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Katrien Lefever

New Media and Sport

International Legal Aspects

T · M · C · A S S E R P R E S S

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Books in the *ASSER International Sports Law Series* chart and comment upon the legal and policy developments in European and international sports law. The books contain materials on interstate organisations and the international sports governing bodies, and will serve as comprehensive and relevant reference tools for all those involved in the area on a professional basis.

The Series is developed, edited and published by the ASSER International Sports Law Centre in The Hague. The Centre's mission is to provide a centre of excellence in particular by providing high-quality research, services and products to the sporting world at large (sports ministries, international—intergovernmental—organisations, sports associations and federations, the professional sports industry, etc.) on both a national and an international basis. The Centre is the co-founder and coordinator of the Hague International Sports Law Academy (HISLA), the purpose of which is the organisation of academic conferences and workshops of international excellence which are held in various parts of the world. Apart from the Series, the Centre edits and publishes *The International Sports Law Journal*.

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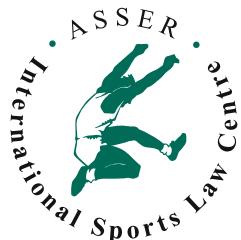
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Foreword

The summer of 2012 is often referred to in the popular media as the Summer of Sports. High-profile sporting events followed each other in quick succession. In early June, the Spanish tennis superstar Rafael Nadal was crowned for an unprecedented seventh time as the ‘king of clay’ at Roland Garros in Paris. Some weeks later, his compatriots in the Spanish national football team continued their unparalleled winning streak at international tournaments during the European Championships in Poland and Ukraine. One week later, on the holy grass of Wimbledon, Roger Federer proved once again why he is the Swiss Maestro. In the Tour de France, two British riders from Team Sky mainly decided amongst themselves which one of them would ultimately take the yellow jersey home to Great Britain. Bradley Wiggins’ historic victory was the ideal appetizer for the *pièce de résistance* that was about to come thereafter, the 2012 Olympic Games. During the next sixteen days, the performances of the likes of Usain Bolt, Michael Phelps or Epke Zonderland in London dominated the headlines in the media worldwide. Only when the IOC Chairman Rogge drew the curtain over the ‘happy and glorious games’ did the 2012 Summer of Sports come to an end.

A great deal of sports history was written in a time span of merely three months. Hundreds of millions of people all over the globe were able to follow all these sporting highlights in one way or another. Nowadays, we live in an information society. This book even speaks of an ‘information rollercoaster’. The times when the only means to be directly informed about a sporting event were to actually go to the venue, to watch television or to listen to the radio belong to the past. During the last decade, the number of providers of sports content in the media has substantially increased. Moreover, new platforms such as the internet or mobile phones enable them to provide more sports. Almost inevitably, these developments in the media landscape influence the relationship between the media and the sporting world. As the public’s access to sports content is valuable—which is the working hypothesis of this book—these developments also entail legal repercussions. The overall objective of this book is precisely to examine the impact of our rapidly evolving information society on the existing legal framework relating to the public’s access to sports content, especially media law and competition law.

Adopting both an interdisciplinary and intra-disciplinary approach, it specifically purports to assess how competition and media law guarantee access to live and full sports coverage for the audience in the new media landscape.

The subject of this book by Ms. Lefever is important and topical. Sport and the law have long been uneasy bedfellows. Sporting federations traditionally operated under the assumption that they enjoyed complete autonomy in organizing and regulating sports and thus that they were immune to legal intervention from the ‘outside world’. This general attitude may have been contested or even (successfully) challenged in court on a given concrete occasion, but ultimately it was only in a judgment of December 15, 1995 by the Court of Justice of the European Union that sporting federations would definitely lose their self-proclaimed aura of being legally ‘untouchable’. In the already legendary *Bosman* case, the Court of Justice first dispelled every doubt about its previous statement that sport is part of EU law insofar as it constitutes an economic activity, before subsequently outlawing certain aspects of the traditional transfer system and also the so-called ‘3+2’ nationality clauses in professional football in Europe for infringing the free movement rules laid down in the European Treaties. Since that day, the Court of Justice has been laden with all the sins of Israel in sporting circles. *Bosman* is widely regarded as the main culprit for everything that has gone wrong in professional football and beyond the last fifteen years: in particular, that the sporting and financial equilibrium between clubs is disturbed and the gap between rich and poor clubs has widened, or that many clubs no longer invest time and money in the development and training of young players. The sporting establishment has often been so occupied with criticising the *Bosman* decision and looking for ways to circumvent or overturn it, that other plausible explanations were simply overlooked or did not receive appropriate attention. More or less contemporaneously with the *Bosman* judgment, professional sports became increasingly commercialised. Revenues from the sale of the broadcasting rights of sporting events reached unprecedented heights. It is submitted that this – and the unequal distribution of this wealth—is the principal reason for the financial and sporting imbalances that have occurred over the last few years. One of the intrinsic strengths of this book is therefore its overall topic: the regulation of the laws concerning the broadcasting of sports events.

Besides this, the book also tackles several of the important concrete sub-issues in this regard. To mention but a few; firstly, it addresses the specificity of the sports sector, emphasizing the social and economic function of sport. This so-called specificity of sport is also important in legal terms. For instance, sports associations often refer—with varying degrees of success—to the argument of the specific nature of sport to justify a *prima facie* infringement of EU law or even to call for an exemption from the scope of EU law. Secondly, the book also inquires whether the freedom of expression and the right to information, enshrined in article 10 of the European Convention on Human Rights, can play a role in protecting the public’s access to sports content, as consumers and as citizens. Thirdly, concerning media law, the focus is on the analysis of the ‘list of major events’ mechanism. Sport is an important weapon in the ‘battle for the audience’ between broadcasters. In an attempt to attract more viewers and more

advertisement revenue, media operators often try to acquire exclusive broadcasting rights to sports events. This has led to the situation that some of these events are no longer available to all on free-to-air television. Therefore, a list of major sporting events has been drawn up that must be accessible to all viewers. The book examines the suitability and the necessity of this list. Fourthly, the book addresses a number of competition law concerns triggered by the fierce competition for these sports broadcasting rights. Through regulation and case law, the national and European competition authorities have created the conditions of open and fair competition for the sale, acquisition and exploitation of sporting broadcasting rights. The book studies whether, and if so, how, the rise of new media operators has influenced these competitive conditions. In this respect, attention is primarily paid to issues such as joint selling, sublicensing obligations and ‘must-offer’ obligations.

All in all, this book by Ms. Lefever deals with the right topic in the area of sports and the law, it asks many of the right questions and provides various useful insights, analysis and answers. I warmly recommend this book to broadcasters, sports governors, lawyers and all those with a general interest in the issue.

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