

COPYRIGHT AND RELATED RIGHTS

In the past, writers, musicians and artists across the globe wrote, composed and made their works mainly for fame and recognition. Fortunately, copying, being a laborious and very expensive process at that time was not a major issue. With the advent of industrial revolution, making multiple copies was easier, due to inventing of copying techniques such as printing machine by Johannes Gutenberg. This posed a great danger to creative people who by that time wanted to earn a living or make profits from their creative efforts since monetary considerations have overrun this area of human activity. Thanks to the concept of copyright, a legal principle followed by world over, it was possible to address the above issue and to safeguard the interests of creative people. In that sense, copyright is not a positive right but a negative one since it prevents others from exploiting the work without the right holder's consent or license.

Copyright which is a widely used type of IP provides legal protection to the authors of original works. The protection granted by copyright arises immediately after its creation without formalities and generally exists throughout author's life time plus seventy years upon his death. However, protection granted to some types of works does not enjoy such a lengthy life span. Upon expiration of protection period, the work is transferred to the public domain and at that stage unauthorized use is permissible under some conditions.

The rationale behind copyright law is to provide original authors, composers, and artists with an exclusive right for a limited period of time to exploit their works for monetary gain, thus encouraging creativity. The economic exploitation is done by licensing such exclusive right to publishers, film producers and sound recorders for a monetary consideration. Uniqueness of copyright is that, unlike other forms of IP it is a multiple right consisting of a bundle of different rights in the same work. These rights can be assigned or licensed either as a whole or separately. In the case of a literary work, for instance there is the right of reproduction in magazines and newspapers, the right of dramatic and cinematographic versions, the right of public performance of a play or a musical work etc.

Related rights, a relatively modern legal concept when compared to copyrights can be considered as an extension of copyright, and safeguard the interests of the persons who contribute to make the copyright material available to the public. Related rights also demand some kind of creativity or technical skills, and embrace three categories of rights namely, the rights of the performing artists, the rights of the producers of sound recordings (phonograms) and the rights of broadcasting organizations.

SPORT AND ITS RELATIONSHIP TO COPYRIGHT & RELATED RIGHTS

Sport has emerged as one of the fastest growing global industries in recent times. Sport first evolved as a recreational activity. From that stage sport has been transformed to a stage of mega international business with huge investments sponsored by governments and multi-national commercial entities.

With the advancement of time, entertainment aspect of sports emerged prominently and organizers of sports events have introduced novel forms of entertainment elements especially in opening and closing ceremonies of events to broaden the viewership and to please the fans. Copyright, related rights and sports are seemingly unrelated at a glance. Their relationship however is closer than expected, complex, and developing fast. Therefore let's examine how copyright and related rights have involved in sports.

The following are the key areas where copyright and related rights play a major role in sport world.

1. **Sports related literature** – Literary works has captured the appeal of sports. Probably cricket has had an impact on literature more than any other sport. Others however have inspired writings in numerous ways. In addition, there are millions of sport specific articles in magazines, newspapers, journals etc. Copyright subsists in such literature provided they are original. It is pertinent to mention here that not ideas themselves but the style of expression of ideas are protected under copyright. Therefore a piece of sport news itself cannot be copyrighted but the way it is presented to the public i.e., its writing style is copyrightable.

2. **Sports specific software and computer databases.** – Organizers of tournaments who are heavily burdened with duties are resorted to sport specific software to ease and to automate the administrative tasks of tournaments. There are many types of sport specific software which help coaches to improve performance of players, and empower administrators with online booking, payments, appointments etc. Both object code and source code of software or a computer programme devised for working of computers, and computer databases can be protected under copyright. Program manuals and computer printouts may be regarded as literary work and accordingly can be protected under copyright.
3. **Dramatic works related to sports** – Both electronic and print media have transformed how fans enjoyed sports. They brought players and sports events into the houses of millions and popularized tournaments, players and their accomplishments. As a result, dramatic works which revolve around sport events and players saw the light of the day. Copyright subsists in such types of works like choreographic works, and in case of cinematographic works, drama and other audio-visual works, in script and scenario.
4. **Sport specific musical works** – The researchers on “music for performance” states that music enhances athletic performance. In addition there are thousands of sport theme songs which touched hearts of fans. Copyright subsists in these types of original musical works with or without accompanying words.
5. **Artistic works including photographs, drawings and sculptures** – Taking photographs is so common in sport world that it gave birth to “ sport photography ”, a special branch of photojournalism. There are millions of dedicated sports photographers across the globe work for newspapers and magazines and other broadcasting agencies. Photographs, a kind of artistic work are protected under copyright. In case of drawings and sculptures, successful players are often honored for their talent and dedication to sport and to his country. Throughout the ages, artists were inspired by such type of players, and to remember and to commemorate them drawings and paintings were

made, sculptures and figurines were built, all of which are entitled to copyright protection.

6. **Performances in sports tournaments** – Generally opening and closing ceremonies of sport tournaments are characterized with entertainment elements comprised of performances of actors, dancers and acrobats etc to please and attract the fans. Such performances are protected as rights of performing artists, a category of related rights.
7. **Sport broadcasting** – In sports, copyrights and related rights is normally vested with the individual players, sport teams and organizers of tournament or sport event as the case may be. This is true for sport broadcasting. Therefore, in order to broadcast a sport event, it is necessary to obtain the authorization of the organizer.

Sport broadcasting is protected as rights of performing artists, a category of related rights. The holder of broadcasting right can exploit the rights commercially in a number of ways which mainly include; fees received for the advertisements and licensing of the rights to rebroadcast sport events to other broadcast entities. Today, the main source of revenue for organizers of sport events is not the sale of entrance tickets but the sale of broadcasting rights.

As a result of advances in telecommunications and the Internet, the value of broadcasting rights has grown at an unprecedented pace. According to Forbs, estimated worldwide audience for 2016 Rio Olympic was 05 billion. NBC Universal has paid a record \$1.23 billion to screen Rio 2016, far higher than the \$900 million it spent on Beijing Olympics in 2008. Another example is the US National Football League's main event, the Super Bowl which attracted some 114 million viewers in 2017 and a 30-second slot of advertisement cost about \$ 5 million on average, over \$166,000 per second.

INFRINGEMENT AND FAIR USE

In Sri Lanka, the whole body of law of copyright and related rights are enshrined in IP Act No. 36 of 2003 and regulations made there under.

If any person, without obtaining expressed permission of the copyright holder, commercially exploits the work he will be infringing the copyright. In general, infringement occurs by one or more of the following acts.

1. Reproduction of the work and fixation the same in a material form
2. Publication of the work
3. Communication of the work to the public.
4. Performance of the work in public
5. Unauthorized adaptations and translations of the work.

The above list is not exhaustive and these types of infringement undermine the revenue potential that sport sector offer. A BBC survey in 2017 revealed that in the United Kingdom more than a third of English Premier League (EPL) viewers are watching live matches via unauthorized streaming websites.

According to the IP Act, there are three types of remedies available against such infringements; namely civil, criminal and administrative. The latter is exercised solely by the National Intellectual Office (NIPO) by way of a dispute resolution mechanism.

However, not all unauthorized use of a work commit infringement. To balance the interests of right holders and the general public, IP Act accommodates or permits the acts of fair use for some purposes namely private use, criticism, comment, news reporting, teaching and research etc. In addition, if the work is in public domain, unauthorized use can be permitted provided such use does not harm the right holder's moral rights.

It is a pity that Sri Lankan sport sector, except in the area of sport broadcasting, has largely underutilized benefits of copyright and related rights which assist and facilitate them to fight a case of an infringement, safeguarding their interests.