

Sports development, legal infrastructure and protecting Intellectual Property rights.

- Zia Akhtar ¹

Abstract

It was during the era of colonialism that modern sport was introduced in the subject nations by either the administrators, teachers, or missionaries who came to implant their civilising project. The induction in organised sport was provided through physical education by enforcing the laws of the game, statutes and rules of each International Sports Federation. The legacy of imperial governments was differentials in the facilities available to the rich and poor, and there were no universal standards for sport to flourish after the states attained their independence. In countries where sport is still underdeveloped there is need for a legal regime that can support an infrastructure of business growth, entrepreneurship and job creation; improving health and nutrition, encourage discipline, teamwork, and a competitive spirit. This can be achieved under the auspices of the UN whose agencies encourage more cohesive and sustainable communities. The recent meeting of sports ministers in Kazan has led to the MINEPS VI in 2017 that has goals that includes a "proposal for investments in physical education, physical activity and sport". This paper examines how it can be achieved through the opportunities provided by the World Intellectual Property Organisation (WIPO), which can provide intellectual property (IP) rights and encourage sport sponsorship. This will create the infrastructure for countries facing sporting underdevelopment and lack of human resources to compete at global standards, and an enabling regulatory environment that protects investment in sport.

Key words: Physical education, WIPO, sponsorship, Intellectual property, TRIPS.

¹ LLB (Lon), LLM(Lon), Gray's Inn, Sussex University Phd candidate. His articles have appeared in EU and Sports Review- A legal commentary; International Sports Law Journal; British Sports Law Journal; International Sports Law Review Pandektis ; and ABA Sports and Entertainment Lawyer.

Introduction

Staging sporting events, whether at grassroots, national or international levels, can enrich the social and cultural fabric of communities, increasing the prospect of more competitors arriving on the international stage. In the developing countries there is a shortfall in resources to meet the skills and management training that denies the prospect of athletics coming through the ranks or fulfilling their potential. There is a requirement to develop an infrastructure that will need a legal regime to underwrite the sporting structures by means of building a framework of Intellectual Property (IP) that provides the design of sports merchandise and services and increases the financial investment for sportsmen to compete at the highest level in all sports.

This is a pertinent question of development for countries in Africa, Asia and Latin America who upon achieving independence from the colonial countries adopted many institutions of the imperial governments. This includes the legal system which formalised the new order when and sports introduced by the previous authorities were integrated into the new order. Nevertheless, lack of practice and recreation facilities and the infrastructures prevented their athletics to compete at the highest level. The lack of a national sports policy and inadequate provision for sport in the school curriculum also severely restricted access to sport. While the governments in Third World countries have now accepted the potential value of sport this has not significantly increased the provision of facilities or opportunity to participate. This has meant that the sportsmen and women of the developed countries continue to dominate the medals table in international competitions.

Crucially, however, is the acceptance of the need of the country's government to address these issues for the social and economic prosperity of the nation.² There is a problem of priorities in the developing countries of the inhabitants namely the fact that participation in sport is not an occupational priority of the majority. Lack of parental support and an inadequate knowledge of the benefits of sport and exercise frustrate efforts to increase the levels of participation. Where educational faculties exist sport is often considered to be of marginal value which compromises the academic education. There are institutional barriers to sports development which appear substantial such as the economic impoverishment that prohibits the construction of sports complexes, purchase of equipment and implementation of support systems that make it very difficult to build the environment for training potential athletes and their promotion and development.

There are also other organisational impediments such as sports associations which experience regular episodes of serious mal-administration and embezzlement to the detriment of goal

² Sport in developing societies has a serious function to perform. It is (invariably) state controlled with specific utilitarian and ideological designs associated with hygiene, health, defence, patriotism, integration, productivity, international recognition, cultural identity and nation building." Jim Riordan, *State and Sport in Developing Societies*, *International Review for the Sociology of Sport*, pp 287-300 , journals.sagepub.com/doi/abs/10.1177/101269028602100403

realisation and advancement. These national bodies lack strategic planning with the result that they are unable to establish long term objectives. Within the ministerial departments sport and physical education is often marginalised and their importance is discouraged and the government find it a burden to take responsibility for sport and exercise management in contrast to the accepted standards in the developed world.³

This paper looks at the first of the IP framework as devised by the World Intellectual Property Organisation (WIPO) to protect and develop intellectual property rights in sport. This includes all formats in the spectrum of business and sport in order to develop a legal basis for the regeneration of sport in developing countries. The framework will attempt to build a basis for sponsorship in the developing countries within the guidelines arrived at by the UN to build a Sustainable future in Sport by 2030. The argument for the merchandise, services and industrial products for athletes includes sponsorship in the developing world's sports facilities, and it will set out an argument for a legal regime that strengthens and protects these rights for potential of athletes to be realised and sustained.

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Partnerships with international organisations

The lack of sporting prowess is part of the multiple social, economic and political problem confronting the developing world and it depends on partnerships between the nation states and international agencies who can help build the environment and culture for attaining excellence. The rationales for non government intervention in sport exists where there is a lack of standards and mobilization to bring relief and change is possible through the UN and its agencies that have been active in promoting sport.⁴

³ Professors Amusa and Toriola, aligned more closely the developments in sport in many African countries with the rationale that underpins state provision and sponsorship of sport in the developed world. For example, when expressing a potential value of sport, they identified a key value of sport in the developing world : “ The role of government should involve coordination, supervision, financing, quality control personnel development and maintenance, promoting sport for all and building capacity in sport industry and business”. Amusa, L.O.; Toriola, A.L.; Onyewadume, I.U.; Dhaliwal, H.S. (AFAHPER-SD. Perceived barriers to sport and recreation participation in Botswana , <http://ajol.info/index.php/ajpherd/index>, 2008)

⁴ Much of the support for Sport for Development and Peace policy and programmes is undertaken at the country level by UN agencies in partnership with local implementing partners. Such national level policies and programmes are supported by networking and coordination undertaken at UN Headquarters level through various mechanisms including the [UN Inter-Agency Task Force on Sport for Development and Peace](/sport/content/un-players/un-coordination-mechanisms/un-inter-agency-task-force-sport-development-and-peace) and the [3](/sport/content/un-players/un-coordination-mechanisms/un-</p></div><div data-bbox=)

The international framework can engender sport in the developing countries and make it more inclusive for all athletes. The platform exists for this to happen by the consensus of international bodies governed by the UN. The manifesto of UNESCO is that there has to be "inclusion, integrity and sustainability" in the construction of the institutions for sport worldwide.⁵ This is the platform for regeneration by an agenda of concise action for developing sports strategies in the developing countries. The sixth International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport, MINEPS VI⁶ held at Kazan, in the Republic of Tataristan in July 2017 established the Kazan Action Plan (KAP). This brings sport policy into the framework of the UN 2030 Agenda. The KAP sets out five concrete blueprints to further the principles of sport ethics, inclusion and sustainability, which form part of the substance of the document as follows:

1. Elaborate an advocacy tool presenting evidence-based arguments for investments in physical education, physical activity and sport.
2. Develop common indicators for measuring the contribution of physical education, physical activity and sport to prioritized SDGs and targets.
3. Unify and further develop international standards supporting sport ministers' interventions in the field of sport integrity (in correlation with the International Convention against Doping in Sport).
4. Conduct a feasibility study on the establishment of a Global Observatory for Women, Sport, Physical Education and Physical Activity.
5. Develop a clearinghouse for sharing information according to the sport policy follow-up framework developed for MINEPS VI.

The sport policy framework provides governments a single document to refer to when making domestic policy to invest in sport programmes. The conference's main purpose was to assess the global developments in sport and guide governments and policy makers in how to make effective policies in the areas of physical education and sport. There were 116 states whose representatives attended and endorsed the principles of the declaration.⁶

communication-group%E2%80%99s-working-group-sport-development-and-peace" style="color: rgb(33, 103, 209)">UNCG Working Group on Sport for Development and Peace.

⁵The UNESCO is the UN's lead agency for Physical Education and Sport (PES). It assists in providing guidance services for governments, NGOs, and experts to debate the evolving challenges of physical education and sport. The organization also assists and advises Member States wishing to elaborate or strengthen their training system in physical education. It also has the expertise for designing and implementation of development programmes in the domain of sport. In addition, UNESCO plays the secretariat role for the Intergovernmental Committee for Physical Education and Sport (CIGEPS).www.unesco.org/new/en/social-and-human-sciences/.../physical-education-and-sport

⁶The output of the meeting in Kazan is an 'Action Plan' outlining how to follow up on the Berlin Declaration from the MINEPS V in 2013 and on the revised International Charter of Physical Education, Physical Activity and Sport. Both these documents are integrated with the UN Agenda 2030/Sustainable Development Goals (SDGs). Philipp Müller-Wirth, UNESCO's Executive Officer for Sport to Play the Game stated: "Whereas the Berlin Declaration was a set of recommendations, this time governments and other sport policy stakeholders wished to provide a clear

There are other specialist UN agencies, include the International Labour Organisation (ILO) that has focused on the value of sport in the development of human resources since its inception. The ILO has had an interest in sport as labour exchange because it is part of an endeavour to provide skills and employment to younger people.⁷ It has long advocated for sports development and youth training by supporting programmes for sports as an initiative for peace and to harness sporting talent that is part of its founding principles that it has nurtured.⁸ Matthieu Cognac, Youth Employment Specialist in the ILO Regional Office for Asia and the Pacific states the approach of the UN is based on drawing an analogy between "real life training for employment and sport". It defines these requirements as " 'soft skills' which are hard-work, punctuality, discipline, creativity, team play, pro activity, risk taking, responsibility, leadership in their own fields, respectfulness, results-driving, positive attitude, competitiveness, fun and energy".⁹

Cognac argues that the need is for understanding how these soft skills that can be developed through sports "such as ethics, attitudes and communications" which could help in the engagement with sport.¹⁰ There are number of projects that have already been launched with such initiatives as 'A Ganar' in Latin America and 'Just Play_' – a programme of the Oceania Football Confederation, with support from the Fédération Internationale de Football Association (FIFA) designed to contribute to community development priorities in the Pacific Islands. The latter targets children aged 6 to 12, but there are plans to extend it to other countries and older ages.¹¹

framework presenting a concise action plan for the work with sports policy". <https://en.unesco.org/mineps6/kazan-action-plan>

⁷ International Labour Organisation (ILO) and International Olympic Committee (IOC) established institutional cooperation, in 1922 later reinforced through a series of partnerships between the IOC and UN system partners. UN Office on Sport and Development and Peace. <http://www.un.org/sport/content/chronology>

⁸ It has also published the book *Beyond the Scoreboard: Youth Employment Opportunities and Skills Development in the Sports Sector*, Giovanni di Cola (Editor), International Labour Office (2006)

⁹ Matthieu Cognac, How can sports help to promote youth employment? http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_232712/lang--en/index.htm

¹⁰ Id

¹¹ The Pacific Youth and Sports Conference, which took place in Noumea, New Caledonia, from 2 to 7 December 2013, discussed many of the ideas and programmes that are being implemented in the region on youth and sports. It concentrated on three themes: "health, social inclusion, and education and capacity building. Pacific Youth Sports Conference (PYSC) 12 Feb 2013. <https://www.sportanddev.org/en/event/pacific-youth-and-sport-conference->

The UN has under the auspices of the General Assembly adopted several resolutions that further the programme of inclusion, integrity and sustainability. In November 2004 the General Assembly agreed on a resolution that proclaimed the year 2005 as the International Year Of Sport and Physical Education advocating “Sport as a means to promote education, health, development and peace”.¹² This document was presented as key factor in the delivery of the Millennium Goals and sport and physical education were identified as movements for change in the developing world and it was designed to provide a unique opportunity to make the case for universal development through sport.¹³ These Declarations establish objectives for the promotion of sport have been renewed in 2010 and in 2017 with the specific intention of formulating standards for the presentation of sport as an ideal in nation building and harmony among states.¹⁴

The role of sport has progressed from the Millennium goals to a more advanced stage of Sustainable Development goals. In resolution 70/1, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, adopted in 2015, the task of sport in advancing social progress is further acknowledged.¹⁵ It has been recognised as "proven to be a cost-effective and flexible tool for promoting peace and development objectives. Since the inception of the MDGs

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¹² The United Nations General Assembly in its Resolution 58/5, entitled “Sport as a means to promote Education, Health, Development and Peace”, recognized the positive values of sport and physical education and acknowledged the challenges presented before the world of sport today. This Resolution invited Governments, the United Nations system and sport organizations to cooperate in the realisation of those goals.
http://www.un.org/sport2005/a_year/why.html

¹³ The Millennium Development Goals (MDGs) were established at the UN Millennium Summit in September 2000. The eight MDGs aim to eradicate or reduce poverty, hunger, child mortality and disease, and to promote education, maternal health, gender equality, environmental sustainability and global partnerships. The target date for achieving the MDGs is 2015. <https://www.un.org/sport/content/why-sport/millennium-development-goals>

¹⁴ Adopting Resolution, General Assembly Reaffirms Role of Sport as a Means to Promote Education, Health, Development and Peace, 16 December 2016. Press release by the UN Office on Sport for Development and Peace, <https://www.un.org/sport/node/203631>

¹⁵ The Role of Sport in Achieving the Sustainable Development Goals, UN Chronicle Vol L 111 No. 2 August 2016, <https://unchronicle.un.org/article/role-sport-achieving-sustainable-development-goals>

in 2000, sport has played a vital role in enhancing each of the eight Goals, a fact that has been recognized in numerous resolutions of the General Assembly.

The GA Resolution 70/1 sets out a framework of 17 possible objectives in order to enhance and promote sporting opportunities on a global basis. The most significant for countries facing sporting stagnation and lack of organisation were the guidelines " Sport can encourage new approaches to "industrialization and inspire innovation and it can contribute to equitable access for all by providing accessible sport infrastructure and spaces, and by building and reconstruction of resilient infrastructure, including sport facilities". (Goal 9) The second important objective was to "Ensure sustainable consumption and productive patterns" through "education and awareness" through campaigns that will raise the output of "sports products services, events and related industries". (Goal 12) ¹⁶

This is an invitation for a code to be devised and IP rights to be integrated in the regulatory framework of developing country's laws. This will be compatible with the Sustainable Development goals by promoting innovation and creativity and work behind the scenes to push the boundaries, creating new opportunities for competition and for athletes to improve their performance. It is necessary to set this out with reference to WIPO that is responsible for establishing a basis for copyright for sports products that helps both the manufacturing process and sponsorship for athletics.

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IP and the business of sport

The IP lies at the heart of the huge commercial opportunities offered by the world of sport because it protects legal rights, especially patents, trademarks and broadcasting rights that help to secure the economic value of sport. This process stimulates growth of the sports industry, enabling sporting organisations to finance high-profile sports events, and provides the means to promote sports development. The transactions related to sponsorship, merchandising, broadcasting and media deals are all structured on IP rights.¹⁷ This creates an industry that is

¹⁶ Sport and sustainable Development Goals, UN Office for Development and Progress.
<https://www.un.org/sport/content/why-sport/sport-and-sustainable-development-goals>

¹⁷"*Intellectual property underpins the many commercial relationships that exist in the world of sport, and offers enormous potential as a driver of economic development.*" – Francis Gurry, WIPO Director General An Interview with WIPO Director General Francis September 2010,
Gurry www.wipo.int/wipo_magazine/en/2010/05/article_0001.html

supported by the WIPO regime that encourages technological advances which results in more sporting excellence, and promotes the concepts of "image and aesthetics".¹⁸ The guidelines that it provides contribute to the distinct identity of events, teams and their gear and generate the interest in commercial investment in the form of sponsorship.

The sports product such as a shoe may be "protected by several IP rights which include patents protecting the technology used to develop the shoe; designs protect the 'look' of the shoe; trademarks distinguish the shoe from similar products and protect the 'reputation' of the shoe (and the company making it); and copyright protects any artwork and audiovisual creations used to publicize the shoe". Strong brands command customer loyalty and premium prices, constituting valuable assets that drive company revenue and growth.¹⁹

The market technique based on the selling power of the trademark are crucial to the success of branding or trademarks in sport. This can be defined as a merchandising license used in conjunction with certain products and/or services in order to increase their demand. The aim is to commercialize products and/or services by an agreement which defines the programmes that create and help manage licensing opportunities across defined categories. While licensors are not involved in the manufacturing of the products, they must provide careful management and oversight of their licensing programs to protect their brand's reputation. The technology license may be a useful option for companies involved in the development of sports-related equipment, and these can be used both to "license in" technologies developed by other companies or to earn additional income by "licensing out" homegrown technologies. These include clauses such as Quality Standards, which means that the trademark owner must monitor the quality of the products manufactured by the licensee. The licensee must assume product liability and it will contain the Usual clauses of licensors audit rights, the consideration, fees and royalties, and termination. There are other clauses that stipulate the Territory, Scope, Exclusive / Non exclusive/ and Prohibition against child labor.²⁰

¹⁸ The sports industry has a growing impact on the world economy, creating jobs, investing in public infrastructure and mobilizing resources – and an important component of this is generated through IP-protected activities. The global revenue of the sports industry – comprising sponsorships, gate revenues, media rights fees and merchandising – is predicted to reach US\$ 133 billion in 2013 from US\$ 114 billion in 2009. The annual global turnover of sporting goods (equipment, apparel and footwear) is put at around US\$ 300 billion. The activities target a wide range of stakeholders such as: government and public bodies; enforcement officials and judiciary; legal practitioners; agents, athletes, clubs, sports federations; event organizers, donors, sponsors; sports good manufacturers; television and media companies. WIPO Background brief http://www.wipo.int/pressroom/en/briefs/ip_sports.html

¹⁹ 'Strong brands such as Nike command customer loyalty and premium prices constituting valuable assets. They increase company revenue and growth. Foundations of Sport Management: Organisational behavior in Sport'. By James Skinner, Bob Stewart (2017), Routledge.

²⁰ Carolina Pina, Garrigues, The role of IP in sports: Sponsorship, Media Rights and Merchandising (2011) www.wipo.int/edocs/mdocs/mdocs/...ip_sport.../wipo_reg_ip_sport_sin_14_t_3.pdf

The implementation of an IP regime in sports has been recognised in the objectives of international organisations such as in safeguarding the Olympic Games. This is for the protection of their logo, flag and trademarks in particular which play a central role in promoting the Olympic symbols.²¹ The International Olympic Committee (IOC) Fact file shows that it is financial self sufficient and its framework is based on sponsorship which is between "*an Olympic organisation and a corporation, whereby the corporation is granted the rights to specific Olympic intellectual property and Olympic marketing opportunities in exchange for financial support and goods and services contributions. Olympic sponsorship programmes operate on the principle of product-category exclusivity. Under the direction of the IOC, the Olympic Family works to preserve the value of Olympic properties and to protect the exclusive rights of Olympic sponsors*".²²

These are beneficial in providing Olympic sponsorship programmes that in the main provides "*valuable financial resources to the Olympic Family; Sponsors provide support for the staging of the Olympic Games and the operations of the Olympic Movement in the form (i)l of products, services, technology, expertise and staff deployment (ii) Sponsors provide direct support for the training and development of Olympic athletes and hopefuls around the world, as well as essential services for athletes participating in the Games, and (iii) Sponsors provide essential products and services for broadcasters, journalists, photographers and other media*".²³

Blackshaw states the IP rights play an important role in Sports Events Marketing and "without IPRs, it would be impossible to market sports events, sports persons and sports teams, because sports bodies and individuals would have nothing to commercialise or sell". There will no protection available as "*no one who is going to pay for the grant of any rights to be associated with sports events or to sponsor sports personalities and teams without those rights being recognised by law and, as such, being legally enforceable against others that IP have not been granted those rights and—even more importantly—have not paid anything at all for the privilege of exploiting them commercially*".²⁴

²¹ The Olympic Charter which was effective in 1908 codified the Fundamental Principles of Olympism, Rules and Bye-Laws adopted by the IOC. According to Rule 7 of the Charter, the Olympic properties include the Olympic symbol as well as the Olympic flag, motto, anthem, identifications (such as "Olympic Games" and "Games of the Olympiad"), designations, emblems, the Olympic flame and torches. All rights to any and all Olympic properties belong exclusively to the IOC, including rights to their use in relation to profit-making, commercial or advertising purposes.

²² OLYMPIC MARKETING FACT FILE, International Olympic Committee, 2016 edition
<https://stillmed.olympic.org/.../OlympicOrg/.../IOC-Marketing...Files/Olympic-Marketing>

²³ Ibid, p 29

²⁴ Blackshaw I.S. (2011) The Importance of Intellectual Property Rights in Sports Event Marketing. In: Sports Marketing Agreements: Legal, Fiscal and Practical Aspects. ASSER International Sports Law Series. T. M. C. Asser Press, DOI https://doi.org/10.1007/978-90-6704-793-7_3

The commercial benefits from licensing of sports products, services and sponsorship agreements has also been recognised at the European Union (EU) level.²⁵ However, sporting events as such are not protected as IP under the EU law. In *Premier League v QC Leisure the European Court of Justice*²⁶ stated that sports events as such (notably football games) do not qualify as protected subject matter under EU copyright law. The Court explained that in order to be classified as a “work of authorship” the subject-matter concerned would have to be original in the sense of the author’s own intellectual creation.²⁷

The sporting events cannot be regarded as intellectual creations within the meaning of the EU Information Society Directive.²⁸ This applies in particular to football matches, which are subject to rules of the game which leave no room for creative expressive freedom.²⁹ The Court went even further and stated that sports events are not protected by European Union law on any other basis in the field of intellectual property, excluding therefore neighbouring or related rights to copyright (including database sui generis rights) as well.³⁰

The issue is how can there be a design technology and regulatory framework transfer to the developing countries of an IP regime that will meet with the Sustainability goals of the UN agenda 2030. This has to be accomplished by investment from the leading manufacturers of sports merchandise such as Nike, Puma and Adidas who will need more incentive to establish industries in developing countries. At present these companies have high-tech (and tightly guarded) test labs equipped with the very latest technology, and they work in conjunction with top athletes, measuring and recording their movements to develop equipment for optimal performance. The technical base will be lacking in countries that do not have the purpose-built facilities to develop and test equipment under varying conditions. There will have to be a technology convergence with the merchandising and trade marking sporting goods with the non-sports manufacturers taking a segment of the market. The leading developers of consumer electronics, including Apple, Nokia and Samsung, are work in proximity with leading sports brands to develop new sports-related technologies (and new revenue channels).³¹ Their

²⁵ See, the White Paper on Sport of the European Union. PART 3 (Economic Dimension of Sport) "A growing part of the economic value of sports is linked to intellectual property rights. These rights relate to copyright, commercial communications, trademarks, and image and media rights. In an increasingly globalised and dynamic sector, the effective enforcement of intellectual property rights around the world is becoming an essential part of the health of the sport economy. It is also important that recipients are guaranteed the possibility to have distance access to sport events at cross-border level within the EU".COM/2007/0391 FINAL eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391

²⁶ See Joined Cases C 403/08 and 429/08 *Football Association Premier League Ltd and others v QC Leisure and others and Karen Murphy v Media Protection Services Ltd* (2011) ECR-I-9083.

²⁷ Id.

²⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society.

²⁹ at 98.

³⁰ at 99.

³¹ Apple Inc., noted for its development of software technology has already progressed into collaboration with sports wear producers. It has with its Nike + iPod sports kit which, thanks to sensors in the Nike+ shoes, enables iPod users to obtain real-time feedback during workout sessions and to track their performance. The company has obtained a patent (US Patent 20160256082) for a “smart garment” on which advanced sensors are affixed that transfer data -

investment in delivering sports merchandise and copyrights can establish an IP regulatory system that will promote the sports sector in the economy of the developing countries.³²

The maxim still holds that "IPR regime is effectively a system of *“private gain in service of the public good”* which is a particularly inappropriate system in regards to sports based frameworks.³³ These have to fall within the WIPO system and the laws and business practices governing athletic events will require more protection in terms of ownership and organisation. This must reflect the principle that growing part of the economic value of sports is linked to IP rights. In an increasingly globalised world where the UN has established the Sustainability Goals in Sport for 2030 it is a dynamic sector, and the effective enforcement of IP rights around the world is becoming an essential part of the health of the sport economy. It is also important that recipients are guaranteed the normative environment for access to investment.

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Establishing the regulatory framework for IP protection

The process of integrating countries of the developing world for sport regeneration has to meet the UN agenda of 'inclusion, integrity and sustainability' and this can be achieved by establishing an IP regime. The WIPO administers a treaty based framework that together with national and regional laws, make up the international regulatory framework for developing countries. It is necessary to set out protection of the rights that could be in accordance with

such as location information, physiometric data of the wearer, garment performance and wear data - to an external data processing device such as a portable digital media player linked to a computer server. Apple Invents a Major Wearable Sensors Network for Total Next Generation Workouts. 9/9/16. <http://www.patentlyapple.com/patently-apple/2016/09/apple-invents-a-major-wearable-sensors-network-for-total-next-gen-workouts.html>

³² The success of such ventures will hinge, in large part, on effective IP asset management and access to affordable, efficient and user-friendly IP services, such as WIPO's Patent Cooperation Treaty (PCT). The PCT is an international treaty that makes it possible to seek patent protection for an invention simultaneously in a large number of countries by filing a single "international" patent application instead of filing several separate national or regional patent applications. The granting of patents remains under the control of the national or regional patent Offices in what is called the "national phase". The PCT is used by major corporations, research institutions and universities when they seek international patent protection.

³³ "From Signal of Source to Frozen Signs" in "Authors, Inventors and Trademark Owners: Private Intellectual Property and the Public Domain" Keith Aoki 18 Columbia-VLA Journal of Law and the Arts 1994 191

international formulas devised in countries with a functioning IP laws such as in the EU. The regulations should define the manner in which assets should be protected as follows:

1. Effective protection of symbols, emblems and event names through trade mark law. 2. Adequate procedures and remedies against infringement. 3. Protection against on-line piracy to protect the broadcasting rights. 4. Protection of designs 5. Importance of the data mining and big data in Sport and 6. Protection against ambush marketing.³⁴

The former Director of the Institute for Information Law (IViR)) Egbert Dommering has established a framework for IP rights protection which brings the different elements of sport that are relevant for determining the right type of protection. These are "firstly, there is the game and the connected property rights in the venue where it is played. Secondly, there are the players and the related informational privacy or publicity rights. Thirdly, there are content producers, who often own rights on the results of their audiovisual recordings, fixations, and broadcasting of the event. Fourthly, the right of the information media companies to access the venue and/or the signal in order to be able to offer to the public an account for informatory purposes. Fifthly, a general right to exploit the event in many different forms (e.g. sponsors, marketing companies, gambling operators, etc.), which is shaped by a number of *ad hoc* contracts concluded by the relevant subject".³⁵

Dommering considers the "traditional property rights in particular represent an important, and sometimes underestimated, tool to protect the value of the investment". These can be safeguarded "by fencing the venue where the event takes place, controlling access, and prohibiting specific acts by contract are all examples of the effectiveness of this 'old-school' but powerful right (a legal construction also known as "house right" in many jurisdictions; this aspect is discussed in the first part of IViR's sport study)". The other "important set of rights regards the recording of the event and its broadcast" which can lead to "various forms of protection such as copyright in the audiovisual work, the producer right in the first fixation of the film, and the right of the broadcasting organizations in their broadcasts".³⁶

This means that "there are regulatory challenges such as restrictions (ban on certain products such as tobacco, spirits, beer, etc) that have an impact on sponsorship income for event organisers". There are also "*financial fair play rules and if a company invests funds through a sponsorship deal with another business to which he is related, then competent bodies will investigate and, if necessary, adapt the calculations of the break-even result for the sponsorship revenues to the level which is appropriate ('fair value') according to market prices*".³⁷

³⁴ Carolina Pina, *supra* 20, at 11

³⁵ Thomas Margoni, 'Who owns the World Cup? The case for and against (intellectual) property rights in sports.', Kluwer Copyright Blog, October 13 2014, <http://copyrightblog.kluweriplaw.com/2014/10/13/who-owns-the-world-cup-the-case-for-and-against-intellectual-property-rights-in-sports/>

³⁶ *Ibid*

³⁷ *Ibid*

In order to broadcast a sport event it is necessary to obtain the authorisation of the original and derivative owners of the corresponding media rights.³⁸ The protection of broadcasting rights is a form of IP because the sale of these rights is a major source of revenue to event organizers. The transmission is of a contemporaneous event at which the focus of the media is provide a running commentary on the activity between the opposing parties. The digital revolution through the internet and the web has brought problem for sports broadcasters who have come to rely on a profitable but restrictive compact to sustain their operation and public profile.

Hutchinson and Rowe state that the "*intersection of access and content involve the broadcasters and sports leagues are attempting to adapt effectively to the changes posed by on line media and the vicissitudes digital television formats and devices, to the use the advantages of incumbency against new media sports operators and to protect the economic value contained in the live broadcast event*".³⁹

The arrival of the World Wide Web has allowed the speed and carrying capacity of consumer broadband internet connections to be improved with the quality of the images that can be streamed in real time internet users. The "limited data plans and download speeds for households that once served as a protective layer for broadcasters against on-line piracy are now falling away", and the "major sports leagues and free air and subscription broadcasters joined the anti piracy fray".⁴⁰ The technology required to retransmit a live TV broadcast online is readily accessible though the Web. However the challenge for regulators is "how to combat downloadable software, cheap of the shelf hardware and internet users searching for free access to telecasts". This breach of broadcasting rights compromises "exclusive broadcaster control over who has access to live TV sport in different territories (domestic and various international markets) and by what means (for ex. free to air, pay for review, or official streaming reviews)".⁴¹

The problem of privacy is real because the commercial value and popular appeal of live sports events causes the vulnerability of TV broadcasts to on line streaming. Although illicit streaming

³⁸ Under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) of 1961, broadcasters have exclusive rights for 20 years to authorize rebroadcasting, "fixation" (recording), reproduction and communication to the public of their broadcasts. However, there is wide agreement that the protection of broadcasters' rights needs updating to accommodate the digital communications revolution. Ongoing negotiations at WIPO aim to update the international legal framework to adequately and efficiently protect against the piracy of broadcast signals. Since 2011 WIPO's Standing Committee on Copyright and Related Rights, which is responsible for the broadcasting negotiations, agreed a work plan to come up with a new draft treaty that would be acceptable to all or most WIPO members. The outstanding issues include: What should be protected? How should broadcast signals be protected? What further rights should be given to broadcasters? What limitations and exceptions should there be? How long should protection last? <http://www.eipo.int/pressroom/en/briefs/broadcasting.html>

³⁹ Brett Hutchinson and David Rowe, *Sport and beyond the Television: The Internet, Digital Media and the Rise of Net worked Media Sport*, Routledge, (2012) p 36

⁴⁰ *Ibid* p 40

⁴¹ *Ibid* p 41

services are regularly taken down, directories and sites can be located by users through on line searches and from bulletin boards where URLs are circulated via posts, live chat, or pirate messages exchanged between users. This is because sports events are "most vulnerable to have peer to peer streaming, as opposed to distributive after the point of release through file sharing protocols like BitTorrent and file locker sites".⁴²

The possibility of litigation against piracy is difficult to execute successfully because of jurisdictional issues and the financial resources required. There is also the difficulty of identifying individuals who are responsible for infringement and there is a lack of consistent legislation across the world.⁴³ The technology involved is based on " 'fast moving and mutating networks' that involves considerable time and effort to trace the location of site operators" and the ephemeral nature of live sports is "comparatively transient and any infringement notice is 'unlikely' to be effectively acted upon until the event has finished and the stream terminated anyway".⁴⁴

Birmingham and David argue "Using the dual use defence site hosts (Online Service Provider) who may have knowledge of copyright violations while providing services can defend themselves by stating they are specifically reported remain unaware of their existence at the time of their transmission".⁴⁵ However, the more that "sports organisations and broadcasters persevere with a protectionist mindset by failing to invest seriously in reliable and widely accessible authorised services, the more likely it is that online word-of-mouth among users will continue to expand the avoidance for illicit streams".⁴⁶

The IP protection of broadcasting offers reasonably consistent financial returns and prompts and in the internet cultures of sport leagues occupies prominent space in broadcast schedules. The medium of television was viewed as a reliable media technology even with the arrival of cable and satellite television but the Web tend to be viewed as "risky" as liable to be pirated. The accepted media industry discourses around Internet piracy contribute to the framing of these

⁴² Ibid p 43

⁴³ In the Svensson Case ECJ C-466/12, February 13, 2014 the Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society, was interpreted as meaning that the provision on a website of clickable links to works freely available on another website does not constitute an 'act of communication to the public', as referred to in that provision. Article 3(1) of Directive 2001/29 must be interpreted as precluding a Member State from giving wider protection to copyright holders by laying down that the concept of communication to the public includes a wider range of activities than those referred to in that provision.

⁴⁴ Ravi Sundaram, *Pirate Modernity: Delhi's Media Urbanism*, Oxford, New York: Routledge Sundaram (2010), p 132

⁴⁵ Birmingham, J. & David, M. (2011). Live-Streaming: Will football fans continue to be more law abiding than Music Fans? *Sport in Society*, 14(1): 69-80.

⁴⁶ Ibid pp 76-77

technologies, reinforced by the knowledge that it is onerous and probably impossible to orchestrate completely foolproof blocking, filtering and censorship of online sites.⁴⁷

The effort has been made to preserve the business model based on IP rights that are protected in the regulatory framework. The lobbying of copyright industry non governmental organisations (NGO) s such as the IP Alliance, International Anti Counterfeiting Coalition and the Alliance against broadcasting piracy have been augmented by the creation of the Sports Rights Owners Coalition (SROC). The SROC tries to influence IP policy development, making representations to the EU and the WTO, and commenting publicly on their SPOC -sponsored Background Report on Digital Piracy of Sporting Events.⁴⁸ This argues that "professional sports are positioned as the hapless victim of digital piracy which is an extra ordinarily difficult challenge to which they are ill equipped to respond given the current legal and technical means at their disposal".⁴⁹

There is also a need for further protection of broadcasting a sporting event which requires the measures to efficiently remove advertising from illegal linking sites, and eliminate any other kind of fund for their support. The promotion for an effective notice and deletion on illegal content and linking sites is considered necessary for the tracing the broadcasting pirates of sporting events and removing their source of funding.

4/

Justifications of IP in Developing frameworks

There is a basic logic for the implementation of intellectual property rights to promote innovation in investing in sports infrastructure in developing countries. The framework of IP drawn up by the WIPO assists in the process of its legal underpinning and the precise connection between intellectual property and economic development varies over time from

⁴⁷ A 2010 study conducted by the One Earth Future (OEF) Foundation estimated that maritime piracy costs the *global* economy between \$7 billion and \$12 billion annually (Bowden, Anna. (2010). The economic costs of maritime piracy. One Earth Future Foundation. In another study the Directors Guild of America (DGA) estimated that global online piracy cost the United States economy \$25 billion and 375,000 jobs a year (DGA, 2010). Given the harm that is caused by illegal streaming and downloading, it is amazing how often these activities are practiced. Researchers at Columbia University estimate that 45% of American adults, 76% of young adults (ages 18-29), and 90% of college students have illegally consumed movies and television shows online (Karaganis, J., & Renkema, L. (2013). Copy culture in the US and Germany. The American Assembly. <https://piracy.americanassembly.org/wp-content/uploads/2013/01/Copy-Culture.pdf>

⁴⁸ Digital Piracy of Sporting Events 2008 Updated (SUBMITTED IN CALL FOR EVIDENCE TO INDEPENDENT REVIEW OF INTELLECTUAL PROPERTY AND GROWTH) www.wipo.int/expert/sites/www/ip-sports/en/pdp/piracy_report_2011.pdf

⁴⁹ Ibid p 3-4

countries and continents.⁵⁰ There has been the emergence of a transnational system of innovation since the (Trade Related Aspects of Intellectual Property Rights) TRIPS Agreement, that has profoundly altered the nature, scope, and economic consequences of international intellectual property regulation.⁵¹

The objective of the TRIPS Agreement was to secure export markets for a wide variety of knowledge goods in which industrialized countries had long held a competitive advantage. Its main purpose was to formulate the conditions of future global competition, particularly the extent to which developing countries could use intellectual property as a form of industrial policy in pursuit of strategic development objectives. It has been asserted that “with strong upgrades in patent and copyright protection, seminal international coverage of new subject matter, and a celebrated enforcement mechanism, the TRIPS Agreement targeted the soft underbelly of the development process”.⁵² The knowledge-based economy relies primarily on the use of ideas and innovations rather than physical abilities and on the application of technology rather than the transformation of raw materials or the exploitation of cheap labour.⁵³

However, it has made “access to knowledge and technology acquisition by firms in developing countries more costly, thereby undermining their ability to compete in a global knowledge economy, at least in the short run”.⁵⁴ There is also the creation of the fusion of the blend of global and local politics, which has defined a new era of private sector influence in the political economy of globalized IP norms that have impacted on the system enacted by the WIPO. The developing countries have not been able to implement the IPs into their economy because they promote the interests of multinationals which are not always in accordance with the welfare of the local people.⁵⁵

⁵⁰ Pugatch, Meir, P, The Process of Intellectual Property Policy-Making in the 21st Century—Shifting from a General Welfare Model to a Multi-Dimensional One, 31 *Eur. Intell. Prop. Rev.* 307 (2009). See generally Keith E. Maskus, *Intellectual Property Rights in the Global Economy* 2–3 (2000); Meir P. Pugatch, Stockholm Network, *If It Ain't Broke, Don't Fix It: A Discussion Paper on the Benefits of the Voluntary Market-Driven Approach to Innovation* (2008) (“[I]nnovation both influences, and is influenced by, a number of exogenous or external factors—social, cultural and demographic trends, for example.”).

⁵¹ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 183, 33 I.L.M. 1197

⁵² Okediji, Ruth, L. : *Legal Innovation in International Intellectual Property Relations* Published by Penn Law: Legal Scholarship Repository, 2015 *University of Pennsylvania Journal of International Law* Vol 36,1 (2015) 1-2

⁵³ See Keith E. Maskus, *Intellectual Property Challenges for Developing Countries: An Economic Perspective*, 2001 *University of Illinois Law Review* 457, 473 (2001) (providing a table of estimated economic impact of TRIPS patent changes for selected countries).

⁵⁴ U.N. Conference on Trade and Development, Geneva, Switz., *The TRIPS Agreement and Developing Countries* 36, UNCTAD/ITE/1 (1996) (providing estimates of costs of TRIPS implementation in some developing countries); INT'L BANK FOR RECONSTR. & DEV., WORLD BANK, *Global Economic Prospects and the Developing Countries* 136 (2002), available at <http://siteresources.worldbank.org/INTGEP2002/Resources/gep2002complete.pdf> (citing J. Michael Finger & Philip Schuler, World Bank, *Implementation of Uruguay Round Commitments: The Development Challenge* (1999) (manuscript)).

⁵⁵ In South Africa the government has refused to abide by the patent laws that protected the design of the multi national pharmaceutical industry. This was necessary because the government attempted to amend its laws in 1997

The proposed uniform solution of IPs is rejected by the developing countries on the reasoning based on the theoretical and empirical evidence that indicates that the economic institutions and laws protecting knowledge in advanced economies are inadequate to govern the less prosperous economies.⁵⁶ In some developing countries the patent office is not sufficiently indigenized to support a local resource base which means that inventions will not be copyrighted because of the shortcoming in the registration of patents. The example of Kenya is indicative in a study by Isaac Rutenberg, who found that the patent office which is among the most active on the African continent has issued a total of 589 patents since the office opened in 1991. This can be compared to the 5,500 patents issued by the US patent office in a single week in July in 2017. The statistics show that there were approximately 50 patents granted in Kenya each year and between zero and five (on average) are granted to local organisations or individuals.

The realm of sport cannot be reduced to its economic dimension only and is also, or mainly some would argue, an important socially relevant activity due to the educational function it upholds, particularly for the youth. The type of sport that is more strictly linked to this social dimension (usually grass-root and/or amateur sport) is generally and largely publicly funded in Third world countries and will have to strive to meet the Sustainable Development Goals 2030 of the UN for sport. It will have to receive funds from industries based abroad as it will not have the basis of its own capacity to generate revenues. This makes it necessary to look at the labour and economic models for the development of sport, with the need to create IP rights, that can be legal protected.

The resulting picture appears contradictory, or perhaps is just complex given the complex nature of sport. On the one hand it constitutes an extremely profitable business for the private sector and thrives in the market and on the other it is sufficiently socially relevant to deserve state subsidies (from grass-root financing to tax benefits for professional teams), that should be deserving for the people will follow the sport as a national game. This is when sport's public interest dimension is so relevant that there are major events broadcast on free-to-air TV, reducing of course the potential economic value of related media rights. This complexity may cause strong tensions between the different stakeholders and the "players of the game": sport organizers, clubs, federation, players, broadcasters, the media, sponsors, and fans.⁵⁷

to avail itself of affordable generic medicines for the treatment of HIV/Aids. It led to litigation based on an amendment to the Medicines and Related Substances Act section 15(c) which have reversed the TRIPS-compliant compulsory licensing and parallel imports of medicines in South Africa. The legal action was eventually terminated but it caused delay in the implementation of the new policy and it extracted a human cost. In Brazil there has been a similar response by the government that had a policy to treat people with HIV/Aid by lowering drug prices considerably and rejecting the patent. The promulgation of laws that override patents of international companies has been found to comply with the WIPO standards. Wealth before health: Why the Intellectual Property laws are facing a counter attack, The Guardian online, James Shiltz, 18/10/17, <https://www.theguardian.com/business/2017/oct/18/intellectual-property-laws-demand-a-21st-century-solution19/10/2017>

⁵⁶ Boyle, James. 2004. A Manifesto on WIPO and the Future of Intellectual Property. Duke Law & Technology Review, vol. 9, pp. 1-12. <http://www.law.duke.edu/journals/dltr/articles/PDF/2004DLTR0009.pdf>

⁵⁷ Judgment in Case C-201/11 P, C-204/11 P and C-205/11 P UEFA and FIFA v Commission, the Court of Justice dismisses the appeal brought by FIFA and UEFA against the judgments of the General Court on television broadcasts of the World Cup and the EURO. Belgium and the United Kingdom each drew up a list of the events

There will need to be mitigation of the rights currently enjoyed by international sports federations such as FIFA, which usually require the approval of *sui generis* legislation as a condition for a country to host the finals. This often imposes rules that strengthen the proprietary element of trade marks without paying due attention to the public access aspect. It was pointed out that even groups that are generally very supportive of IP rights, such as International Association for the Protection of Intellectual Property (AIPPI), have questioned the ‘stretching’ of intellectual property to confer extended *sui generis* rights to sports organizers, as this would tarnish the nature of trade mark law. The commercial behavior of sports organizers such as FIFA have to be in accordance with the interests of developing countries if it is to stage events that will be in accordance with their aspirations and UN goals.

The justifications of IP protection in the environment of developing countries must regulate in an appropriate manner taking into consideration the lack of sport infrastructure according to the following variables:

(i) ‘The Labour theory’

Copyright justifies itself sufficiently in a moral John Lockean approach, being that those who are the authors should reap the rewards of their labour. However, in a low income country the athletes will be the local working class people who participate in sports such as soccer, boxing or track and field events. In the developed countries most of the current top football league clubs originate from industrial workingmen, Church groups and schools⁵⁸, and as the history of football clubs shows that their it was they were established by working men them for the benefit of the local community for generations to come and the descendents of the industrial workers are generally the current locals. It is therefore not appropriate under such a justification, that owners of clubs and the football authorities should be given such strong IP rights over a publicly created sport and clubs merely because they invested money in a business sense. The international investors of sport sponsorship should not be able to buy the Copyright to a community’s own historical creation and excessively charge for access to all parts of it.

Once it is established that a sport is a national game in the same manner as in the UK “*Football was the game of the common people*”⁵⁹ created by the common people situated within the public domain, then the privatisation of anything with financial worth within football cannot be justified under the labour theory especially as the prices set effectively can put a national game out of the

they regarded as being of major importance for society in their respective states. Those lists contained, inter alia, in the case of Belgium, all the matches in the final stage of the World Cup and, in the case of the United Kingdom, all the matches in the final stage of the World Cup and the EURO. Those lists were sent to the Commission, which decided that they were compatible with EU law. The ECJ noted that the designation by a Member State of certain events as being of major importance for society and the prohibition on their exclusive broadcasting constitute obstacles to the freedom to provide services, the freedom of establishment, the freedom of competition and the right to property. However, such obstacles are justified by the objective of protecting the right to information and ensuring wide public access to television coverage of those events.

⁵⁸ See James Walvin: *The People’s game: a social history of British football* (Allen Lane, 1975) p57-60 for evidence of several other clubs origins and an overview of the social reasoning behind this etc.

⁵⁹ Ibid p62

reach of the common person. If this theory is implemented then the IP rights will be strictly limited to trademarks and the logos carried by the players or athletes involved in the sport. The sports manufactures, sponsors or broadcasters would not be allowed to purchase the authorship (including moral rights) of the sports clubs for the benefit of the game thereby increasing the price for those attending or watching the broadcast.

and

(ii) The 'Law & Economics' justification

This theory is based around the concept of law providing an incentive to create by giving legal protection to authors who otherwise would not be protected from 'free riders' copying and distributing their work without having to invest any creative mental labour. This has become the focal point of IP regulation has widened the scope of protection to cover almost any material capable of making a profit. This holds some basic merit in most commercial situations such as the production of materials that are easily copied i.e. logos, trademarks, etc. As if no protection laws were in place then there would be no incentive for companies to invest in their production. This was why IP protection has been described as "*a necessary evil – a restriction on the free flow of information to the minimum extent necessary to encourage needed investment in innovation*"⁶⁰. The present circumstances show that IP rights in sport are following the general business trend of being implemented far beyond the 'minimum' extent necessary to encourage investment.

The investment in sport has several positive effects for clubs at grassroots level, however it is not necessary to privatise such vast areas of sport to receive these ends. The balanced system that would need to be implemented in a developing sports environment will still provide financial rewards to encourage business investment whilst also maintaining the public aspect of the sport. The sports associations in such an environment need not take such an approach to financially survive and pay their playing staff their lucrative salaries. The player's demands should be so high as the income of the clubs and there should be investment that leads to a law of diminishing returns.

This ownership instead of authorship reliance that has become common within Copyright law protection should be discouraged and sporting associations should offer a concept of ownership that conforms to the public domain origins of the sport. Its distinctive character and differing aims, as well as its broad social significance should be preserved. The sports activity would become self generating over time for income from subscription will increase and the regulations should be devised with that in mind rather than viewing it purely as a commercial enterprise that exists only for profit maximisation.

This theory is based around the concept of law providing an incentive to create by giving legal protection to authors of patents who otherwise would not be protected from 'free riders' copying

⁶⁰ "*Romantic Authorship and the Rhetoric of Property*" – Lemley, Mark – 75 Texas Law Review 871 (1997)

and distributing their work without having to invest any creative mental labour. This has become the focal point of IP regulation and it has widened the scope of protection to cover almost any material capable of making a profit. This holds some basic merit in most commercial situations such as the production of materials that are easily copied i.e. logos, trademarks, etc. As if no protection laws were in place then there would be no incentive for companies to invest in their production. This was why IP protection has been described as “*a necessary evil – a restriction on the free flow of information to the minimum extent necessary to encourage needed investment in innovation*”⁶¹. The present circumstances show that IP rights in sport are following the general business trend of being implemented far beyond the ‘minimum’ extent necessary to encourage investment.

The investment in sport has several positive effects at grassroots level, however, it is not necessary to privatise such vast areas of sport to achieve these ends. The balanced system that would need to be implemented in a developing sports environment will still provide financial rewards to encourage business investment whilst also maintaining the public aspect of the sport. The sports associations in such an environment need not take such an approach to financially survive and pay their playing staff their lucrative salaries. The athletes demands should not be so high as the income of the clubs and there should be remitted according to the law of diminishing returns.

This ownership instead of authorship reliance that has become regular within Copyright law protection should be discouraged and sporting associations should offer a concept of proprietorship that conforms to the public domain origins of the sport. Its distinctive character and differing aims, as well as its broad social significance should be preserved. The sports activity in developing country would become self generating over time and income from subscription will increase, and the regulations devised with in that prospect will be more beneficial rather than viewing it purely as a commercial enterprise that exists for profit maximisation.

The supply of goods and services that have to be tailored by the demand not to be high and for the growth of the market will be minimal.⁶² The environment in which sport thrives within the IP system has changed in the sponsorship sector because the industry that generates the profits and makes it an economically successful venture.⁶³

⁶¹Mark Lemley, *Romantic Authorship and the Rhetoric of Property* 75 Texas Law Review 871 (1997)

⁶²Zagnoli, P., & Radicchi, E. (2013). Major sport events on tourism attractiveness: New scenarios in the economic recession. Paper presented at the Cinquieme edition du Colloque International sur les Tendances du Tourisme, Tunis–Sidi Dhrif, October 31–November 2, 2013, IHET, 2–21.

⁶³ The EU countries have recognized that while sport is sufficiently socially relevant to deserve state subsidies, from grass-root financing to tax benefits for professional teams the public interest dimension is so relevant that there are major events broadcast on terrestrial TV, reducing the potential economic value of related media rights. The disputes have come between the different stake holders includes the sport organizers, clubs, federation, players, broadcasters, the media, sponsors, and fans. In Case C-201/11 P, C-204/11 P and C-205/11 P UEFA and FIFA v Commission, the Court of Justice dismisses the appeal brought by FIFA and UEFA against the judgments of the General Court on television broadcasts of the World Cup and the EURO Belgium and the UK each drew up a list of the events they

Radicchi argues that there has been a transformations in the economic variables because “*over the last years, sport sponsorship relations moved from the conventional logo exposure next to the name of a professional sports athlete, team, facility, or event: If the sponsorship is developed according to a strategic communication plan, both partners might reach high levels of effectiveness. On the one hand, the sponsor increases the visibility of its brand. On the other hand, the sports entity can gain economic support as well as enhance its popularity in the sponsor’s market. When the sport organization is a winner in the sport competition, the result is a virtuous circle that enhances brand value, image, and popularity of both partners, the sponsor and the sponsored entity. The final outcome may even overcome the mere monetary income when the sponsorship becomes a long-lasting relationship able to involve multiple functions (R & D, marketing, organization, etc.)*”.⁶⁴

The process of globalisation has increased the process of homogenization in the diverse markets but differences among countries might make a successful investment strategy in one country ineffective in another country. The framework of laws that protect the exclusivity needs to be ascertained before the sponsorship agreements take effect. The legal system in each country applies a different rule when it comes to IPs and sport marketing professionals when “doing business internationally it is important to be aware that each country has its own legal system and laws that affect business practices, rules, and regulations that have an impact on such critical issues on patents, trademarks, and copyright”.⁶⁵

The patents have to be devised according to the legal system that exists in the country along with the framework for a IPs system to be formulated within the local contexts.⁶⁶ However, the realm of sport cannot be reduced to its economic dimension only and is also an important socially relevant activity due to its educational function that it upholds for the youth. The type of sport that is more strictly linked to this social dimension (usually grass-root and/or amateur sport) is generally publicly funded in the countries of the Southern hemisphere. It will have to receive investment from corporations based abroad which makes it necessary to look at the labour and

regarded as being of major importance for society in their respective states. Those lists contained, inter alia, in the case of Belgium, all the matches in the final stage of the World Cup and, in the case of the UK, all the matches in the final stage of the World Cup and the EURO. Those lists were sent to the Commission, which decided that they were compatible with EU law. The ECJ noted that the designation by a Member State of certain events as being of major importance for society and the prohibition on their exclusive broadcasting constitute obstacles to the freedom to provide services, the freedom of establishment, the freedom of competition and the right to property.

⁶⁴ Radicchi, Elena, Sports Sponsorship Evolution in the Economic Recession: Analytical Evidence from Empirical Cases , Physical Culture and Sport. Studies and Research, Vol 61, Issue 1 (2014)
<https://www.degruyter.com/view/j/pcssr.2014.61.issue-1/pcssr-2014-0005/pcssr-2014-0005.xml>

⁶⁵ Gaskill, FJ, Legal issues in setting up a business abroad, Ethics and Critical Thinking Journal, (2014) (2) 32

⁶⁶ Zhang states : “The local markets have their own characteristics and because of the uncertainties integration and difference, it has been debated whether international marketing strategies should be focussed on standardisation which applies the same marketing strategy across different markets or adaptation which modifies marketing campaigns to serve regional exclusivity. It should be important to consider factors that can affect the effectiveness of international sport marketing across different marketplaces“. Contemporary Sports Marketing: Global Perspectives, editors Zhang, James, J, Pitts, Brenda, G, (2017), p 17

economic models for the development of sport, with the need to create legally protected IP rights.

Conclusion

There is a correlation between the IP and sport development as devised by WIPO that exists because of the plurality of stakeholders who can claim rights or specific interests in the various elements of the value chain constituting the organization of sporting events. This has a structure by which they implement the regulatory regime that promotes the sport, the event and the participants. It is related to industry that is composed of manufacturers in sports merchandise and those who involved in its transmission. There is a sports infrastructure that has been successfully merged with a legal regime in the industrialized countries and the question is if it can be transferred to the developing countries where the resources are not sufficient to state to develop sports and a system of copyright. It has become an imperative to transfer the legal framework in order to meet the goals of the 'inclusion, integrity, sustainability' by 2030.

The element of interdependence in the sport sector is because of the plurality of stakeholders who can claim rights or specific interests in the various elements of the value chain constituting the organization of sport events. This consists of the sports clubs, leagues, federations, TV broadcasters, sponsors, and owners of sport facilities who create a web of commercial relationships that need to be properly addressed with in an efficient framework of rights. These have to be identified in the environment where this infrastructure does not exist and where it needs to meet the local standards but also the problems that are faced in the digital age by the legal systems of advanced countries.

It is necessary that along with the ideals of the UN, mechanisms of the WIPO and the financial potential of the richer countries leads to investment in the sports infrastructure of the developing countries. This must recognise that along with incentives for young people the national game is protected. The incentives should create a reduced emphasis on profit and a willingness to assist the development in the technical areas by setting a price for the IP rights to be within the financial means of low income countries. This will lead to an equitable sporting relationship that will mean that sports will no longer has a colonial legacy but has objects that stem from an equal relationship.

