

Kluwer Copyright Blog

Copyright law and football matches: impossible to match? (Part II)

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This post is based on the chapter “Audiovisual Coverage of Sports Events and Copyright Law: Originality in the Details?” in Natalie Helberger, Joost Poort, Martin Senftleben, Mireille van Eechoud, Stef van Gompel (eds.). Intellectual Property and Sports: Essays in Honour of P. Bernt Hugenholtz, Kluwer Law International, 2021.



The principle of non-protection of football matches as such by copyright law (see [Part I of this blogpost](#)) does not preclude the possibility of protection for the filming and broadcasting of the event, provided that the latter entail free and creative choices of the director.

These choices, which may distinguish the broadcasting and filming from the underlying unprocessed facts of the game, can be expressed in various creative stages, as noted in the CJEU’s Painer decision (C-145/10, par. 89): in the preparation phase, when filming the event and by making editorial choices after the filming phase.

Choices and constraints: is originality hidden in the details?

Both the filming and the broadcasting of the match consist of a complex combination of choices and decisions made at various levels, often in collaboration between several contributors.

The sports director decides on the camera position and the coverage plan for each camera, the visual logic to be followed, what kinds of shots and camera movements to use during the production, and the development of animated wipes used for replays and transitions. They also instruct the technical director how to select the images coming from multiple cameras according to the “storytelling” opted for. Multiple camera operators “propose” shots for selection to the control room. The sports director or the technical director acting on the instructions of the sports director (and possibly in creative collaboration with them) will continuously select the images that will be broadcast live from the “gallery” of video monitors displaying all camera sources.

Even though constraints regarding shot selection are imposed by the rules and the purpose of the game itself, the director's choices create a specific viewer experience which has been designed by the director. For instance, the audiovisual representation of the game may be characterised by wide and barely interrupted filming, placing the emphasis on the fluidity of the game, the visibility of tactics, the animation of the system and collective movement without the ball; or the focus could, more individualistically, be on the player who carries the ball, where shots are multiplied so the fluidity of the game is more often interrupted, while the techniques and skills of the individual players are emphasised.

In Europe, the question of whether the filming of live sporting events could be protected as an original work was one of the main issues raised before the Swedish courts in the *C More Entertainment* case (C-279/13). In the litigation before the national courts, the Court of Appeal concluded that the live broadcast of matches could not enjoy copyright protection because neither the commentators' nor the camera crew's or the producers' contributions were original. Having excluded copyright protection, the only question which remained was to establish whether the broadcasts could be protected by related rights of the broadcasters. Copyright protection for the filming of live matches was also subsequently denied by the Swedish Supreme Court, which ruled on the case after the CJEU's judgment regarding the scope of protection of the broadcasters' related right. In a divided judgment (three to two), the [Supreme Court ruled](#) that live broadcasts of the games were not original because the work of the commentators, cameramen and picture producers was mainly driven by the events in the game.

Based on the above, the originality of the filming of sporting events could be found mainly in the details. The inherently limited scope for personal choices switches the emphasis to a more comprehensive search for originality, since often only details can reveal a personal stance. In this sense, the more the filming depends on technical and functional elements, the more creative contributions focusing on details would be required to grant copyright protection to the film coverage of sporting events.

The role of special effects and commentaries

The creative input which will trigger originality might also consist of various special effects, such as the use of instant replays, slow motion and split screens, the integration of music compositions and jingles, the use of graphic designs, subtitles, 3D animations and other special effects. In virtual reality broadcasting, additional means can be used to enhance the social interaction between viewers, such as chat interfaces and the representation of users via avatars.

These additional creative elements can be protected by copyright law, provided they meet the EU originality standard. In this context, graphic user interfaces integrated into the broadcasting of a football match (e.g. icons, frames, animations, graphic charts) could be protected as works if they are the author's own intellectual creation on the grounds of the CJEU's judgment in the BSA case (C-393/09).

The protection of special effects by copyright law was examined in the Football Association Premier League case (par. 149), where the CJEU recognised the possibility of copyright protection of additional constituent elements of the filming, such as graphics and anthems displayed during broadcasting. Independently of any special effects and additional creative contributions during the event, contributions made before the start, during the half-time intervals and after the event may also be protected by copyright law, such as the opening video sequence, interviews and pre-

recorded films showing highlights of recent sports events.

In addition to images, the commentaries of sports journalists are supplementary elements which, like the dialogue of a film, could be protected either as constituent elements of the audiovisual work as a whole, or as separate oral literary works.

In conclusion, by exploring the possibilities of original additions, either in the filming process or in the production process (special effects, commentaries), it would be possible to apply the protection of copyright law to the coverage of football matches without sacrificing the core principles of copyright law. The robust arsenal of copyright law is already available for creative broadcasters who may invoke copyright protection for the coverage of sport events as audiovisual works.

At the same time, since creativity will be mostly hidden in the details, necessary clarifications of the application of the EU originality standard to the broadcasting of sports events could emerge through litigation, if the CJEU is given the opportunity to take a position on this point. Moreover, digital technologies and artificial intelligence may dramatically transform how the concept of creative choice will be assessed. In esports, such as FIFA videogame broadcasting, the choices regarding the angle of view of the game are made by software. Virtual reality (VR) broadcasting also brings challenges on how creativity is analysed. The broadcaster's own expression becomes limited or non-existent when VR allows the match to be shown from all angles, such as through 3D video capturing or image-based 3D reconstruction technologies. So, more evolutions are expected, since digital revolutions will continue to shake the world of copyright law.

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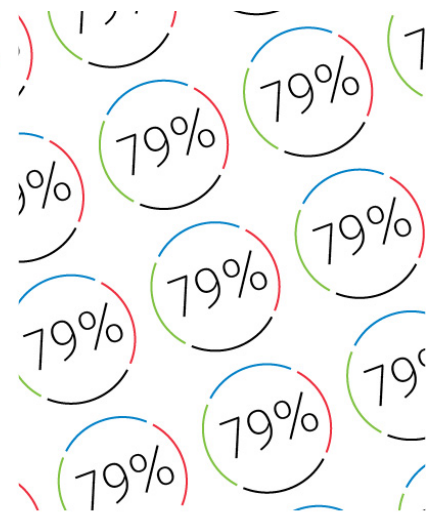
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