

broadcasting right for sport events in China

Description

I have been serving as external legal counsel for SlamBall China for a couple of years. With its rapid growth and expansion, it has attracted more and more media attention. In this November, it will hold a SlamBall tournament in Wuhan and Beijing, a big event for SlamBall China and for the sport itself.

Here comes an internet company with interest to broadcast the event live on its website. Thus, the issue of broadcasting right issue arises before me.

As in other parts of the world, broadcasting right is not something clearly defined in Chinese laws. In fact, there is no law at Chinese parliament level even touching on this issue. Even in the academic arena, people are widely divided as to the nature of the broadcasting right with quite a few schools of thoughts. Though I have my own version of analyzing and understanding broadcasting right for sport event, I am not going to expound the idea here.

In summary, a broadcasting right is in essence a form of property (in a broad sense other than physical “things”) owned and enjoyed by the organization that organizes the sport or entertainment events to present the events live to a wider audience not on site in exchange for value.

There are not many but only a few cases available involving issues of broadcasting rights. I would only attempt to summarize the current court opinions concerning broadcasting right.

1. Sport match or competition falls out of the ambit of China Copyright Law

The four cases judged by Beijing and Shanghai courts all found that sport events in particular the football matches or competitions themselves don't constitute the “works” protected by copyright laws in China, though a Beijing court held that the opening ceremony of Olympics Games shall be “works” under copyright law.

Due to this difference, an internet company was ordered to pay damages to CCTV International for hosting a video filming the opening ceremony of London Olympics Games while in another case, another internet company hosting video of a football match of Asia Football Confederation was judged as innocent when brought to court by the company that was duly authorized by AFC. In the latter case, the internet company relayed a CCTV live broadcast of the match in question, therefore the court noted that the internet company didn't infringe on the copyright of the AFC authorized company though it may have infringed on CCTY's copyright in the TV program based on the match.

2. Rights and interests in sport event fall out of the ambit of China Property Law

It shall be noted that China Property Law is actually a piece of law about physical goods. While there is a lot of discussion of broadcasting right in the field of property laws in the west, due to the limited sense of “property” in China, Chinese Courts are not ready to bring broadcasting right under the umbrella of China Property Law. A Shanghai appeal court ruled in one of the cases in the face of

raising of property law protection by AFC authorized company mentioned above that the “goods” under China Property Law shall only be those provided by the Property Law. However the court found that the broadcasting right is rather a contract-based right, which is apparently in my opinion a mistaken viewpoint.

3. Unfair competition as an alternate ground for claiming compensation

In a recent case judged by a Beijing appeal court where a CCTV affiliated entity sued an App company which made a TV App that can help users to watch TV programs broadcast by CCTV entity, the court again found that the rebroadcasting by the App didn't infringe upon any copyright held by the CCTV but constituted unfair competition.

The rules on broadcasting rights are yet to develop and culminate into a legal right that can be readily protected by courts. Therefore, the only thing for interested parties to do is to draft a sound legal contract when selling or authorizing broadcasting rights.

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