resources to appeal are required (Khoshnevis, 2009:140).

3. Manifestation of intellectual property in sport legal persons

Sports clubs have to be taken as the primary component of sport industry. However, the importance of sports clubs does not deprive other sports organs of legal protection of intellectual property. Sports leagues and committees including international Olympic committee are among sport organs in which legal protection of intellectual property and industrial property is realized simultaneously.

3.1. features , bases and nature of broadcasting right for sport events

In the majority of countries, radio and television broadcasters are subjected to legislation because they are sources of information for audience. Consequently, their shows and programs are supervised carefully under the title of "related property". On the other hand, all programs broadcast by these organizations are included in intellectual property. This section focuses on nature of sport patent one component of which is intellectual property.

3.1.1. Nature of sport broadcasting contracts

Sport patent covers different aspects and issues. One important issue is sport contract. It is claimed that the primary basis of sport is sport contract because no sport event is held until a contract is signed. For instance, rights of coach, players, clubs, shops, journalists, sport agencies, sport physicians, sponsors, etc. are defined on the basis of contract. Sport is a developed form of movement. The most notable aspect of sport is organization and the ability to reach that organization (Khouli, 2003:32). With regard to the mentioned concepts and principles of contract sport, characteristics of sport patent are:

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- From television broadcasters' point of view, sport is a tool to attract audience. Accordingly, increase in advertisement rate depends on how important the sport event is. According to sport clubs and organizations, it can be a profit making method. Mutual advantages make agreement on details possible. In the case of competition between television broadcasters, patent is dedicated to the company who pays more.
- Buying broadcasting right (patent) can be of annual or periodical type or can be specifically done for a special sport event (Olympics or world cup). Additionally, sport patent can be of national or international nature. If a company buys the patent for broadcasting port events and then addresses national audience, the patent signed by patent holder and the company is also a n international one.
- Sport broadcasting patent covers the right for broadcasting live sport events. The point is that the more attractive the event is, the greater number of audience will be attracted. Therefore, a company has to pay more money for the patent. It is the reason why football patent is more expensive than other sports. The content of the broadcast event is also of a significant status according to sport patent because the patent is mostly violated through copying while the event is broadcasting. If sport patent is ignored, undoubtedly, sport industry may undergo harmful changes. The point here is that a sport patent in countries other than Iran is paid for up to 60%-70%. When broadcasting live sport events is of importance, unauthorized broadcasting of that event may be taken as a violation of patent legally assigned to the target company. Consequently, it may lead to less loss.
- Each sport event has its own audience and fan as well as financial significance. Practically, desire to buy sport patent has been introduced since privatization of television while there is competition between radio and television. Accordingly, as for countries in which radio and television is exclusively in the hands of the government, sport patent is priced unrealistically (Ishaqi, 201043).

4. Bases and nature of sport patent in terms of intellectual property

According to article 1 of legislations related copyright focusing on authors and artists or whoever creates intellectual or artistic works, the focus is on the protection of the work no matter how it has been created. Sport patent regards sport as an artistic work in terms of intellectual property. Television and radio companies have related property which is referred to in Rome treaty. Regardless of social and cultural role of these companies, their ownership right for literary and artistic works is of high importance. Since the early 20th century, radio and television broadcasting has been widely spread. Television broadcasting was developed during the 1950s and the 1960s (Ismaeili, 2003:45). Protection of broadcasting companies is administered via two methods: some countries assign copyright to these companies while others focus on related right. Countries Such as Australia, Cuba, Ireland, Nigeria, Singapore, South Africa and Great Britain assign copyright to companies broadcasting sport events. On the other hand, countries including Argentina, Cameron, Chile, Brazil, China, Columbia, Finland, France, India, Italy, Japan, Mexico, Russia, Spain and Turkey are among the countries which focus on related rights.

Theoretical bases of protection of author can be divided into two groups:

- The first one focuses on economic aspect. Actually, it is of instrumental view which deems author's right as an instrument to accomplish the desired social goals.

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- The second one is free of concerns related to economic challenges and first focuses on creator's right. Then, the focus is on personal right followed by social and economic aspects as of the second significance (Hosseini Nik, 2009:78). The second basis is called natural rights theory and is individual-oriented. The given theory is seen in Greek philosophical literature expanded by John Lock, the famous philosopher, with intention to expand ownership right. What Lock has mentioned about natural rights and ownership right of work is summarized in one sentence: Persons own themselves and therefore their own labor (Drahos, 2005:42). Accordingly, creator of a work has ownership rights to control copying his work. Artistic or literary work is somehow an expression of the creator's personality. Based on the natural rights theory, the focus is on protection of the author which is enacted in such countries as France, Germany and continental Europe. It is the reason why it is called Roman-German. The primary purpose is to protect literary/artistic works from unauthorized uses leading to damages to intellectual and personal profits of the author. Consequently, intellectual rights of author is of a stable place in this system (Bently and Sherman, 2001).

4.1. Radio and television broadcasting

Development of sport industry and its integration with modern technologies have turned sport into a sport industry. It has attracted investment. To this end, radio/television broadcasting plays a vital role in sport industry in terms of popularity of sport events all over the world which in turn is a motive for more industrialization of sport. Accordingly, the legal nature of radio/television broadcasting rights may lead to different laws and laws-oriented viewpoints. In this section, television broadcasting rights is deemed as one manifestation of sport patent from the intellectual property's point of view.

4.2. Protection of television/radio broadcasting rights

Speaking of television broadcasting rights and its protection, two concepts are discriminated: First, sport events are deemed as an independent asset. Accordingly, its related rights are scrutinized. Second, television broadcasting is a kind of audio/visual work whose rights are examined. In terms of common law concept, unauthorized ownership of assets and properties, violation of agreements and unfair competition are legal approaches to determine the nature of television broadcasting nature. In Roman-German system, the rights are defined other way round. In the majority of countries, broadcasting of sport events is under the protection of related rights. 1992 French sport law and policy for sport developers in most countries, television broadcasting rights is included in copyright. On the other hand, copyright protects animation pictures recorded on a carrier.

5. Copyright and television broadcasting rights

Copyright is the rights assigned to the author to enable him to decide about the publication and trade of his/her literary, artistic and scientific works. The decision has been made to ensure that the author's right is not violated or expropriated. To this end copyright is a kind of legal rights to protect intellectual and moral rights of those who have created literary, artistic or scientific works. Under protection of this rights, the patent holder is allowed to make decision on publication of his work and no one, natural or legal, is authorized to intervene in the decision making process (Salari Rad, Salehi 2011:68). The first condition for protection of literary/artistic/scientific works is originality of the work. The least degree of creativity is taken as the pre-requisite mentioned in all legal systems but it is still unclear how the minimum amount of originality is defined (Salehi, 2007:34). Generally, it is claimed that an sport event is of originality

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because each event is representing a unique performance of players. Audiences are not informed of the result of the game until the end of the game. In each event, unique creativity and innovation developed by players and sport committee may lead to a unique sport event. Additionally, team arrangement is quite different from a game to another. Even if the arrangement is the same, the way a player plays depends on the way the opposing team chooses to play. Accordingly, each game will be a unique one being quite different from other games (Hekmat Nia et al. 2009:134). It is likely that sport events are not mere idea rather a manifestation. To realize goals of events including sport events or creativity and physical performance, there are various ways of performing available. On the other hand, to reach the objectives, there are multiple ways each of which deemed as unique. As for the concept of stability which is believed to be the pre-requisite for copyright in some countries, it is possible to reach the stability through recording the sport game. During live broadcasting, a record of the game is also being prepared to keep in archive. After realizing stability, the sport game can be protected under the title of copyright. Section 4 of article 5 of copyright (2005) radio/television broadcasting of the event is included in author's rights. In other countries also the same is true and the copyright holder is the exclusive person having rights for radio/television broadcasting and public purposes.

5.1. Copyright and its audio/visual components in sport

When a sport event is recorded audio-visually, a kind of audiovisual product is created which is under the protection of copyright itself. Article 102 of USA copyright recognizes audiovisual products under the protection of copyright. Article 112-2 of French intellectual property protects audiovisual products through copyright. Section 3 of article 2 of Iranian author's and artist's rights points out that "audiovisual products aimed at presenting on stage or screen, no matter how they are written, recorded or published should be protected based on copyright. It is stated that recording sport event is done from a unique perspective of angel to help originality development. It is obvious that one component of copyright is the right to publicly broadcast the event through television. It is worth noting that television broadcasting rights is subjected to constraints in order to keep the public interests. One of these constraints can be fair use. Public interests make it necessary to inform all of sport news. Accordingly, to show short episodes of sport events in sport news is a manifestation of fair use. To make films of the games never shown on television just for sue in football schools and for training purposes and also to make 2-minute films of players' performance never broadcast publicly are two exceptional cases which were predicted in national sport organization of USA universities (Wango, 1994:580).

5.2. Rights for television/ radio broadcasting of sport events

Stakeholders involved in sport events and consequently in television broadcasting of those events are likely to be assigned those rights. Athletes and players are the most important stakeholders of the sport event. Some countries recognize players as being deserved to be included in television broadcasting patent. In Brazil and based on Pele law, 20% of the money paid for television broadcasting belongs to players. But, the money is given to those who are playing the game. The percentage is quite different based on the players' performance and their creativity (Sterling, 2003:230). It is worth noting that according to article 28, players are employees and club is employer. The rights, duties and responsibilities of both parties are decided upon through a contract. On the other hand, sports clubs are deemed as owner of the finalized outcome of the sport event because it is these clubs who attempt to organize the games. In

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other words, clubs' owners are employers and owner of the products created by players as employees. In Iran, professional football league is taken into account while speaking of television broadcasting rights although there are multiple obstacles in enacting the mentioned rights. How to divide the revenue made out of television broadcasting of sport events is discussed (Ramezani, 2008:249). The lion's share of the revenue equally goes to all teams involved in league. The rank of teams at the end of the season affects the share of revenue dedicated to them (ibid, 250). Broadcasting companies play a vital role in making up animated pictures. Keep in mind that their role is under the influence of possibility of film making in clubs. These companies take advantage of related rights. They are supported nationally as well as internationally under the protection of Rome treaty. Although radio/television broadcasting companies do not directly take advantage of the rights, it is possible to discuss on re-broadcasting sport events appealing to related rights whenever the rights have been assigned to the company in advance. Having pointed out factor affecting television broadcasting, it is worth noting that sports clubs which are under the supervision of sports leagues in the majority of countries are deemed as being authorized for television broadcasting of sport events (Wongo, 1994:585).

6. Comparative study of television broadcasting patent of sport events

To establish the legal stance of organizations authorized for broadcasting sports events in countries in which radio and television are the main mass media is one of the most significant challenges from cultural and legal points of view. The desire of mass media to exempt from broadcasting patent fee and is counterbalanced with emphasis put by sports companies and organization on compulsion of broadcasting patent fee. Therefore, to pass las for broadcasting sports events, it is required to conduct comparative studies in some countries which are active in this field. In Iran, all debates on television broadcasting patent is finalized with reference to article 44 of constitution. Accordingly, radio and televisions, like other on industries, are under the ownership of government. If audiovisual product of sport events is deemed as an independent work, how it is possible to justify the fact that Iran broadcasting is a state-owned entity which is not obliged to pay money for broadcasting sport events. In France, according to 1984 law revised in 192, football federation is patented to broadcast football games. According to 1992 revised law, French Supreme Court again endorses authority of football federation to broadcast football games. The conventions signed between football federation and radio/television broadcasting companies to contract out the authority for broadcasting games are of private nature, because financial and economic aspects are of the most significance in these contracts. According to laws, it is forbidden to give the broadcasting right to a company for more than 5 years. It is aimed to prevent bias and unfair competition. In Netherlands, thing are quite different so that there is a specific channel (channel 7) for football games. Court believes that the football federation must not have the exclusively right for broadcasting football games; rather, football clubs can be included because this is these clubs which attract fans and make sports popular. This way, economic value of broadcasting sport events increases. Consequently, football federation of Netherlands was not successful to delegate its patent for broadcasting football games in 1996. In Germany, according to the verdict given by the Supreme Court in 1997, football federation was not patented to broadcast UEFA and Europe Champion League which were to be held in Germany. It was in contrast with competition rights and rights for broadcasting games. Germany courts introduced a criterion for patenting sports clubs for broadcasting games. According to judicial proceedings in Germany, a sports clubs is producing sport events and can take advantage of these events if it is the host

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of events. In the EU countries, an eclectic methods is preferred meaning that sports clubs are not authorized to sign a contract with domestic broadcasting companies in Union Champion Leagues because regulations re preferred over competition and clubs have to follow laws passed by UEFA. But, they are authorized to sign contracts for domestic leagues. In Spain, 1998 verdict was passed stating that the contract signed by federation and broadcasting companies are illegal because the patent was transferred exclusively. In Italy and Great Britain, there are different approaches enacted. On July 1999 in Italy, complete delivery of broadcasting patent for A and B leagues was announced forbidden. On the contrary, Britain court found out that the complete delivery is not in conflict with public interests (Elsan, 2013:18).

Conclusion

Ignoring television broadcasting patent for sport events may lead to reduce revenues of sport industry by one third. Additionally, it hinders provision of the grounds of development for sports clubs. Previously discussed points can make profits for sport industry. As for legislation, Iran sports industry can fill the gaps in intellectual property although there are multiple voids. To make best advantage of these discussions, authorities in sports industry have to focus on passing new regulations and laws related to intellectual property. According to intellectual property, whoever produces a service or product owns that service or products and therefore has ownership rights for that service or product. Accordingly, he is authorized to decide where to offer his service/products to whom based on his personal interests. Sports events are exclusive products of sports clubs which can be bought by broadcasting companies in the same way they buy broadcasting patent for Korean and Japanese series. It is stated that the lack of law-based system for broadcasting sports events may lead to reduction in desire for investment in sports industry in private sector. Though governments have to provide motives for investors, investors willing to invest on domestic sports witness that the sports clubs who are in trouble receiving broadcasting patent fee. Broadcasting patent is accepted by the majority of legal systems, sport and international organization including International Olympics Committee and FIFA and has been enacted for decades.

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