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Copyrightability of Sports On-Field Celebration Moves

LAXMI¹

ABSTRACT

Messis' celebration by Pointing of finger on each hand towards the sky, the 'siiiii' celebration of Ronaldo where he jumps, turns while being mid-air and lands in a wide-legged power stance, Nehra's Airplane celebration, David warner's signature leap, jumping ecstatically, Ravindra Jadeja's celebration of swinging his bat like a sword are all an excellent example of steps for which the players are known and loved for. The ability to promote their personalities and enthral audiences both on and off the field by engaging in choreographed dances or celebration movements has increased these players' appeal and paved the road for them to do so. The problem arises, though, when third parties take advantage of their renown by adding pictures or sketches of such occasions to items like water bottles or t-shirts, unfairly abusing the athletes' grit and determination. While preserving the celebration's originality, allowing athletes to commercially exploit their own ideas gives them the opportunity to make money, which is particularly essential considering that the majority of athletes have short-lived careers. This article examines the scope of the copyright law of various jurisdictions to provide protection to sporting and on-field celebration moves, as well as the impact of providing protection in an area that was previously a field for fun and frolic, and transforming it into an individual's commercial venture.

Keywords: *On-field celebration, moves, copyrightability*

I. INTRODUCTION

The sports industry is flourishing all around the world. Sponsors, league owners, regulatory authorities, and athletes are all stakeholders, and it is in their best interests for sports to remain lucrative. Intellectual property is one of the methods employed by the sports industry to ensure that sports are profitable. For example, trademarks have long been used as a strategic weapon in sports sponsorships, advertising, and marketing. In the context of sports broadcasting, the usage of copyrights leads to multi-million dollar deals.² The limits of intellectual property law's

¹ Author is an Advocate at Bar Council of Pubjab and Haryana, India.

² Jirí Janák, *Can athletes claim copyright in their sporting performances?* - *LawInSport*, <https://www.lawinsport.com/blogs/jiri-janek1/item/can-athletes-claim-copyright-in-their-sporting-performances> (last visited Mar 5, 2023).

application are still being tested in many areas, and given its worldwide appeal, it's not unexpected that the application of intellectual property law to sports sparks debate and disagreement.

In the industry, Messis' celebration by Pointing of finger on each hand towards the sky,³ the 'siiiiiiii' celebration of Ronaldo⁴ where he jumps, turns while being mid-air and lands in a wide-legged power stance, Nehra's Airplane celebration, David Warner's signature leap, jumping ecstatically, Ravindra Jadeja's celebration of swinging his bat like a sword are all an excellent example of steps for which the players are known and loved for. These steps are unique and reflect the creative expressions of these players, which then attract a lot of attention and love for them and therefore they are one of the major stakeholders of the industry with a short-lived career.⁵

Fans are willing to spend large sums of money on products associated with their favourite teams and athletes, which has resulted in a once-in-a-lifetime opportunity for athletes to achieve both fame and financial security during their generally short-lived playing careers. Many factors, such as the rapid expansion of media coverage of sporting events, the growing focus by fans and the media on a "individual athlete's" on-field success and charisma, and fans' willingness to spend large sums of money on products associated with their favourite teams. Athletes can take advantage of this tendency by attracting media and audience attention to themselves by doing athletic celebration moves following a successful play. Athletes may promote themselves and build their brands on the field while performing these manoeuvres.

The issue comes, however, when third parties profit from their fame by putting photographs or sketches of these moves on tangible products like bottles and merchandise and exploiting the hard-earned respect and following of these athletes⁶. If the Copyright Law include these unique sports celebration moves for protection, this will the athletes to protect their expression and

³ Jon Livesey, *Lionel Messi celebration explained: Touching reason behind superstar's trademark "pointing to the sky" revealed* - Mirror Online, MIRROR ONLINE, <https://www.mirror.co.uk/sport/football/news/lionel-messi-goal-celebration-explained-13260581> (last visited Mar 5, 2023).

⁴ What does Cristiano Ronaldo's "siiuuu" celebration mean? | Goal.com, GOAL (2023), <https://www.goal.com/en/news/what-does-cristiano-ronaldos-siiiiii-celebration-mean/1sdbp1s7pf35zpc5yej22go> (last visited Mar 5, 2023).

⁵ Lines, Gill. (2007). The impact of media sport events on the active participation of young people and some implications for PE pedagogy. Sport Education and Society - SPORT EDUC SOC. 12. 349-366. 10.1080/13573320701464234.

⁶ Privacy, Publicity and Copyright: The Risks of Using Candid Photography in Your Business | Pillsbury - Internet & Social Media Law Blog - JDSupra, <https://www.jdsupra.com/legalnews/privacy-publicity-and-copyright-the-8021598/> (last visited Feb 18, 2022).

further use them for their profits financially once they are retired. It will provide financial stability to these athletes who cannot play professionally after a certain age.⁷

Copyright is a legal concept that prevents one's work, labour, talent, or test from being appropriated by another party. Copyright protects against theft. The primary objective of the copyright law is to incentivize creators to share their works with the general public and ensure that others are able to benefit from them. This will be possible only once the law recognises the author's claim to ownership of the works produced by the author. This is a path that has the potential to transform the lives of athletes who have put in a lot of hard work over the course of many years to reach the point where they can entertain audiences with their one-of-a-kind celebration movements while also building a brand for themselves in the industry. It is long past the time for India to study a new field of intellectual property law and sports, as well as the possibility of incorporating hallmark celebratory gestures into existing copyright legislation.

In this study, we will analyse the necessity of providing copyright protection to the distinctive celebration motions utilised by athletes, and we will also investigate the feasibility of including sports celebration moves within the scope of the subject matter of dramatic works.

II. TRENDS OF PLAYER-ORIENTED FAN FOLLOWING

Sports events have been highly commercialised in the last couple of decades, which led to the overall development and promotion of the sport. Cricket reaches every nook and corner of India⁸ and is considered an emotion. Roads were filled with people when India won the World Cup, which shows how much this sport is watched and loved. However, the sports clubs and countries used to be the centre of attraction, it has been shifted to individual players in last decade.⁹ The retirement of Sachin Tendulkar filled the country with emotions where every news outlet dedicated its front page to his stats. If we talk about calmness, we never forget to mention the calmness Dhoni showed in his career.

This change is not just because of the level of media coverage or marketing the sports has been subjected to, but also due to the acts and personalities of the players. The on-field celebration

⁷ Henry M. Abromson, *The Copyrightability of Sports Celebration Moves: Dance Fever or just Plain Sick?*, 14 Marq. Sports L. Rev. 571, 601 (2004).

⁸ Cricket at every nook and corner, HINDUSTAN TIMES (2011), <https://www.hindustantimes.com/mumbai/cricket-at-every-nook-and-corner/story-WidKPLMkpL96l2R5cJVfL.html> (last visited Feb 18, 2022).

⁹ The Problem with Rewarding Individual Performers, <https://hbr.org/2016/12/the-problem-with-rewarding-individual-performers> (last visited Feb 18, 2022).

moves of Ronaldo¹⁰, Messi¹¹, Jadeja¹², and other such are famous to a different level, and their stats and performance mixed with such witty moves and celebration has been a huge reason for this change.

As a result of this modification, the players have increased their fan following and have been given a face value for their contributions. Their supporters continue to show an incredible amount of enthusiasm when it comes to purchasing any item or service that is promoted by these players or their team. These fan bases contribute to the athletes' marketability.

These players' on-field celebrations are characterised by a high level of passion and individuality, which serves as an indicator of their charm. These actions thrust individuals into the public eye, which ultimately leads to their own recognition and notoriety. Ravindra Jadeja is well known for his celebration that resembles a sword, and many have begun to develop a crush on his demeanour. People have begun to refer to Shikhar Dhawan by the nickname Gabbar because of the celebratory dance he frequently uses. Ronaldo's "siiiii" celebration¹³ has its own kind of following and the love he has received from people is proof of that.

Thus, these actions, act as a medium for the player to channelise their personality through on-field celebrations and capitalise it.

III. NEED OF COPYRIGHTABILITY

In comparison to other possible lines of work, a career in athletics is still relatively uncommon. They will have the opportunity to convert this goodwill into merchandisable popularity, which will further provide them with an option for permanent financial stability once their sports career has come to an end. This opportunity is provided to them as a result of the personality and charisma they create through on-field celebration and success. Plain clothes might be transformed into a branded sports item by adding even a basic etching or outline of these moves in monochromatic form and placing it on the garment. As was said before, the increased fan

¹⁰ What does Cristiano Ronaldo's "siiiii" celebration mean? | Goal.com, <https://www.goal.com/en/news/what-does-cristiano-ronaldos-siiii-celebration-mean/1sdbp1s7pf35zpc5yej22go> (last visited Feb 18, 2022).

¹¹ Lionel Messi celebration explained: Touching reason behind superstar's trademark "pointing to the sky" revealed -Mirror Online, <https://www.mirror.co.uk/sport/football/news/lionel-messi-goal-celebration-explained-13260581> (last visited Feb 18, 2022).

¹² WATCH: "Rajput boy" Jadeja impresses fans with his sword swinging skills | Off the field News - Times of India, <https://timesofindia.indiatimes.com/sports/off-the-field/rajput-boy-jadeja-impresses-fans-with-his-sword-swinging-skills/articleshow/75111110.cms> (last visited Feb 18, 2022).

¹³ What does Cristiano Ronaldo's "siiiii" celebration mean? | Goal.com, <https://www.goal.com/en/news/what-does-cristiano-ronaldos-siiii-celebration-mean/1sdbp1s7pf35zpc5yej22go> (last visited Feb 18, 2022).

following that they gain as a direct result of these initiatives converts their admirers into dedicated customers.

In light of these considerations, it is very necessary for every athlete to have a legal or compensating copyright protection solution in place. This will prevent other competitors from utilising or claiming rights to, or watering down the uniqueness of their celebration action in any way.

Copyright safeguards encourage top-flight playmakers or shot-stoppers to inject innovative originality into their victory dances, thereby increasing the thrill of the sport and advancing the enthusiastic involvement of spectators. All of these factors contribute to the broader vision of the copyright law, which is the promotion of public welfare.

The necessity for copyrightability is illustrated not only in football, but also in Tiger Woods' winning golf moments, Rafael Nadal's tennis wins, and LeBron James' well-known 'silencer' celebration after scoring a basket. Even gold medalist Chinese Olympic divers bend down to the judges and the crowd when they celebrate. The extensive use of one-of-a-kind celebrations across a wide range of sports necessitates an immediate requirement to interpretively recognise their copyrightability.

IV. JURISPRUDENTIAL ASPECT

Given the impact of such celebrations on their marketability, even Indian Olympians can extend the use of such celebrations in their particular sports, as previously said. So, within the statutory framework of India's Copyright Act, 1957, can a supposed celebration of a cricketing prodigy be granted copyright protection? Can the adjudication's dynamic and transformational character encompass this new artistic expression, or should its comprehensiveness remain static, excluding such "creatively-presented" manifestations of a player's triumphant mood?

Since such celebration moves are fundamentally self-expression of the player, selected by his own decision, the requisite element of originality is inherently contained in them. As a result, this freely chosen display of unbalanced emotions is intrinsically a one-of-a-kind performance, created by the players for themselves, and hence copyrightable.

It's also worth noting that these celebration moves aren't the same as ordinary sports moves like Woods swinging his putter, Jordan leaping towards a basket, or Neymar curling a freekick. This distinction has a 'two-fold' significance.

To begin, athletic manoeuvres like this are very important to the game and may be thought of as an integral or entrenched part of the sport. Because of this, a single player cannot hoard such actions for his own personal usage, and in contrast to these manoeuvres, a celebration is tailored to the player's personality rather than being just a slight alteration on an action that is embedded in and essential to the execution of the sport.

Second, even though these passes, putts, shots, or bowling motions can be generic, the celebration moves that are in question are typically custom-made by the players. This gives the players an element of creativity that qualifies them for copyright protection over personally constructed 'complex-choreographies,' which are considered to be more complex.

V. POSSIBILITY OF INCLUSION IN DRAMATIC WORKS

The fundamental aim of the Copyright law is to provide encouragement for the creators to make their work public and let people enjoy the same, which can only be done once the law recognises ownership of the creator in the works. The Copyright Act, 1957, includes the dramatic work that further incorporates choreographic motions that are "fixed in writing or otherwise".¹⁴ Therefore, choreography is provided protection under Copyright Act. However, the fixation of work in tangible form is a necessary prerequisite for the dramatic work to be protected under the Copyright Act in India. The condition is not as restrictive in western countries¹⁵, however, the Indian pre-requisite is a strict one.

The copyright law protects dramatic works which are fixed in writing or concretized in a literary manner¹⁶, according to the Indian judiciary. In *Academy of General Education, Manipal and Ors. v. B. Malini Mallya*, the Supreme Court said unequivocally that "*a unique form of dance could only be copyrighted as a dramatic work if it was replicated in a literary format.*"¹⁷

The lack of a video clip fixation greatly limits the rights of choreographers and performers who operate in a technologically savvy environment but can only claim copyright protection for their dance if it is written down.¹⁸ The Act, on the other hand, clarifies performer rights, prohibiting the public reproduction, transmission, or distribution of original creations without the creator's

¹⁴ The Indian Copyright Act, 1957, §2(h), No. 14, Acts of Parliament, 1957 (India).

¹⁵ David Vaver & Pierre Sirinelli, *Principles of Copyright Law*, WIPO, (Jul. 2002), https://www.wipo.int/edocs/pubdocs/en/copyright/844/wipo_pub_844.pdf.

¹⁶ Anupama Mohan v. State of Kerala, WP (C) No. 22790 of 2015.

¹⁷ *Academy of General Education, Manipal and Ors. v. B. Malini Mallya*, MANU/SC/0146/2009.

¹⁸ The Indian Copyright Act, 1957, §2(f), No. 14, Acts of Parliament, 1957 (India).

authorization¹⁹, and provided exclusive rights for "every individual who makes a performance" over their creative expression.²⁰

It is well-established in copyright doctrine that choreographic works are afforded legal protection. The provision encapsulated under section 2(h) of the Copyright Act, which provides a definition for dramatic works protected by copyrights and which exclusively includes into its wide compass only those choreographic tasks that are not a part of 'cinematographic films,' enshrined this principle statutorily. It may be argued that if the celebration is choreographed with just a single step, it is too minor to be copyrighted, but if it is a series of steps, such an interconnected system of actions, in the author's opinion, is likely to be copyrighted.

In order to be eligible for registration as a dramatic performance, the celebratory act must also be written down in a literary manner. The Supreme Court stated in *Academy of General Edu., Manipal and Ors. v. B. Malini Mallya*²¹ that a novel and unique form of a ballet dance that is recreated in a literary format can be called a 'dramatic work.'

Taking note of certain recent US Supreme Court rulings can help to strengthen the case for this concept. It was argued in *Baltimore Orioles Inc. v. Major League Baseball Players Association*²² that player performances lacked artistic merit, but the Court disagreed, citing its decision in *Gilles-Widmer Co. v. Milton Bradley Co.*²³ and stating, "Only a modicum of creativity is required for a work to be copyrightable." The choreographic representation of sports celebrations has firmly established this 'modicum of creation,' and so they can be classified as dramatic endeavours under the Copyrights Code.

Furthermore, some choreographed performances may capture the general public's curiosity and have significant commercial worth, but it may be difficult to assess their educationally aesthetic or general academic value. As a result, it could be argued that the fans, rather than the courts, should be the deciding factor in determining the fate of such theatrical productions with broad public appeal.

¹⁹ The Indian Copyright Act, 1957, §38), No. 14, Acts of Parliament, 1957 (India).

²⁰ The Indian Copyright Act, 1957, §2(qq), No. 14, Acts of Parliament, 1957 (India).

²¹ *Academy of General Education, Manipal and Ors. v. B. Malini Mallya*, MANU/SC/0146/2009.

²² *Baltimore Orioles, Inc., et al., Plaintiffs-appellees, v. Major League Baseball Players Association, a Labor organization and an Unincorporated Association consisting of the Major League Baseball players, Defendant-appellant*, 805 F.2d 663 (7th Cir. 1986)

²³ *GELLES-WIDMER COMPANY v. MILTON BRADLEY CO*, 313 F.2d 143 | 7th Cir., Judgment, Law, casemine.com, <https://www.casemine.com/judgement/us/59149bd6add7b0493463b736> (last visited Feb 18, 2022).

“It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits.” wrote Justice Holmes in *Bleistein v. Donaldson Lithographing Co.*²⁴ As a result, the worth of such joyful statements may not be readily evident to a lawyer, and an amicus curiae with knowledge in the field may be accountable for a recommendation in the adjudication of copyrightability of such celebrations.

VI. CONCLUSION

Because a sports player's celebratory actions are essentially a dance sequence, they are likely to be granted copyright protection because they are intrinsically original and effectively demonstrate their ownership. The reasons for granting such insurance are explained at the start of this article by emphasising that big-name athletes can be exploited by newcomers if their unique celebrations are not copyrighted.

It can also be argued that once enshrined in IP legislation for their distinctiveness, these celebrations should be regarded as a profit-making feature that is unmistakably attributable to specific players. When a win celebration becomes so well-known that it may be regarded as a recognisable trait of the athlete, a case can be made for trademarking the well-known victory celebrations. To recapitulate, in modern copyright jurisprudence, original and monetizable assets such as sporting events are subject to statutory protection under Indian IP regulations, particularly the Copyright Act.

²⁴ *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903)