

Research on the Legal Issues on the Broadcasting of Ball Games
—Focusing on American Law

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Abstract

Along with the development of the media, sports have developed an economic symbiosis with the media. Sports leagues generate a huge amount of economic interest through the use of the media. In the meantime, certain legal disputes arise, with the main disputes focusing on the huge amounts involved in the sports broadcasting fees.

While the sports broadcasting fees have been increasing, the issue as to whether the fees should go to the team or the players then follows. In the case of the *Baltimore Orioles*, the players had claimed their entitlement to enjoy the sports broadcasting fees through litigation, but the court granted the fees to the team, which owns the copyrights to the sports broadcasting. In view of such opinions, how do we protect the players' performances in a game?

In the 1977 *Zacchini* case, the U.S. Supreme Court recognized the right to publicity for the first time, and further held that the right to publicity protected the performance values. In the 1986 *Baltimore Orioles* case, the baseball players claimed protection of the right to publicity for their performance in a game. However, the court held that such a claim conflicted with the copyrights of the sports broadcasting owned by the team, and that the right to publicity of the players should be preempted by the copyrights of the team according to the Copyrights Law. This opinion gave rise to many criticisms. The prevailing opinions have been that the copyrights of the broadcasting should not preempt the right to publicity.

Finally, based on the practices of sports broadcasting operations, most sports leagues

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enter into broadcasting contracts with television stations by means of collective selling. However, the collective selling of broadcast rights was ruled a violation of the Sherman Act by the US Department of Justice in 1961. The National Football League thereafter lobbied and successfully persuaded the Congress to pass the Sports Broadcasting Act of 1961 to exempt collective selling from the Sherman Act. However, the recent increase in the number of sports leagues and the development of broadcasting media have broadened the scope of application of the Sports Broadcasting Act. Legal theories and courts have not yet come to a final conclusion.

We may not have faced these legal issues that have arisen from sports broadcasting in our country. However, this article hopes to clarify these issues by referring to American law and can serve as reference for any problems we may face in the future.

Keywords: Ball Games Broadcasting, Right of Publicity, Collective Selling, Sports Broadcasting Act