

## Sports Betting and Intellectual Property



### Sports Betting and IP

- Pro leagues are attempting to charge licensing fee for use of statistics from their games
- Multiple federal cases have held different pro leagues have no IP rights to these statistics, making licensing fees improper

On May 14, 2018, the Supreme Court handed down a decision striking down the federal prohibition on sports betting. This decision allows states to begin offering legal sports betting, in accordance with the state laws they develop. With many states, such as New Jersey, Mississippi, New York, Pennsylvania and West Virginia expressing a desire to immediately move forward with offering sports betting, professional leagues are trying to get in on the action as well. The mechanism they are trying to utilize to effectuate this, Intellectual Property rights.

In an attempt to gain a piece of the expected large revenues coming to states allowing sports betting, professional sports leagues have attempted to start lobbying for a “1% Integrity Fee” on all wagers made on their respective leagues. This “Integrity Fee” would be for the licensed use of the statistics, which will be used in gambling on the professional leagues. Professional sports leagues claim to have intellectual property rights over these statistics, and as such, are seeking to exact a licensing fee for sports betting entities use of said statistics. In the words of NBA Commissioner Adam Silver, “...the NBA will spend roughly \$7.5 billion creating content, and creating games this year...” and “the notion that as intellectual property creators we should receive a 1% fee seems very fair to me.”

An obstacle of this “Integrity Fee” however is the lack of underlying “intellectual property rights” to statistics which leagues such as the NBA are claiming they have. To be clear, professional sports leagues such as the NBA have intellectual property rights, and very strict enforcement, over their content such as multimedia, designs, logos, associated apparel bearing trademarks, and the like, all of which would require a license to legally use. However, sports betting entities would only be using statistics that were the result of a sporting game. Unfortunately for professional sports leagues, two federal court cases have already been decided on the issue of propriety of sports statistics, neither of which supported the sports leagues. First, *NBA v. Motorola*, in the Second Circuit court of Appeals, held that the NBA did not possess any intellectual property rights to the live transmission of game statistics that were tabulated and compiled by other individuals watching or following the games on television or radio.

## In response to newly legalized sports betting, pro leagues are attempting, wrongfully, to rely on IP rights to exact licensing fees...

Second, *C.B.C. Distribution v. Major League Baseball Advanced Media*, in the Eight Circuit court of Appeals, held that statistics derived from professional baseball games and used by a third party for the purposes of interactive, online fantasy gaming constitute "a form of expression due substantial constitutional protection." Both of these cases had the combined force of conclusively holding professional sports leagues have no proprietary or intellectual property right to the live transmission of statistics being derived from their games.

In total, the professional sports leagues see the coming tide of nationally legalized sports gambling, and are wanting a piece of the revenue. While there may be a place for the sports leagues in the governing, supervising, or support of sports betting, the lever of intellectual property regarding the use of statistics derived from their games is not one the leagues have available to pull. This case is another example where improper understandings of intellectual property rights can lead a business to believe they are entitled to revenue, and confuse potential new businesses into believe they have a legal exposure that may not in fact be present. As always, proper understanding of intellectual property rights is crucial when facing new trends in business. Consult with Tsircou Law for all of your intellectual property questions to stay ahead of the trends, and properly assert your rights, both offensively and defensively, when moving forward in a new industry.



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