

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 1

2025

© 2025 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Role of Intellectual Property Rights to Sports Industry

HARITHA D.¹

ABSTRACT

In this research paper, the author has attempted to explain the connection between intellectual property and sports by outlining some of the key features of IP rights that are applicable to today's commercialized sports industry. This paper is intended to give the reader with a general overview of intellectual property rights and their commercial application in sports. The evolution of various types of intellectual property, such as copyrights, trademarks, and patents, has been discussed along with how they relate to the sports sector. To a very large extent, Intellectual property rights have provided the right incentives to continuously inspire advancement in sports. Different kinds Intellectual property rights stimulate the growth of the sports industry in different ways. This paper examines how intellectual property rights are used in the sports sector to protect assets, generate value, and stimulate growth. The paper also provides an in-depth examination into the role of IP rights in the world of sports. Since intellectual property is a major component of the law and the sports sector, it must be protected in order to prevent issues and legal disputes. Additional elements like media broadcasting, eSports, and ambush marketing have been explained in detail. Examples of various sports entities and sports persons have been provided for a better understanding.

Keywords: Sports Industry, Copyrights, Patents, Secure Resources, Intellectual Property Rights.

I. INTRODUCTION

Sports were always thought of as a leisure pastime, but in the modern world, they have evolved into a lucrative industry with enormous revenues. The sports club's numerous intellectual property rights are exploited in the branding, marketing, and licensing processes, which account for a significant amount of money. A sports club's formation results in the creation of massive intellectual property, which connects it to the sports industry. People are increasingly registering their own intellectual properties in order to prevent ownership conflicts because there are disagreements about who owns certain intellectual property. This brief essay discusses the several kinds of intellectual property rights related to the sports industry and different methods

¹ Author is a Research Scholar at School of Excellence in Law, Tamil Nadu Dr. Ambedkar Law University, India.

of protection through the use of intellectual property tools including patents, trade secrets, trademarks, and copyright.

There are a number of case laws pertaining to disagreements over intellectual property in sports law. This research discusses various forms of intellectual property protection that have emerged recently, in addition to the more established ones like copyright, trademarks, and trade secrets. These include personality rights, performer's rights, broadcasting rights, domain name protection, and many more. This research also discusses the competitiveness that results from the sports industry's commercialization as well as the several intellectual property conflicts that may emerge from it. The financial penalty amount has changed recently as a result of several adjustments to make the regulations stricter. The goal of this action has been to reduce the likelihood of someone's genuine intellectual property rights being violated. For people whose intellectual property has been violated and they are in distress, India offers both civil and criminal remedies. It also discusses a number of unanticipated legal issues pertaining to intellectual property and sports.

World Intellectual Property Organization (WIPO), a Geneva based specialized agency of the United Nations promotes innovation and creativity for the economic, social and cultural development of all countries through a balanced and effective Intellectual Property system. Intellectual property carries commercial value for sporting clubs and organizations and covers the range of intangible assets covered by copyright, trademarks, designs . Intellectual Property Rights such as copyrights, trademarks, and designs became a source of significant value to the sporting arena. Apart from easing the way for protection of Intellectual property around the world, WIPO works to ensure that the benefits of the sports industry are spread wide and deep. Intellectual property carries commercial value for sporting clubs and organizations and covers the range of intangible assets covered by copyright, trademarks, designs. Sporting gears, may be the subject of patent, design, copyright and trade mark rights. The technology used in a swim wear is inventive in nature and therefore can be registered as a patent, the logo printed on the swim wear can be a registered trade mark, the designer can get copyright and the physical design can be registered as an industrial design. These registrations help to protect the value of the unique design and marketing capabilities associated with the sporting gear. Another example is a simple sports shoe which could be protected by several IP rights: patents protect the technology used to develop the shoe and designs protect the look of the shoe and trademarks distinguish the shoe from similar products and protect the reputation of the shoe and the copyright protects any artwork and audio visual creations used to publicize the shoe. Also Intellectual Property Rights are associated with many other facets of sporting business, such as

sponsorship deals, event promotions, athletes, and merchandising. Intellectual Property Rights are used as marketing tools towards the branding of sponsorship sporting, games, teams, broadcasting and media deals, celebrity status, etc. Various football clubs around the world such as Barcelona, Real Madrid, Manchester United, and Liverpool are a perfect example of intellectual property brand capitalization. Intellectual Property encourages the growth of the sports industry and enables sporting organizations to finance sporting events and assists in the development of the sports.

(A) Significance of the study

The study of intellectual property (IP) in sports is crucial due to its significant impact on various aspects of the sports industry. Here are some key reasons highlighting the importance of IP in sports:

- **Brand Protection:** IP rights, such as trademarks and copyrights, enable sports teams, leagues, and organizations to safeguard their brands, logos, and distinctive signs.
- **Revenue Generation:** IP rights facilitate revenue streams through merchandising, licensing agreements, and broadcasting rights.
- **Innovation:** IP encourages innovation in sports equipment design, technology, and software development.
- **Player Rights:** IP protects athletes' rights, including their name, likeness, and image.
- **Competition Regulation:** IP helps regulate competition, preventing unauthorized use of proprietary information.

Exploring the role of IP in sports offers valuable insights into:

Legal frameworks governing IP in sports, Strategies for IP management and protection and Emerging issues, such as ambush marketing and digital piracy

By examining IP in sports, researchers, practitioners, and policymakers can better understand how to balance competing interests, foster creativity, and promote fair competition.

(B) Review of literature

“Sports Branding: From Davy Crockett to Nike” by Robert J. Toporek (2015, 1st ed.) Historical perspective on sports branding and Examines successful branding strategies.

“Branding the Nation: The Global Business of Sports Marketing” by Richard C. Crepeau (2014, 3rd ed.) Global perspective on sports marketing and branding and covers sponsorship, licensing, and merchandising.

“Copyright Law and the Sports Industry” by Daniel M. Dougherty (2020, 1st ed.) Clear explanation of copyright law in sports and covers broadcasting, streaming, and digital media.

“Patent Law and the Sports Industry” by Peter S. Menell (2016, 1st ed.) Expert analysis of patent law in sports and covers innovative technologies and equipment.

“Innovations in Sports Equipment” by Steven M. Green (2018, 1st ed.) Examination of innovative sports equipment designs and covers patent law and intellectual property protection.

(C) Research Gap

Identifying research gaps in the field of intellectual property (IP) in sports reveals several areas needing further exploration:

1. Impact of Emerging Technologies: The integration of technologies like virtual reality, augmented reality, and blockchain in sports raises questions about how existing IP frameworks accommodate these innovations. Investigating how IP can protect new forms of engagement and commerce in sports is crucial.

2. International Comparisons: Many studies focus on IP within specific jurisdictions, often overlooking comparative analyses. Research could examine how different countries manage IP in sports and the impact of international treaties on local practices.

3. Economic Impact of IP in Sports: While there are insights into the commercial value of IP in sports, more empirical research is needed to quantify its economic impact, particularly in emerging markets.

Addressing these gaps could enhance our understanding of the dynamic relationship between IP and the sports industry, guiding policy and strategic decisions in this evolving field.

(D) Objectives of the study

The objectives of studying intellectual property (IP) in the sports industry can be framed as follows:

- 1. Understanding IP Frameworks:** To analyze the existing IP laws and regulations that govern the sports industry, including trademarks, copyrights, and patents, and their effectiveness in protecting the interests of stakeholders.
- 2. Evaluating Economic Impact:** To assess the economic significance of IP rights in sports, focusing on how effective IP protection contributes to revenue generation, brand value, and overall market growth within the industry.

3. **Identifying Challenges and Opportunities:** To explore the challenges faced by sports organizations in managing and enforcing IP rights, as well as identifying opportunities for leveraging IP to enhance competitive advantage.
4. **Examining Digital Transformation:** To investigate the implications of digital media and technology on IP rights in sports, including how streaming, social media, and emerging technologies affect the protection and commercialization of IP.
5. **Exploring Global Perspectives:** To conduct comparative analyses of IP practices across different jurisdictions, highlighting how cultural, economic, and legal differences impact the management of IP in sports worldwide.
6. **Assessing Player Rights and Brand Management:** To evaluate how IP laws affect athletes' personal brands and endorsement opportunities, aiming to balance the interests of teams and individual players.
7. **Investigating Sustainability Practices:** To examine the relationship between IP rights and sustainability initiatives within the sports industry, focusing on how IP can promote eco-friendly practices and products.

These objectives collectively aim to deepen the understanding of how IP influences the sports industry and guide future research, policy, and practice.

(E) Research Methodology

This study is based on Doctrinal method. The work is relied upon the primary and secondary sources which includes various research articles, journals, books and newspaper.

(F) Hypothesis

This study hypothesizes that intellectual property rights (IPR) play an important role in shaping sports technologies. Specifically, it is argued that stronger IPR protection will have a positive impact on sports industry innovation, facilitating increased investment in research and development and ultimately leading to increased adoption and diffusion of the sports technologies. Furthermore, the study hypothesizes that IPRs moderate the relationship between sports industry development and other IP related technological mechanism. Furthermore, the study assumes that the optimal level of IPR protection varies across sectors and and sport field, which in turn affects the effectiveness of IPRs in promoting the technology. These assumptions determine the role of intellectual property rights in the creation of sport industry.

(G) Research Questions

1. Can sports teams restrict the use of their logos and branding on social media and how they

protect their brand identities through trademark?

2. How copyright law protect sports broadcasting rights?
3. What role do patents play in driving innovation in sports technology?
4. Can video game developers restrict the use of their games for esports purposes?

(H)Scope and limitations

The role of intellectual property (IP) in the sports industry faces several limitations. Firstly, IP laws struggle to keep pace with technological advancements, making it challenging to protect digital content and prevent piracy. Secondly, the fair use doctrine and exceptions to copyright infringement, such as news reporting and criticism, limit the scope of IP protection. Additionally, trademark law's territoriality principle restricts protection to specific geographic regions, hindering global brand enforcement. Furthermore, IP rights can be difficult to enforce in real-time, particularly during live events. The complexity of ownership and licensing agreements also creates disputes over IP rights. Lastly, balancing IP protection with fan engagement and freedom of expression remains a delicate task, as over-protection can stifle creativity and innovation.

II. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Aside from easing the way for protection of trademarks, patents and designs around the world, WIPO works to ensure that the benefits of the sports industry are spread wide and deep.

WIPO awareness raising and training activities look at successful IP rights strategies and monetization of IP assets to promote the growth of sport as a tool for development. Activities also address challenges for creating an enabling regulatory environment and how to ensure effective action against IP violations that erode sponsors confidence and the benefits associated with the hosting of major sport events.

IP awareness raising and training programs are demand driven and tailored to the specific social and cultural context of each country.

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.

Themes addressed include: The sport business model building an effective IP rights strategy; Signal piracy and the WIPO draft broadcasting treaty; Sale of media and broadcasting rights;

The use of patents, trademarks, designs and models in sport; Use of domain names and Sports-related domain name cases; Digital content, using social media for sport; Sport contracts; Marketing, merchandising and licensing agreements; Athletes' image rights; Building successful sponsorship programs; Enforcement of rights & Building respect for IPR's in sport; Sport disputes and alternative dispute resolution for sport.

III. IP AND SPORTS

WIPO supports these endeavors, and at the request of its member states, advises governments and policymakers on how to integrate IP and sports-related objectives into national development plans. And, through a range of activities, WIPO works with its partners to raise awareness about the relevance of IP to sports ecosystem within a country. Seminars and training programs focus on developing the human and institutional skills and knowledge to support the business of sports in member states to spur innovation, support business growth and social and economic development. Supporting the development of an enabling regulatory environment for IP is an important part of these activities. This includes building respect of IP rights and advising on ways to tackle abuses or infringement of IP rights. Such violations undermine the ability of organizers of sports events to attract sponsors and diminish the benefits of hosting major sports events.

These capacity-building activities are tailored to the specific social and cultural context of each country. They involve many stakeholders: government and other public bodies, enforcement officials and members of the judiciary, legal practitioners, sports agents, athletes, clubs, sports federations, event organizers, donors, sponsors, sporting goods manufacturers and television and media companies.

WIPO has given two reasons for intellectual property laws. Firstly, to "give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations". Secondly, to "promote, as a deliberate act of government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development².

IP rights and protections allow creators to earn recognition and profit financially from their work. WIPO has argued that this rewards and encourages creativity, innovation, and investment, and compensates for the time and energy dedicated to those endeavours³. Moreover, WIPO has emphasised the importance of a balanced system of IP rights; one which recognises and rewards

² World Intellectual Property Organisation, 'WIPO Intellectual Property Handbook', 2008, p 164.

³ World Intellectual Property Organisation, 'Intellectual Property and Sports: Tracing the Connections'

creators, but also ensures that society benefits from those creations. According to the US Chamber of Commerce, there is a positive correlation between effective IP protection and economic growth, creation of complex knowledge-intensive products and global competitiveness⁴.

However, others have argued that the link between IP protections and increased innovation is not supported by evidence. For example, the Economist has emphasised that many great inventions occurred before the advent of IPR and has contended that strengthening IPR regimes in various countries has not led to more innovation. Indeed, academics such as Michele Boldrin and David Levine of Washington University have argued that IP protections create market monopolies, therefore restricting innovation, distribution, and economic progress⁵. A report from the UN in 2006 suggested that IP rights encourage innovation and economic growth in high and middle-income countries, but not in low-income countries.

Others have questioned the concept of IP itself. For example, Stephan Kinsella, an IP lawyer, has outlined his belief that ideas cannot be treated as commodities or as equal to physical and tangible assets: a tangible asset can be depleted, but there is no natural scarcity to ideas or information⁶. He has argued that the reuse and duplication of an idea does not diminish the original idea, only its monopolistic value. Richard Stallman, the founder of the Free Software Foundation, has questioned the use of the generalised term 'intellectual property' since the three main types of IP laws (patents, trademarks and copyright) are all fundamentally different, with different aims and histories. He has stated, for instance, that only patent laws were designed to encourage innovation, and only copyright laws protect creativity. He contends that each one should be considered separately, and they should not be simplified into one category.

WIPO describes the global sports ecosystem as a "unique landscape that brings together multiple players with overlapping interests". IPR-including patents, trademarks, designs and copyright—underpin the commercial relationships that maintain and support the ecosystem⁷. WIPO also states that due to profit generated from IP protections, sports organisations and businesses can finance events and develop the industry, thus helping to secure the economic value of sports.

IP protections are used within the sports industry in various ways. Some key examples are

⁴ Patrick Kilbride, '2019 IP Index Shows IP Protections Increase Countries' Global Competitiveness', US Chamber of Commerce, 8 February 2019.

⁵ Michele Boldrin and David K Levine, 'Does Intellectual Monopoly Help Innovation?', *Review of Law and Economics*, 2009, vol 5 no 3, pp 991-1024.

⁶ N Stephan Kinsella, 'Against Intellectual Property', *Journal of Libertarian Studies*, 2001, vol 15 no 2, pp 1-53.

⁷ World Intellectual Property Organisation, 'Intellectual Property and Sports: Tracing the Connections',

highlighted below:

Sports federations and event organisers aim to create high-quality events in high-quality venues to attract athletes and audiences. The use of appealing designs or mascots, for which they would need design patents, can make their event distinct and add commercial value.

Venues are becoming increasingly high-tech in an attempt to improve the connectivity between fans and players and amplify the experience of watching a live game. Mobile phone applications also allow fans to track the performance of their favourite athletes and teams, creating more engagement within sports. In these types of cases, technology companies use patents to protect their IP.

Manufacturers of sports equipment use patents to develop new technologies and materials in order to produce innovative and high-quality products which maximise athletic performance. For instance, they have developed equipment with built-in sensors that collect information about an athlete's health and performance, data from which can serve as training guidance.

Trademarks are used by brands that specialises in sportswear, and which also aim to promote their products in venues and via sponsorships. Sponsorship can cover an event, a team or a particular athlete. It is beneficial to brands because it raises their profile, but is also beneficial to athletes or organisations who acquire funding. In 2019, for instance, Guinness announced it would be sponsoring six seasons of the Six Nations rugby tournament. Trademarks can also be licensed out to third parties to create merchandise and make kits. For example, Manchester United Football Club is currently in a 10-year deal with Adidas worth £750 million, with the Adidas Chief Executive, Herbert Hainer, predicting sales of £1.5 billion during that time.

In addition, IP protections cover broadcasting; exclusive broadcasting rights over live sporting events are given to media companies, and this can become the organisation's largest source of revenue. Research by the consultancy and advisory firm Deloitte indicated that 61 percent (£3.2 billion) of the Premier League's total revenue in 2016/17 was generated from broadcasting rights.

IV. OBJECTIVES, FEATURES AND RELATIONS

(A) Interface Between IPR and Sports

The link between intellectual property rights and sports has long been established, to the extent that sports cannot exist without proper protection of intellectual property rights. Consequently, creativity is required in sport. Without IP rights and incentives, sport cannot become a

commercially viable asset. Patented innovations, including sportswear and boots, lead to improved sporting equipment. The telecasting rights form the monetary foundation for sporting events, live sports are a lucrative deal for the producers and consumers are willing to pay a fortune for watching those events live. The use IPR like trademarks is included within the broadcasting rights of the sporting programmes. A huge component of the revenue generation is dependent upon license and merchandise related to the sports event concerned. The sporting industry economy has to be understood as a case study in detail, in which IP assets become a business platform and related industries. The two aspects must be studied jointly.

IPRs were dormant in almost every domain of sports. IPRs are valuable assets which are used to brand sports games, connected activities, sports clubs, players, celebrity status and soon. In producing, preserving, popularizing, and maintaining recognizable symbols, logos and personalities, marketing techniques are applied, while copyright in the brand and production of photographs, etc., are secured in order to gain benefits, taking into account the very existence of competition in sport exclusively.

From the legal perspective it is apparent that Intellectual Property Rights through image rights, logos, designs, etc., are essential components of proper commercial value of the sports. In fact, the bulk of revenue in the current times from sporting events is generated not from the gate fees but from the proper exploitation of trademarks, copyrights, etc., of the sports. The sports industry around the world as well as in India needs a variety of IPRs to thrive and expand. Generally, most sports around the world have generally been synonymous with the two components of IP rights, i.e., Trademark and copyright. However, this is more of a traditionalist view of how sports companies should use IP rights to expand to their own advantage. Although copyright and trademarks remain fundamental to various sub-sectors, such as broadcasting, apparel, brand value, etc., yet it is necessary to use some other categories of IP rights for preserving the programme content⁸.

The production and sale of counterfeit goods made by unscrupulous elements who manage to sell them cheap is a grave threat to the genuine producers. These products cause damage economically to everyone including the consumers. The counterfeit producers manage the low costs as they do not pay any fee to the rights holder, yet they do manage to harm the reputation of the brand and consumer's trust, resulting in the loss of various employments. Also, because online shopping is rising tremendously and e-commerce is growing rapidly every year, the

⁸ Molly Torsen, Intellectual Property and Sporting Events: Effective Protection of Event Symbols through Law and Practice, INT INTELL, PROP. INST. (Oct. 5, 2020, 7:15 PM) https://iipi.org/wp-content/uploads/2010/07/Sporting_Events_and_Intellectual_Property.pdf

increase of counterfeit products is an issue to be addressed. Some studies have suggested that a gargantuan amount of revenue upto \$50 billion is lost globally due to the sale of unauthorised products. This figure is only expected to increase further and would only rise if adequate measures in the form of IPRs are not taken. Additionally, if the indirect effect on related resources is taken into account, the total impact of counterfeiting is valued at 84 billion dollars annually⁹.

V. TRACING IP RIGHTS IN SPORTS

(A) Patents

A patent can be said to be one of the strongest forms of Intellectual Property. The main objective of a patent is to encourage and safeguard the inventors by awarding them special rights to benefit from their inventions. After the patent is registered, the owner gets the right to exclude others from making, selling, using the invention. A patent is an important incentive for technical and creative knowledge of the inventor. In sports, it is possible to get a patent for certain items of sporting equipment¹⁰. For ex- A new design of a golf club or a new design of a football boot qualifies for patent protection. For enhanced performance and better results, sports technologists keep on applying their creativity and expertise for the development of better and safer equipment! It is also possible to get patents registered in connection with the infrastructure and other facilities of sports, for ex- a retracting roof of a stadium or some other engineering feature¹¹. The patent system in sports has enabled the manufacturers of sport equipment to grow economically which has benefitted the whole industry. Apart from the equipment, various sports methods and techniques can also be patented such as a particular method of Specific-Fitness training.

(B) Patent in Indian scenario

India has seen a good number of patent filings recently for sports and equipment field. Many Indian as well as international filings have been seen for patent for composition/ method/ machinery/ device/equipment etc.

The basic criteria for patentability remain the same for this field. The Indian Patents Act also introduces certain provisions that inhibit certain subject matter from patentability, including section 3(d), which states that “the mere discovery of a new form of a known substance which

⁹ Seemantani Sharma, A Copyright Incentive for Promoting 'Aesthetic Sports' in Endan, 17(1) ENT. & SPORTS L. J. 7 (2019).

¹⁰ Sport and Technology, World Intellectual Property Organisation, WIPO (Apr. 2nd, 2020, 6.14 pm) <https://www.wipo.int/ip-sport/en/technology.html>

¹¹ SIMON GARDINER, MARK JAMES, JOHN O'LEARY AND ROGER WELCH WITH IAN BLACKSHAW, SIMON BOYES AND ANDREW CAIGER, SPORTS LAW 415 (3d Ed. 2006).

does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant” is not an invention.

For example sports drinks may be patentable if the composition differ significantly in properties with regard to efficacy.

Similarly, section 3(e) states that “A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance” is not patentable i.e. a mere aggregation of features must be distinguishable from a combination invention.

Section 3(f) states that “the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way” is not patentable, i.e. in order to be patentable, an improvement on something known before or a combination of different matters already known, should be something more than a mere workshop improvement.

Section 3(m) states that “a mere scheme or rule or method of performing mental act or method of playing game” is not an invention. For example a method of mere playing golf or cricket is a non patentable subject matter.

(C) Copyright

Copyright is a form of intellectual property that gives the creator of an original creative or skilful work, the exclusive right of determination of conditions under which it can be used, for a limited number of years. For a copyright to subsist, the work must be 'original'. It was held in the case of *Ladbroke (Football) Ltd. v. William Hill (Football) Ltd*¹². that the word 'original' requires not only that 'the work should not be copied but also that it should originate from the author'. To claim copyright protection, the author of creator needs to show that his/her own skill and intellect was used to produce the work¹³. There are some sports which are mainly for the demonstration of the skills of athletes and it is not possible to regard them as 'original' works. But other sports like gymnastics, ice skating etc. can be the original works of participants which which can also be reproduced. Rhythmic Gymnastics and Figure Skating are very similar to choreographic and acrobatic works and are capable of being reproduced, which can be protected under the copyright law. In sporting events, the maximum amount of Intellectual Property is

¹² (1964) 1 WLR 273

¹³ *Interlego AG v. Tyco Industries Inc.* (1988) RPC 343.

generated in the form of Copyrights. The artworks, promotional material, merchandise, software etc. are all subject matter of Copyrights.

(D) Trademark

A trademark is any unique identifiable sign, expression or design which recognizes goods and services and differentiates them from others. The use of a trademark can be acquired through registering the logo, mark etc. in the Trade Mark Registry. Trademarks in the present time have become a great source of revenue in the sport industry. Generally, Trademarks are in the form of logos, taglines, indicators of a particular sportsperson etc. Many legal disputes arise due to the unauthorized usage of trademarked logos, names etc. One such dispute arose between BCCI and UEFA over the usage of the name 'Champions League'. The five interconnected rings symbolizing the Olympic movement enjoy trade mark protection at both international and national levels. Registering of trademarks also helps in Brand-Building and affects the public ratings of various sportspersons. Usain bolt's pose is a registered trademark. Taking an example of Formula One, in 2014 season, every driver was allotted permanent numbers for the rest of their careers as their race numbers, which were also visible at the front of the car. This was a great move to exploit the marketing potential which subsequently would lead to building a brand based on the number.

Various goods related to clubs and individuals such as jerseys, mugs, caps, key-chains etc. can also be registered under the respective particular class which are defined separately under the Trademarks Act 1999. With the growth of technology and internet, now domain names can also be registered as trademarks. By registering a trademark, the organizers of sporting events can earn revenue from sponsorships and merchandising.

(E) Trade Secret

Confidential information relating to a business enterprise that provides it a competitive edge over others can be regarded as a trade secret. Some sports in which technology plays a significant role, for ex- Motor-Racing where the design is highly important, the design can be protected under trade secret but only to the extent that it is not easily accessible¹⁴. A case filed in the 32nd Edition of America Cup in which spying on another's yacht and taking photographs was held to be a breach of protocol is an example of a trade secret protection. In another instance where a player quit his club and joined a new club but gave some schemes and information regarding the playing style of his former club to the new club, it was held to be a breach of trade

¹⁴ MUKUL MUDGAL, VIDHUSHPAT SINGHANIA, LAW AND SPORTS IN INDIA, 191 (2nd Ed. 2016).

secret law¹⁵.

In India, there is no particular act that governs the safeguarding of trade secrets and confidential information but the same can be done by having confidentiality clauses in contracts.

(F) Personality Rights

For sportspersons, using their celebrity status in the form of endorsements and capitalizing on fame is a major source of revenue. Personality right is also known as a publicity right and is mainly used to control the industrial exploitation of one's image or identity. Prominent sports persons such as David Beckham and Sachin Tendulkar, among others, have their names registered under the Trademarks Law. The endorsement of a celebrity's persona is also known as Character Merchandising and is a massive revenue earning business. In India these personality rights of the sports persons are protected under the fundamental right of Right to Privacy¹⁶. This type of intellectual property also demarks the image of a sportsperson as a part of a team from his/her image as an individual. As this right of personality of publicity has evolved from the Right to Privacy, it can only subsist in an individual¹⁷.

(G) Ambush Marketing

Ambush marketing is an issue which comes up due to lack of definite legal framework in India. It refers to a company's attempt to capitalize over the popularity of well-known property or even without the proper authorization of the owner¹⁸. It can be also described as an attempt made by a third party to create connection with a particular event or its participants without their proper authorization and by defying the official partners and sponsors¹⁹. It is a golden opportunity for the Brand owners to attract the customers in a cheap way. Ambush Marketing generally includes unauthorised use of registered event logo on merchandise, false claim of being official suppliers of a particular team, creating unofficial websites, film, video, corporate sponsorships etc²⁰. Due to Lack of proper legislation in India, most of the cases of Ambush Marketing are decided under Copyright and Trademark Laws. In a recent case related to commonwealth games, Delhi High Court has recognised Ambush Marketing and has granted an injunction against the defendant for using a website to that of the plaintiff. Nowadays, many of the event managers are taking initiative to suppress ambush marketing. They have started including anti-ambushing clauses in

¹⁵ WILLIAM LATTRICE, INTELLECTUAL PROPERTY FOR ATHLETES, TECHNOLOGIES OF WRITING, 7 (2010)

¹⁶ Art.21 Indian Constitution

¹⁷ ICC Development (International) Ltd. v. Arvee Enterprises and Anr. (2003) VII AD Delhi 405.

¹⁸ Sandler D M & Shani D, Olympic Sponsorship vs. Ambush Marketing: who gets the gold, 29(4) JAR 9 (1989).

¹⁹ Cran David & Griffit Simon, Ambush marketing: Unsporting behaviour or fair Play, 21(8) ELR 9 (1989).

²⁰ Seth Rukmani, Ambush Marketing: Need for a legislation on India, 15(6) JIPR 455 (2010).

their agreements while signing contract between event organisers and sponsors.

VI. ADVANCEMENTS IN SPORTS RELATING TO IPR

The development of technology has had a significant impact on the sport industry, in particular, the advancements in delivery of content through communication media and the rise of eSports Industry. As the biggest source of information, internet has also proved to be a great marketing tool for the development of sport on a global level. Before these technological advancements, the tasks related to team administration such as developing rosters, handling data etc. took a lot of human effort and time but that has been revolutionized as the statistics and information are now stored in computer systems²¹. These advancements have led to the creation of new avenues for recognition of Intellectual Property Rights, mainly considering Copyright laws.

(A) Broadcasting

"Sports from the sofa"²² has made the viewer experience trouble-free and has become a part of our daily lives. It can be said that broadcasting media right are a part of copyright law²³. Copyrights, particularly those relating to broadcasting media establish the relation between sport and media²⁴. Competitive sports have a spectator base all around the globe which has provided a niche to media and broadcasting companies. In the FIFA world cup 2018, the global media rights sale amounted to a whopping \$3066 million²⁵. A new development in this area is the pooling in of members' broadcasting rights in a league²⁶ to solve the problem of who owns the copyright in the broadcast as there are multiple entities involved when an event is being broadcasted.

Broadcasters have been a continuous target of unauthorized transmission of footage. In India, the infringement of broadcasting rights is governed by the Indian Copyright Act, 1957 and further interrelations²⁷ between copyrights and broadcasting rights have been laid down by the courts. Furthermore, unauthorized downloading of content might lead to a penalty upto INR 1crore under the Information Technology Act, 2000²⁸.

²¹ Dr. K.A Ramesh, Role of information technology in enhancing sports performance, INT. J. OF PHY. EDU, SPORTS AND HEALTH, 2016 at 277-279

²² Robert Alan Garrett Arnold, et al., Sports Broadcasting and the Law, INDIANA LAW J.

²³ NEO Sports Broadcast Private Ltd. v. New Sanjay Cable Network & Ors., 2010 SCC OnLine Del 3681

²⁴ Broadcasting & Media Rights in Sport, World Intellectual Property Organisation, WIPO (Apr. 5", 2020, 1.01 am) <https://www.wipo.int/ip-sport/en/broadcasting.html>

²⁵ Ashish Khanna, World Cup 2018: Where from FIFA gets its \$3,066 mn media rights revenue, INSIDE SPORT (Apr. 4* 2020, 2.25 pm) <https://www.insidesport.co/world-cup-2018-where-from-fifa-gets-its-3066-mn-media-rights-revenue-1519062018/>

²⁶ United States v. NFL, 116 F. Supp. 319, 321 (E.D. Pa. 1953)

²⁷ ESPN Star Sports v. Global Broadcast News Ltd. & Ors., 2008 SCC OnLine Del 1385

²⁸ The Information Technology Act, 2000, Act. No. 21 of 2000, Acts of Parliament, § 43 (india)

a. Legal Framework of IP Rights in Sports Broadcasting

The legal framework of Intellectual Property Rights in sports broadcasting is very complex dealing with various areas of law such as trademark, copyright, contract act, competition law etc.

i. Copyright Law:

Copyright refers to the legal right of the owner of Intellectual Property. Copyright means having the right to copy. This means that the original creator has exclusive rights over his work, and nobody can use that work without the consent of the original creator. Once a copyright expires, the copyrighted item becomes public domain. Section 37 of the Copyright Act 1937 says that every broadcasting organization shall have a special right to be known as "broadcast reproduction right" in respect of its broadcasts. The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made. Broadcasters typically own the copyright to their original broadcasts, which include the selection and arrangement of camera angles, commentary, graphics, and other production elements.

To enforce their copyright rights, broadcasters may register their broadcasts with relevant copyright offices and take legal action against unauthorized use or reproduction of their content, including piracy and unauthorized rebroadcasting.

ii. Trademark Law:

Trademark law protects distinctive signs, logos, and symbols used to identify goods and services in commerce. In the context of sports broadcasting, trademarks are essential for identifying sports teams, leagues, events, and broadcasting networks.

Sports organizations and broadcasters often hold trademarks for their logos, team names, and event branding, which serve as valuable assets in marketing and branding efforts. For example, In IPL (Indian Premier league), there are many teams having their own name and logo different from each other. Trademark infringement occurs when unauthorized parties use identical or confusingly similar marks in a way that could cause consumer confusion or dilute the distinctiveness of the mark.

Trademark protection enables rights holders to prevent unauthorized use of their marks in advertising, merchandise, and promotional materials associated with sports broadcasting.

iii. Contract Law :

Contract law deals with negotiation, formation, jurisdiction if any dispute arises or some

agreements between parties involved in sports broadcasting, including broadcasters, sports organizations, athletes, sponsors, and advertisers. One of the main types of contracts used in sports broadcasting are broadcasting rights agreements, which give broadcasters the exclusive right to transmit live sporting events in return for monetary compensation. These agreements typically outline the scope of rights granted, territorial restrictions, duration of the license, and financial terms. Contracts also govern sponsorship deals, licensing agreements, and endorsements involving sports organizations, athletes, and corporate sponsors. These contracts often include provisions related to the use of intellectual property assets, such as logos, trademarks, and image rights.

iv. Competition Law:

Competition law, also known as antitrust law, aims to promote fair competition and prevent anti-competitive practices in the marketplace. Competition law may be relevant to sports broadcasting in several ways.

For example, competition authorities may scrutinize exclusive broadcasting rights agreements to ensure they do not unduly restrict competition or harm consumers' interests. Additionally, competition law may be invoked in cases involving collusion among broadcasters, bid-rigging, or other anti-competitive behavior in the acquisition of broadcasting rights.

The legal framework of Intellectual Property rights in sports broadcasting is shaped by copyright law, trademark law, contract law, and competition law. Rights holders, broadcasters, sports organizations, and other stakeholders must navigate these legal principles to protect and enforce their IP rights effectively. By understanding the legal landscape and leveraging appropriate legal mechanisms, stakeholders can promote innovation, safeguard their intellectual property assets, and ensure the continued growth and success of the sports broadcasting industry.

(B) E-Sports

With the improvement in technology, eSports has shaped itself into a complete industry, involving huge finances just like Sports. Video games or virtual games provide an interactive experience and they involve intellectual property as skill and technicality is used by various stakeholders such as game developers, software engineers, designers etc. while developing them.

Video games are recognized as a sporting activity²⁹. Domestic consumption of video games has

²⁹ Isaac Rabicoff and Kenneth Matuszewski, "The Rise of eSports creates a Complicated Relationship with IP" IP WATCHDOG (Apr. 5", 202, 3.14 am) <https://www.ipwatchdog.com/2017/03/25/rise-esports-complicated->

grown in a flash throughout the world. In fact, the issues concerning IPRs in eSports are complex as compared to the normal sport industry because eSports involve huge reputational aspects to sportspersons and leagues which are used in video games and the invention of new interactive software is increasing at an alarming pace. The most common problem that game developers and other stakeholders in the eSports industry face today is the illegal downloading of software³⁰. It invites large-scale copyright infringement.

Another problem which has generated a new avenue for IPRs is the concept of Game-Mods, also known as Game-Modding³¹ which in simple terms means modification made to gaming software. There are clashes over copyright claims between the software modifiers and original developers and there are certain layers of copyrights which are present in recognizing the ownership of these stakeholders. Trademarks are also involved in the eSports industry as there are many professional gamers who register their game-tags of gaming identifications.

VII. CHALLENGES AND NEW EMERGENCES

(A) Ownership of IPR and Sport

Intellectual property rights are tradable due to their fundamental characteristics. They can also be licensed. In order for the owner to profit commercially from the characteristics of the IPR, it is necessary to verify ownership. Therefore, in order to avoid disputes, the registration of the IPR is recommended so that there can be exact establishment of the ownership. IP protection is territorial in nature, meaning it is limited to a certain area of law. It means an IPR must be registered in India even if it is protected by international laws. In India, businesses may need to wait many months or even years to obtain IP protection, including patent, trademark, design, or copyright registration, due to backlogs in IP registration. Therefore, there should be plan up of registration ahead before entering the market. They should do an audit of the IP that may be is exposed in the market. If they find its commercial worth to be good, it can think whether steps will be taken for registration or not³². The Trademarks Act of 1999 protects the registered marks such as names, logo, brand of the events and each individual teams and franchise. The merchandise, equipment, footwear and apparels are protected under the Designs Act, 2000. The Copyright Act of 1957 provides for the registration for original literary, dramatic, musical and

ip/id=79418/

³⁰ Sean Comerford, *International Intellectual Property Rights and the Future of Global E-Sports*, 37 *BROOK. J. INTL L.* 623, 624 (2012).

³¹ Postigo, Hector 'Video Game Appropriation through Modifications', *Convergence*, 14(1) *INT. J. OF RES. IN NEW MEDIA TECH.* 59, 63 (2008)

³² Kirit S. Javali, *Sports and Intellectual Property in India: An Emerging Sector*, *FINANCER WORLDWIDE* (June 6, 2019) <https://www.financierworldwide.com/sports-and-intellectual-property-in-india-an-emerging-sector>.

artistic works, including cinematographic and sound recordings. It also provides protection to the broadcasting and performer's rights. In visual images or commentaries of sports events, including the photograph of the events, the copyright exist.

(B) Development in sports through IPR

The strategic use of IP rights in global sports has significant potential to support economic development in a variety of ways by:

- Generating income from the sale of sports-related goods and services;
- Supporting innovation and business growth, entrepreneurship and job creation;
- Enhancing a country's reputation and boosting foreign exchange earnings;
- Boosting international trade;
- Transcending national differences and fostering universal values of fair play, mutual respect and friendship; and
- Improving health, social-well-being and social cohesion and encouraging discipline, teamwork and a competitive spirit.

Staging sports events, whether at grassroots, national or international levels, can enrich the social and cultural fabric of communities, making them more attractive locations for investors and tourists. However, the business of sports requires a solid legal framework to support the exploitation of and trade in IP rights, as well as a well-trained workforce to create a favourable policy and regulatory environment and to manage the operational and logistical issues associated with organizing sports events.

Recognizing the huge potential of IP and sports to drive social and economic development, many countries are now integrating IP and sports-related objectives into their national development strategies. By supporting the development of a thriving and sustainable sports sector, and becoming an attractive location for major sports events to take place, these countries seek to create additional opportunities for social and economic development and wealth creation.

VIII. SUGGESTIONS

Commercialization of sports is happening on a huge scale now. The battle between teams and clubs has now moved off-pitch as well. Many teams or clubs are indulging in exploitation of their intellectual property so as to increase their outreach to the global audience and increase revenue. Proper protection of the IP's helps the teams and associations to secure the economic

value. It also gives them the right to obtain injunctions and obtain accounts of profits against the infringers.

There is a dire to need to promote the protection of IP in sports in India. It is advisable as it helps them improve their position in the market while also connecting themselves with the fans.

IX. CONCLUSION

In today's world, there has been a rampant increase in commercialisation of Sports world and associating it with business to incur big profit from it. Due to the greed for money, many sports clubs has plunged into the trap of exploitation of intellectual property rights into different business like merchandising, game café and so on. There is an imminent need for protection of the intellectual property rights by these clubs. In relation to India, it is a signatory to various international treaties in IPR. These rights can be protected through proper and timely registration. They are enforceable in Indian Courts which in any event of infringement, provides an interim remedies like injunction which are effective in nature. They can also instruct the offender to make compensation from the profits generated out of infringement. In India, there are three major IP enforcement channels, police, custom and judiciary. Trademark and Copyright can be enforced through civil or criminal litigation, whereas patent and designs can only be enforced through civil litigation. There are various ways of protection of IP like registration, agreement with proper clause etc. it is important for the proprietors to have a detailed knowledge about how a business runs along with the legal intricacies. There are a various minute but highly important issues such as ownership rights, sharing of revenues, protection of the image and personality of the celebs etc. proper care must be taken to see that these rights are protected. The IP repertoire in a sports world increases with the popularity and success of the team. It is important to keep a regular check on these IP activities and regular audits must be done in order protect and maintain the IP portfolio.

X. REFERENCES

1. <https://www.researchgate.net> publication on *Analysing-the-Impact-and-Role-of-Intellectual-Property-Rights-in-Sports.pdf* - By Faizanur Rahman
2. <https://www.researchgate.net>. 341452491 INTELLECTUAL PROPERTY RIGHTS AND COMMERCIALIZATION OF SPORTS-SCOPE PRACTICE AND ADVANCEMENTS
3. *It's Your Turn, But It's My Move: Intellectual*
4. *Property Protection for Sports Moves - 2009* BY F. F. Scott Kieff, Robert G. Kramer and Robert M. Kunstadt
5. Zoya Nafis, "personality rights - Need for a clear legislation - Privacy protection - India (mondaq.com,2014)
6. Prashant R Sharma "Ambush Marketing - the concept (2015)2(4) *International Multidisciplinary Research Journal*
7. Sujith Aswathy "sports and intellectual property rights - an overview on Indian standards" (2016)2 *Journal of legal studies and research*
