

BOOK REVIEWS

Katrien Lefever, *New Media and Sport: International Legal Aspects* (TMC Asser Press, 2012), 322 pp; Hbk, £117, ISBN 978-9067048729; eBook, £93.50, ISBN 978-9067048736.

The media and sport are locked into a close symbiotic relationship. The media provide much of the finance and publicity for today's top sports, while sport provides the media with high value content, access to which can make or break major media companies. Within sport and the media, a range of operators have competing priorities and concerns that are variously undermined or reinforced by the interaction between the two sectors. Given the potential for these transactions to be influenced by existing power relations and short-term commercial interests, should states be agnostic about their outcome? In particular, are the interests of consumers and citizens adequately taken into account alongside those of company shareholders and professional sports men and women? *New Media and Sport* sets out to explore these questions, examining the various rationales for regulating the trade in sports rights and whether media regulation still has 'a role to play in guaranteeing access to live and full sports coverage in the new media landscape' (p 2). The book is specifically concerned with international legal aspects and its focus is very much on developments within Europe, particularly the influence of the European Convention on Human Rights and European Union law, but it also discusses comparative examples from major sporting countries such as Australia in order to illustrate alternative regulatory approaches.

The development of pay-television in the 1980s created new opportunities for media exploitation of sport. Entrepreneurs such as Rupert Murdoch famously saw sport as the 'battering ram' with which they could break open the audiovisual marketplace, largely dominated in Europe by established public service broadcasters. The resultant competition led to a rapid escalation in the sums paid for key television rights and the gradual migration of premium sporting events from free-to-air to subscription services. In response, measures were taken at both domestic and EU levels to maintain public access to specific sporting events considered to be of social and cultural importance. Any equilibrium reached was, however, short lived as technological developments continued to revolutionise the media sector. Digitisation, coupled with growing mobile phone ownership and internet access, meant that alternative distribution platforms

and further opportunities for exploitation began to come on stream. These developments led to renewed interest in the way premium sports rights were being sold. In particular, there were concerns that the existing procedures were helping to entrench a few powerful pay-television operators in the market, potentially stifling new services on competing platforms, with broader implications for media pluralism. This second phase of turbulence was marked by a number of important regulatory initiatives and decisions, particularly in the competition law field, that are likely to shape the relationship between the media and sport for the foreseeable future. *New Media and Sport* is thus an extremely well-timed contribution to the literature, able to take stock of these recent developments and consider their longer term commercial, social and regulatory implications.

The book is divided into three parts. The first part explains how the 'sports/media complex', comprising producers of sports content, sponsors, media companies, platform providers and the public, has evolved in response to digitisation and convergence. In particular, Lefever notes how the top-down relationship between sports organisations, on the one hand, and the media and fans on the other, has become more engaged and interactive, with individuals not only able to determine how they watch a particular event—angles, replays etc—but also able to discuss developments on a range of social media sites and dedicated fan fora. Moreover, individuals have become producers of video content in their own right, filming sports events using compact digital cameras or smartphones and publishing their coverage online: activities that have led to rights holders imposing restrictions on the use or even possession of such devices in sporting venues. The ability of individuals, with no links to traditional media, to blog and post original video content online marks a more general process of 'disintermediation' as sports clubs and associations begin to develop their own websites and complementary services, offered directly to the public without media 'middlemen'.

Part 1 also focuses on the economic and social dimensions of sport, in particular the role of sport in enhancing social inclusion and a sense of community. It offers an accessible explanation of the history of, and basis for, European Union intervention in the sporting field and considers the potential impact of the new Article 165 of the Treaty on the Functioning of the European Union on sport. Although Lefever does not consider Article 165 to have fundamentally changed the way in which the European institutions address sporting matters—in particular, it has not created a general sporting exception—she notes that it has officially recognised the social as well as economic aspects of sport, both of which must be taken into account when developing policy in the area. This social dimension of sport is unlikely to be accommodated where regulators focus solely on the private interests of consumers as opposed to the communal and public interests of citizens, a distinction explored towards the end of Part 1.

New Media and Sport offers an unusually thorough exploration of the relevance of fundamental rights, and in particular Article 10 of the European Convention on Human Rights, for the development of media law and policy. In particular, Lefever considers

whether Article 10 imposes a positive obligation on states to ensure that the public can gain access to certain sporting events as an aspect of their right to information. The increasing importance of a human rights framework when considering sporting rules is evident from recent cases such as *FIFA v Commission* and *UEFA v Commission* (Cases T-385/07 and T-55/08), where the Court of Justice of the European Union examined the legitimacy of UK and Belgian restrictions on the sale of television rights to pay-television companies in terms of potential infringements of property and free speech rights. In upholding the European Commission's approval of the domestic measures, the cases provide support for Lefever's conclusion that states can legitimately intervene to protect the public's access to live and full sports coverage, whether through the application of competition rules or through sector specific legislation, provided such constraints are prescribed by law and proportionate.

Part 2 then takes up the examination of competition law and sport. An overarching consideration is whether the non-economic social and cultural considerations that underpin the specificity of sport can, and are, being taken into account in this context. Lefever concludes that such consideration is in practice rather exceptional, particularly at EU level, and that competition authorities tend to consider the ultimate viewer or listener from a consumer rather than a citizen perspective. After a brief explanation of the key competition rules applicable at EU level, she then, in a series of dedicated chapters, examines joint selling agreements, notably the *UEFA Champions League*, *German Bundesliga* and *FA Premier League* decisions; sublicensing obligations, which have featured in both joint selling and joint purchasing agreements; and must-offer obligations, which were important in the 2003 *Newscorp/Telpiù* merger decision (case COMP/M.2876) and the 2010 decision of UK communications regulator Ofcom to require satellite broadcaster BSkyB to make its premium sports channels available to other services at a fixed price.¹ These technical issues are navigated in a clear and succinct fashion, providing a helpful framework for understanding the field. In relation to must-offer obligations, for example, Lefever explains the distinction between wholesale and retail obligations using concrete examples and schematic charts. This section of the book serves to illustrate how different bases for intervention can be used to realise very similar ends, though with rather different implications for viewers. The joint selling decisions, in fragmenting and diversifying the available rights packages, helped to facilitate the development of new services on a wider range of platforms but also led to fans having to contract with more than one provider to ensure coverage of all key games in a tournament. By contrast, must-offer obligations do not fragment the rights but give the consumer a greater choice of provider and platform for accessing the same content.

1 See Ofcom (2010) Pay TV Statement at: http://stakeholders.ofcom.org.uk/consultations/third_paytv/statement; successfully appealed to the Competition Appeal Tribunal in *BSkyB, Virgin Media, Inc, the FA Premier League Ltd, BT plc and Top Up TV Europe Ltd v Ofcom* [2012] CAT 20.

The final part of the book examines media specific content regulation, in particular the EU Audiovisual Media Services Directive. The main focus here is on the right to broadcast short news clips, which can extend to sports events, in order to protect the public right to information, and the provisions on events of major importance contained in Articles 15 and 14 of the Directive respectively. Lefever provides considerable detail on domestic approaches to ensuring public access to events of major importance both in Europe and further afield. In particular, she examines the Australian anti-siphoning regime and the options that can be adopted to ensure that those free-to-air broadcasters that do acquire rights fully exploit them. There is also a helpful discussion of whether live-streamed internet services should be regarded as 'free-to-air', opening the door for services such as YouTube to bid for listed events.

New Media and Sport: International Legal Aspects is an important addition to the existing literature in the field. It not only explains the changing technical and commercial dynamics of the exploitation of sports rights, but it also explores these developments using both socio-cultural and human rights frames of reference. The competition law coverage is detailed yet accessible, and the final section on listed events explores the wide range of possible approaches to ensuring continued public access to key fixtures on television. Each chapter concludes with a helpful review of the available literature, key cases and texts for further reading. The clear, confident handling of the material means that this will be a useful book for both undergraduate and graduate students studying media, sport or EU, particularly competition, law. It will also be of interest to academics more generally, legal practitioners and policy makers working in the media and sport fields. This is an authoritative, up-to-date analysis, providing sound guidance on the law and policy. For anyone wishing to explore the role of the state and international institutions in regulating the relationship between the media and sport in this rapidly changing digital environment, *New Media and Sport* is highly recommended.

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