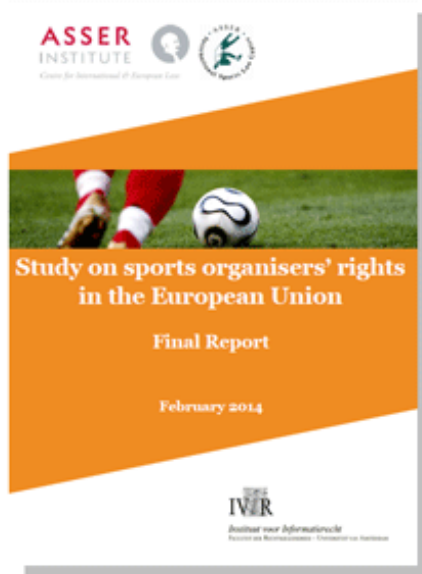


# Kluwer Copyright Blog

## Study on sports organisers' rights in the EU

Thomas Margoni (Centre for IT and IP Law (CiTiP), Faculty of Law, KU Leuven) · Wednesday, May 7th, 2014



*“The study concludes that under their domestic copyright laws none of the current EU Member States offer protection to sports events as such. A handful of countries, however, afford some special form of protection to the specific interests of sports organizers.”*

A study on sports organizers' rights was launched by the European Commission in January 2013. It was carried out by a consortium composed of [TMC Asser Institute](#) and the [Institute for information law \(IViR\)](#) Faculty of law, University of Amsterdam. The study was financed by the Preparatory Action 'European Partnership on Sports' 2012.

### Main objectives and findings

The main objectives of the study were to map the legal framework applicable to the origin and ownership of rights to sports events (sports organizers' rights) in the 28 EU Member States, to analyze the nature and scope of sports organizers' rights with regard to licensing practices in the field of the media and to examine the possibility of establishing licensing practices beyond the media field, notably in the area of gambling and betting.

Following this, the study had to formulate recommendations on the opportunity of EU action to address any problems that may be identified in the abovementioned areas of analysis.

The main findings of [the study](#) can be summarized as follows:

- 1) In the great majority of EU countries the interests of sports organizers find direct or indirect recognition in the general laws of property and contracts. The study does not point out an urgent need for a harmonizing initiative in this respect.
- 2) The laws on copyright and neighboring rights that provide legal protection of the audiovisual recordings and broadcasts of sports events are almost completely harmonized in the EU.
- 3) While the calls of sports organizations for effective enforcement remedies are comparable to those of the traditional content industries, the case for expedient remedies is arguably stronger for

sport. This is related to the highly perishable media value of many sports events, which is usually exhausted immediately with the live coverage of the event.

4) It is recommended to establish a centrally driven distribution system that allocates the revenue derived from (commercial) betting or other gambling services to sports on the basis of transparent criteria (i.e. proportions and beneficiaries prescribed by legislation).

5) A right to consent to bets could be considered as one of the available mechanisms to protect the integrity of sport from betting-related match fixing on condition that extensive and resource-intensive institutional and operational requirements necessary for its successful implementation can be satisfied. Other mechanisms may be explored by Member States to safeguard the integrity of sport competitions in relation to betting.

Points 1) and 2) should be of particular interest to the readers of this blog. The study points out that with regard to the protection of sports events by copyright law, the correct approach should distinguish between the sport event as such and other activities based on the sport event, e.g. its recording and broadcasting.

### **Sport events as such**

The sport event as such cannot be considered a copyrightable subject matter under EU law. The ECJ has clarified beyond any doubt that a sport event as such cannot be considered original in the sense of its author's own intellectual creation (see Joined Cases [C-403/08](#) and [C-429/08](#)). However, in the same decision the ECJ left a door slightly open for domestic interventions in this regard, given the special character of sports.

The study (on the basis of desk research, expert workshops, and questionnaires administered to national correspondents in the 28 EU countries) concludes that under their domestic copyright laws none of the current EU Member States offer protection to sports events as such. A handful of countries, however, afford some special form of protection to the specific interests of sports organizers.

### **Special forms of protection**

The main example is certainly the French system, which grants sports organizers a general right of commercial exploitation of sporting events, which over time has developed to also include – first jurisprudentially and more recently statutorily – a right to consent to bet. Other examples of special forms of protection (although not including a right to consent to bet) can be seen in countries, such as Italy or Portugal.

### **‘House right’**

It emerged quite clearly, however, that in all countries, including those not featuring special forms of protection, the interests of sports organizers are recognized in the general laws of property and contracts. The recognition is many times only indirect, but some other times explicit and takes the name of “house right”. This concept is employed by some authors and some Courts (including the Supreme Courts of the Netherlands, Germany and Austria) to refer to the combined use of the right of property (or right of exclusive use) of the stadium or other venue where the sport event takes place and the contractual instruments utilized to regulate admittance.

Thanks to this mix, sports organizers are able to create the exclusivity they need in order to extract the increasingly growing added value of sport media rights. The exclusivity obtained by these methods can adequately satisfy most of the claims for more, or special forms of, protection on the organization of sporting events.

### **Protection of related activities**

The second element to consider relates not to the sport event as such, but to another class of activities *based* on the sport event. This different class of activities are mainly constituted by the recording of the sport event in a variety of media formats, and by the live or time-shifted broadcast thereof. Both activities, in fact, can very easily – under the proper conditions – represent the subject matter for copyright and/or related rights.

The study demonstrated that the audiovisual production of a major sporting event nowadays constitutes an extremely sophisticated and elaborate effort, which in many cases expresses a sufficient level of originality for copyright law purposes. A televised football match, as much as a F1 race, usually represents the original work of one or more directors who choose which streams of images to televise from a selection usually fed by dozens of cameras placed in a number of different locations. Recording equipment is found in almost every possible spot, including elevated towers, flying helicopters and drones, or even in the racing cars, in an attempt to capture every possible detail and perspective of the event. All these images are combined in a final product that also features replays, slow motion, 3D animations, commentaries, and interviews, in a way that can easily meet the requirements of a work of authorship.

Nevertheless, also in cases where the audiovisual product is too modest and the level of originality too low to meet the threshold of the author's own intellectual creation, EU copyright law offers solutions. These are found in the heterogeneous category of rights related to copyright, or neighboring rights. The right of the producer of the first fixation of a film, which operates independently of any originality in the fixed film, has been precisely devised as a form of reward to the producer for his financial investments and risk-taking. Similarly, the protection afforded to broadcasting organizations for their broadcasts represents a powerful instrument to protect sports organizers' interests in all those cases where the event is broadcasted live or time-shifted – and again the right operates in absence of any work or other protected subject matter eventually contained in the broadcasted signal.

It goes without saying that all these activities that are connected with the recording and broadcasting of the event need to be authorized by the sport organizer, who is the person or entity that has the exclusive right to control and regulate access to the venue.

### **Other rights**

The study also analyzed a number of other rights that relate to the organization of sports events, from athletes image and personality rights to misappropriation doctrines. Further, as mentioned, the study considers media law aspects, such as short news reporting regulations, competition law issues, sponsoring and betting regulations, and offers an in-depth analysis of the issue of whether and how a right to consent to bet can be introduced by Member States in compliance with EU law.

### **Public debate on 14 May 2014**

In order to discuss some of the many interesting aspects that the study has identified, TMC Asser Instituut and IViR will organize a public debate on wednesday 14 May 2014 at the TMC Asser Institute in The Hague at 2pm. During the 3 hour debate the authors will briefly present the study and discuss it with the public and the representatives of sports organizers' rights and betting companies. Attendance is free but subject to prior registration. Please follow [this link](#) for more information.

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The full study and the executive summary are available [here](#).

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## Kluwer IP Law

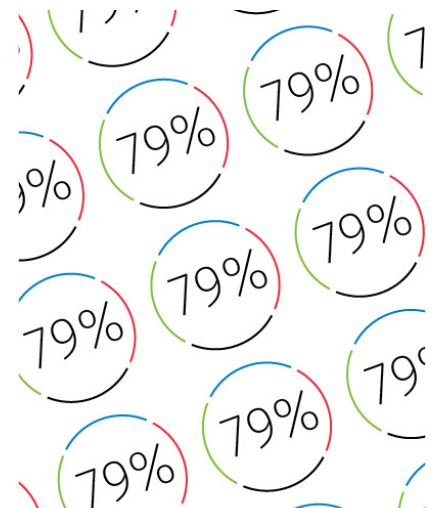
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### Jurisdiction, Legislative process

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