



# **Sports and Copyright: Are they in the same team?**

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# Example: Real Madrid

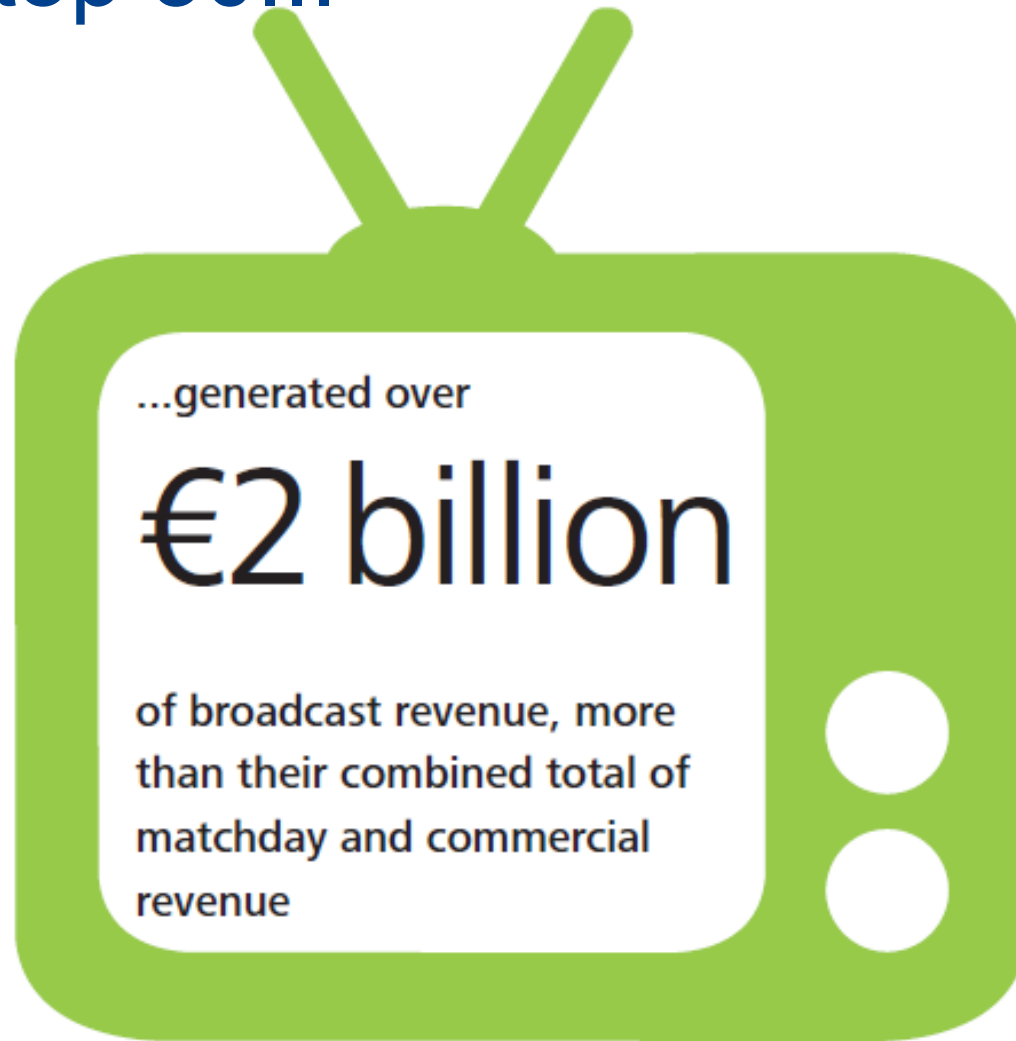
Real Madrid: 2015 Revenue profile (€m)



- Matchday €129.8m (£98.8m)
- Broadcasting €199.9m (£152.1m)
- Commercial €247.3m (£188.1m)

Source: Deloitte – 2016 Football Money League

# English clubs in the 2014/15 Money League top 30...



# Sports and Copyright: Are they in the same team?

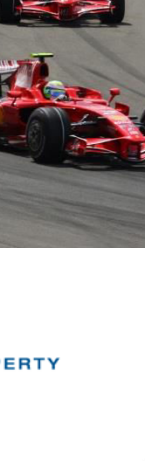
- Copyright and Related Rights as a key element in securing the financing of sport events
- ...Although other rights also play an important role

# Sports and Copyright: Are they in the same team?

- Copyright and Related Rights as a key element in securing the financing of sport events
- ...Although other rights also play an important role

# Where is the copyright protection in sports events?

# The rule of the game: “works”



# Berne Convention, Article 2

- (1) The expression “**literary and artistic works**” shall include every **production** in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, (...)

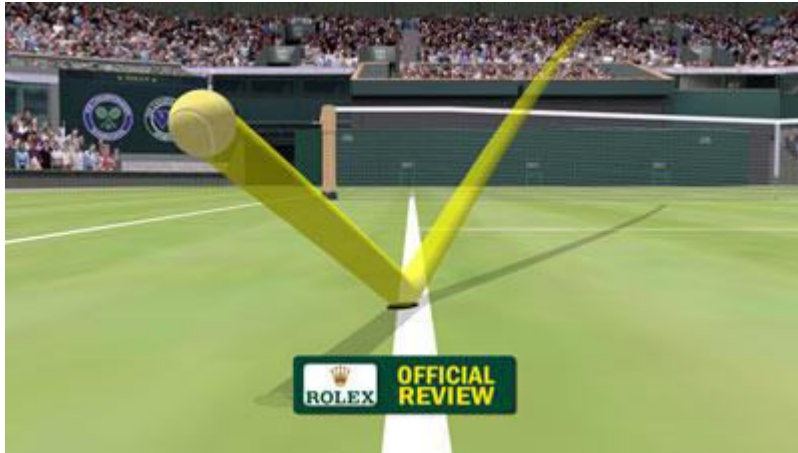
# Copyright and Sports Events

- **Sport events** are generally found to lack “**originality**” therefore are not considered as a “work in the literary and artistic domain”
  - *Case-law in Europe: European Court of Justice, 2011, C-403/08 and 429/08 - Premier League vs. QC Leisure*
- **Skills vs. Creativity**

# Copyright and Sports Events

- *“FAPL cannot claim copyright in the Premier League matches themselves, as **they cannot be classified as works.**”*
  - *European Court of Justice, 2011, C-403/08 and 429/08 - Premier League vs. QC Leisure*
- **Skills vs. Creativity**
  - *Case-Law in Europe: European Court of Justice, 2012, C-604/10, Football Dataco Ltd and Others v Yahoo! UK Ltd and Others*

# What about the recording of sport events?



# The recording of sports events

- Audiovisual recording of sports events may attract copyright if it fulfills the minimum level of **originality** for protection.
- Originality may be achieved through:
  - Variety of camera angles
  - 3D animations
  - Comments, graphs and other elements
- It would also fulfill the requirement of **fixation** existing in some countries

# Berne Convention

## ■ Protection of the “cinematographic works”

### ■ Listed in Article 2

1) *The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as ...cinematographic works to which are assimilated works expressed by a process analogous to cinematography;*

### ■ Art. 14 bis

# Audiovisual Work

- It is one category of “literary and artistic works.”
- International legal framework applies:
  - The Berne Convention
  - The WIPO Copyright Treaty
  - TRIPS Agreement

# Audiovisual Work: Relevant rights

- Reproduction
- Distribution
- Rental
- Broadcasting
- Communication to the Public
- Making available to the public

# Audiovisual Work: Author / Owner

- Berne Convention, Art. 14bis
- **Lack of Harmonization** at the international level on the authorship of audiovisual works: contractual arrangements for the exploitation of sports' events recordings

*(2)(a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.*

# Audiovisual Work

- Difference between **authorship** and **original ownership**
- Lack of harmonization in international instruments lead to different national approaches:
  - EC Rental Directive, Art. 2(2)

*The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors*

Is copyright over the  
“**audiovisual work**” the only  
form of protection?

# Right of Broadcasting Organizations

## ■ Rome Convention:

- Rebroadcasting

- Fixation of their broadcasts

- Reproduction of the fixation

- Communication to the public of television broadcasts against an entrance fee

# At the National Level

- Member States' freedom to:
  - Increase the level of protection of existing rights
  - Recognize other rights
    - Ex.: Current Discussions at the SCCR
  - Recognize other beneficiaries
    - Ex. Film Producers in the EU Rental Directive (2006/115/EC)

# If Copyright and Related Rights exist...

■ They are also subject to **limitations and exceptions**

■ At the **international level**

Examples:

- Article 10(1) Berne Convention: “quotations”

- Article 15 Rome Convention: “...*use of short excerpts in connexion with the reporting of current events*”

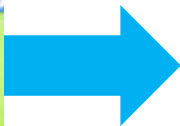
■ In **national legislations**

# Copyright as part of the legal environment for sport events

- Contractual Clauses
- Other Intellectual Property Rights
- Enforcement
- Information Right (ex. EU Directive 2010/13)
- Competition Right
- Special Major events Law (ex. Brazilian World Cup Law)
- Specific sport rights (sui generis) (Ex. Italy with “audiovisual sport rights”)

# Copyright and Related Rights

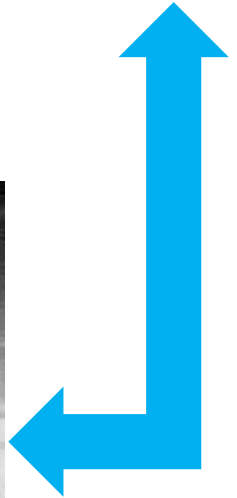
Sport Venue



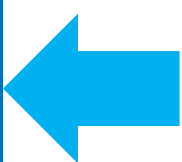
Audiovisual Work



Copyright



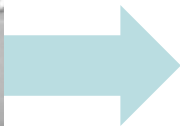
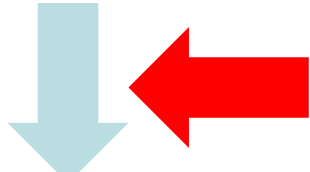
Broadcasting of the Audiovisual work



Related Rights

# Relevance of Contractual Clauses

Sport Venue



Audiovisual Work



Copyright



Broadcasting of the Audiovisual work



Related Rights



# WIPO's role in the game

- Administers 8 treaties in the field of Copyright and Related Rights
- Provides Member States an international forum for discussion
- Co-organizes events dedicated to IP and Sports
- Prepares informative materials about IP and Sports

# Copyright and Sports



**WIPO**

WORLD

**INTELLECTUAL PROPERTY**

ORGANIZATION

[WWW.WIPO.INT/IP-SPORT](http://WWW.WIPO.INT/IP-SPORT)

**WIPO**

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