

Your World First

C/M/S/

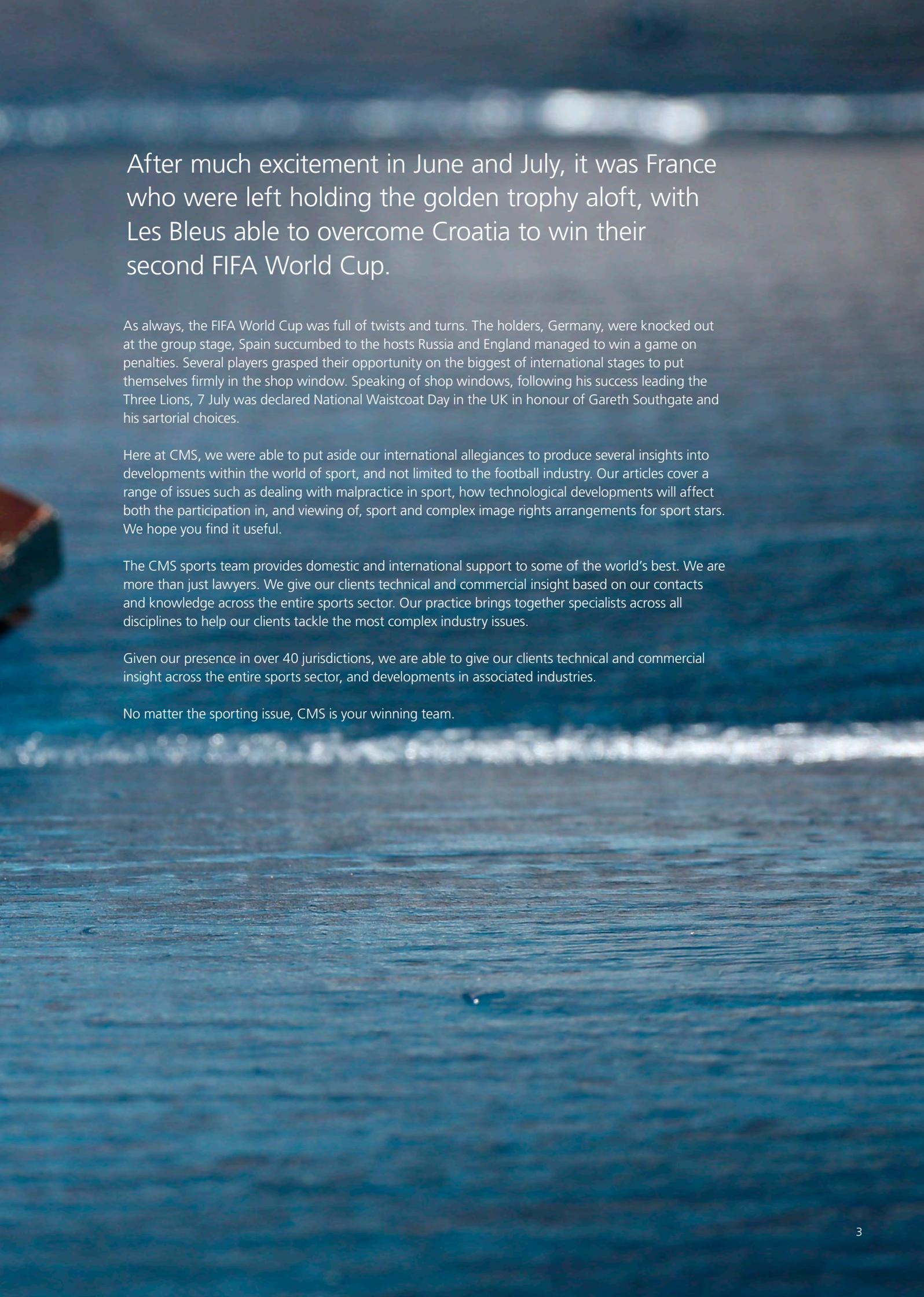
Law . Tax

Summer of
sports 2018



Contents

- 04 Over-the-top: the changing face of sports broadcasting
- 06 Addressing malpractice in sports
- 08 What is the place of virtual reality in sports?
- 10 Don't fall foul of ambush marketing rules
- 12 FIFA's influence on alcohol regulation
- 14 Drink responsibly (and legally) at football games
- 16 Image rights and the Mohamed Salah dispute
- 18 The rise of human enhancement in sport
- 19 Image rights licensed to the club: what is at stake for clubs and players/coaches?
- 20 The risks of reselling tickets
- 22 Endorsement dollars vs major success
- 24 Loot boxes – a treasure trove of gambling regulatory issues
- 26 The development of sports digital media companies
- 28 Virtual advertising enters the game
- 30 Tackling gender inequality in sport
- 32 Our sports expertise
- 33 Get in touch
- 34 Selected examples of our experience
- 35 Global presence



After much excitement in June and July, it was France who were left holding the golden trophy aloft, with Les Bleus able to overcome Croatia to win their second FIFA World Cup.

As always, the FIFA World Cup was full of twists and turns. The holders, Germany, were knocked out at the group stage, Spain succumbed to the hosts Russia and England managed to win a game on penalties. Several players grasped their opportunity on the biggest of international stages to put themselves firmly in the shop window. Speaking of shop windows, following his success leading the Three Lions, 7 July was declared National Waistcoat Day in the UK in honour of Gareth Southgate and his sartorial choices.

Here at CMS, we were able to put aside our international allegiances to produce several insights into developments within the world of sport, and not limited to the football industry. Our articles cover a range of issues such as dealing with malpractice in sport, how technological developments will affect both the participation in, and viewing of, sport and complex image rights arrangements for sport stars. We hope you find it useful.

The CMS sports team provides domestic and international support to some of the world's best. We are more than just lawyers. We give our clients technical and commercial insight based on our contacts and knowledge across the entire sports sector. Our practice brings together specialists across all disciplines to help our clients tackle the most complex industry issues.

Given our presence in over 40 jurisdictions, we are able to give our clients technical and commercial insight across the entire sports sector, and developments in associated industries.

No matter the sporting issue, CMS is your winning team.

Over-the-top: the changing face of sports broadcasting

In recent years, FIFA has been looking for ways to innovate its showpiece World Cup tournament. Russia 2018 has been the first to use the Video Assistant Referee (VAR) system during matches in an attempt to eliminate controversial refereeing decisions during the tournament (Lampard vs Germany in 2010, anyone?). FIFA also recently announced that the 2026 World Cup (and perhaps the 2022 World Cup) will feature 46 teams, rather than the traditional 32.

As the way in which the sport is played continues to evolve, so too has the way we watch football. In particular, over-the-top (OTT) platforms, which distribute audiovisual content to viewers over the internet, have become increasingly popular since the advent of high-speed internet.

Recent deals

OTT platforms' distribution of sports content can take multiple forms. The most common has been that of existing broadcasters creating their own OTT platform to supplement traditional broadcasting methods (e.g. cable or satellite). One example is SkyGo, which will allow Sky subscribers to continue watching Barclays Premier League matches on their devices under the latest rights deal, where Sky agreed to pay GBP 3.58bn for a three-year deal from 2019/20.

However, in recent years we have also seen *new* entrants to the broadcasting market foraying into sports content, such as standalone OTT platforms. The most obvious examples are the social media giants, Facebook and Twitter. The former recently agreed a deal with the Premier League to broadcast matches in South East Asia for (reportedly) GBP 200m, while the latter has aired Thursday night NFL matches in the past.

Similarly, Amazon Prime won the rights to show ATP tennis matches and, significantly, twenty Premier League matches per season from 2019.

Thirdly, rightsholders have started to exploit their content via 'in-house' OTT platforms. One example is the National Basketball Association's League Pass service, operated by Turner Broadcasting on their behalf, which offers live matches and highlights packages to its subscribers.

What does the trend towards OTT mean for sports broadcasting?

Sector

These initial forays into the market signal the intent of online giants, such as Amazon and Netflix, to become the biggest players in content distribution and media generally, using a strategy of sports rights acquisition to achieve this goal.

Competitors

As the tech giants put their hands in their (very deep) pockets to bid for sports content, this is likely to inflate the amounts required to acquire such rights.

Consumers

It is not yet clear whether the increasing involvement of OTT platforms in the market will lead to lower prices for consumers (as providers battle for market share), or whether the increased cost to broadcasters of acquiring the content (see above) will merely be passed on to subscribers. Recent history has shown that the cost for fans has increased steadily.





Some contractual implications

The trend towards OTT platforms when consuming sports content reinforces the importance of the new rules in relation to the portability of content. Under the Portability Regulation¹, which came into force on 1 April 2018, EU nationals who pay to watch their favourite sports online in their home member state can now access the same content whenever they (temporarily) go abroad in the EU.

Similarly, the licensing of content on a 'per territory' basis by rightsholders may be under threat. The global nature of the online players may force rightsholders to offer *worldwide* licences to broadcasters. For example, Amazon acquired the global rights to broadcast NFL's ten-game Thursday Night Football package in April 2017. This is in contrast to the traditional per-jurisdiction model of content licensing; by way of example, FIFA tendered the right to show the World Cup to local broadcasters in each territory with, for example, the BBC and ITV sharing the UK rights, TF1 and beIN Sports sharing rights in France, etc.

While England's fortunes in the World Cup seem to have dramatically changed this year, so too has the way in which we watch football. Stay tuned...



Matthew Hanson

Associate, CMS UK

T +44 20 7067 3852

E matthew.hanson@cms-cmno.com

Addressing malpractice in sports

Sports enable individuals to exercise their bodily talents. They galvanise communities, energise people, are an outlet for communal sentiments, shape national and local identities, produce shared stories, and gather people of all kinds of backgrounds for a common cause. Sports are also good for drawing attention and are increasingly a source of income, if not financial richness.

The financial factor however, has become a threat for sports as well. While young people all over the world are running across fields, wrestle, jump, skate, play, compete to enjoy themselves, we witness more and more financial malpractices, forms of abuse and exploitation, the influence of drugs, corruption, sexual abuse, and other practices that spoil the game.

The question is how to respond to such malpractices. Who should respond? Should that be governmental institutions like courts, or should sports organizations be the ones to take responsibility? And what kind of rules should those responding agencies have to issue?

When all those questions are answered, we can deal with the issue of compliance: that is, how athletes and sports clubs are held to the rules and are controlled for their adherence to, or complying with, the rules.

Social Sphere

Sports are firmly rooted in the social sphere. Kids go out of the house to play with each other. They play games and, at one point, will join a club or form a club to develop their skills and enter a competition with members or teams of other clubs.

When someone plays false, others will admonish him, or even banish him from the game.

In informal games, players will referee themselves. When there is a general agreement that someone committed a foul, they will correct the action. When the games become more serious or take place in the context of an organized competition, certain individuals, usually members of the clubs, will be disciplinary agents, usually called referees. When more serious faults are committed, that cannot be regarded as 'rules of the game' such as more serious misconduct on the pitch, or forms of corrupt behaviour, clubs will do the disciplining, usually by way of specially appointed disciplinary committees, that need to apply rules and regulations of its (national and/or international) Federation.

The important question related to compliance is whether the social sphere is sufficiently equipped by itself to address malpractices in sports as we have seen it in the recent past. Sports Federations are clearly not warmly welcoming external influences when it comes to matters of compliance. Court cases before the European Court of Justice and discussions with the European Committee have made clear that Sport Federations embrace what they call 'the sporting autonomy'. Sport belongs to the sport and there should not be too much interference from the outside world.

Compliance

However, we have seen several examples of malpractices in professional sports, which couldn't be addressed adequately by the Federations themselves. Where FIFA and UEFA implemented regulations with regard to Financial Fair Play, Third Party Ownership and protection of minors, it became clear that the enforcement of



such rules by the Federations and the compliance to the rules by its members is not at all an easy task. And what about doping in cycling and athletics or the exploitation of athletes: 'We are treated like sporting slaves' was the heading of an article in The Guardian newspaper of August 3, 2017. The article explained how athletes were bought by rich Arab and Middle Eastern nations and had their nationality changed against the promise of a good salary, housing and the like. There are numerous examples, however, of such athletes that were 'routinely mistreated, denied prize money and sometimes housed in filthy conditions'.

The question is then justified: how long will it take before people lose interest in sports dominated by financial interests, bribes, abuse and unfair competition? How to address malpractices and safeguard a positive outlook for sports in the future? Who should do what?

Other sectors will call for governmental rules and laws. If they do not do so, politicians may implement them. The challenge is the right design of such laws and the enforcement of compliance, as the latest crisis in the financial sector has made clear. Like that sector, the sports sector calls for better laws and for better compliance.

The point of departure remains that the most important rules are social and that compliance has to be that, too. Yet, with the overheated trading of players, the dominance of the market of television

rights, and the danger of the winner takes it all, which undoes the competitive principle of sports, the design of better rules and laws has become critical.

In an article that will be published in the September 2018 edition of the Global Sports Law and Taxation Report Arjo Klamer, Professor of Cultural Economics, Erasmus University Rotterdam, The Netherlands and I argue that Sport Federations should maintain as a principle the concept of sporting autonomy. Like the EU lawmakers, we recognise the danger of the imposition of laws on the world of sports. Such laws may undo the social fabric that gives sport its special characteristics. Even so, current practices make clear that certain interventions are necessary.

A good option is the creation of organisations in which (international) governments and sports organisations collaborate to address practices that have a reverse impact on the game and to come up with best practices on how to enforce compliance with rules that were implemented to safeguard the characteristics of sports and fair play. The foundation of the international anti-doping agency, WADA, is a good example of such collaboration that deserves copying.



Dolf Segaar
Partner, CMS Netherlands
T +31 20 3016 307
E dolf.segaar@cms-dsb.com

What is the place of virtual reality in sports?

From the invention of the first head-mounted display almost fifty years ago to the virtual reality (VR) pods that populated gaming arcades in the 1990s, VR technology has been around in some shape or form for decades. It has, however, failed repeatedly to achieve mainstream adoption. Nevertheless, there has recently been renewed interest in VR especially following Facebook's USD 2bn acquisition of Oculus in 2014. Could VR be a game-changer for sports? Possibly, but a number of consumers and commentators remain sceptical.

A fresh fan experience

The principal appeal of VR lies in its potential to deliver an immersive experience. This is particularly relevant to sports, where VR can give fans a front-row experience from the comfort of their homes. This potential was leveraged by NBC, in collaboration with Intel and the Olympic Broadcast Services, who broadcasted 30 Olympic events in VR during the PyeongChang 2018 Winter Games. No need to travel, no need to pay excessive amounts for tickets and no need to wrap up warm.

A development tool

VR is also increasing in popularity as a tool to improve sporting performance. In 2017, professional golfer Rickie Fowler teamed up with Success Series to offer VR golf lessons. Such initiatives show that there is scope for VR to be more than a new way for fans to enjoy existing content. Athletes and teams can also use the technology to engage with their supporters, create new experiences and even assist with training development.

UK-based company Mi Hiepa has developed a platform that allows players to input existing match data to recreate in-game situations.

The platform is proving popular, with several Premier League clubs already using it. A player can re-enter a game by wearing a headset and two small devices attached to their boots and shin pads. This technology helps players to develop their skills and can help injured athletes in recovery by allowing them to train while limiting the risk of contact.

Similar technologies are already widespread in the USA where over 23 college and professional teams, including the United States men's national soccer team and several National Football League franchises, incorporate comparable enhanced training solutions from VR start-up STRIVR Labs into their training routines.

Identifying the best talent

This technology can also assist sports clubs when scouting emerging talent. Platforms like Mi Hiepa's can collect vast amounts of player data, including information about body movement, reaction time and general performance during drills and training. Given the price tag attached to football player transfers, for example, perhaps clubs can leverage this data to make better personnel and commercial decisions going forward.

Bridging the gap between traditional athletes and gamers

Another exciting possibility is that the rise of VR could lead to the emergence of new sports. Games such as Racket: Nx combine video gaming elements and physical activity, potentially bridging the gap between traditional athletes and gamers. This is particularly exciting – and not just for fans - with eSports expected to generate a global revenue of USD 906m and audiences expected to surpass 380 million fans in 2018.



... or not quite there yet?

For all of the heightened interest around VR, many are still unconvinced. Particularly, critics comment that current VR technology does not match the lofty promise of a fully immersive visual experience. At PyeongChang, some viewers complained that the resolution reduced athletes to blink-or-you'll-miss-them blurs and the overall image quality was poor compared to a regular broadcast. This is due to current technological limitations, but also, in part, because broadcasters have yet to figure out how best to film and showcase compelling VR content to their audiences. Perhaps these issues will begin to fade away once content creators grow more familiar with VR broadcasting. The onset of 5G and other related networking innovations may also help improve the quality of the experience for viewers.

The bulky hardware also diminishes the social aspects of sports. Whether you are watching a game of football at the pub or soaking up the atmosphere at a live game, sports are traditionally enjoyed in the company of others. The best way to overcome this shortcoming is to make watching sports in VR more compelling. Virtually Live's technology has sought to achieve this by enabling fans to view a sporting event in near real-time from any perspective and to interact with other fans as avatars. Additionally, some broadcasters are using augmented reality technology to display real-time statistics and additional content directly onto the screen, while others have adopted the use of wearable technology to allow supporters to hear the athletes or see the game from their point-of-view. These innovations, when combined with VR technology, could open the door to a number of innovative broadcasting propositions in the coming years. However, we are not quite there yet.



Alexandre Naud

Associate, CMS UK

T +44 20 7067 3592

E alexandre.naud@cms-cmno.com

Don't fall foul of ambush marketing rules

As the world's most watched sports event, the FIFA World Cup provided brands with the inspiration and opportunity to create football-themed marketing and advertising campaigns, promotions and competitions. However, non-sponsor brands needed to ensure that they did not fall foul of FIFA's World Cup ambush marketing rules.

Battle of the sponsors

Sponsorship was clearly an important revenue stream for the World Cup, with FIFA having generated USD 1.6bn from these exclusive official associations during the previous tournament in 2014. In addition to the official World Cup sponsors, sponsors of the participating national teams and individual players also sought to exploit their exclusive associations to engage in brand-enhancing marketing activities. For instance, Brazil's star footballer Neymar is believed to have 39 sponsorship deals across 26 industry categories including in electronics, toiletries and the airline industry.

What is ambush marketing?

To protect the value of these sponsorship arrangements, FIFA and other World Cup participants took steps to prevent 'ambush marketing' by non-sponsor brands.

'Ambush by intrusion' involves non-sponsors carrying out unauthorised marketing activity at the sports event itself in the hope that the marketing will be noticed by spectators at the event and viewers at home. However, stunts such as a group of Dutch women entering a stadium wearing revealing orange outfits paid for by a non-sponsor brewer are likely to be the exception rather than the norm.

A more common activity is 'ambush by association' which is when a brand attempts to advertise in a way so as to create an association with the sports event in question. The desired effect is for the non-sponsor to enhance brand recognition and make the public believe that they are an official partner without paying any sponsorship fees.

With the continued significance of social media platforms, online ambush 'by association' has become particularly hard for rightsholders to police, especially with the increase in popularity of temporary publishing channels such as Snapchat and Instagram stories.

What legal tools are used to stop ambush marketing?

Intellectual property rights

FIFA has a large global portfolio of trademarks which include (among others registrations in the UK and EU for 'Russia 2018', 'Football World Cup', 'FIFA World Cup', 'World Cup 2018', various World Cup logos and the World Cup trophy.

The Football Association has registered trademark protection for the England National Team's iconic 'Three Lions logo'. Famous players are also increasingly relying on trademark protection – Cristiano Ronaldo has for example his well-known 'CR7' nickname registered as a trademark in various jurisdictions.

Unauthorised use of these trademarks or, in certain circumstances, similar signs to the trademarks can entitle FIFA or the relevant rightsholder to bring a claim for trademark infringement.

Even if not using the official World Cup marks or, a national team or a player's trademark, non-sponsor brands should be careful that marketing campaigns in the UK do not attempt to leverage the goodwill or 'reputation' of these brands to misrepresent an association with the event or relevant rightsholder. Re-creating the 'look and feel' of the World Cup branding or of a connection with a national team or player could lead to a claim of passing off.

Rightsholders also rely on copyright and design rights which subsist in the various visual graphics associated with the World Cup such as fonts, logos, mascots, imagery and on-screen graphics.

Statutory legislation

Russia introduced Federal Law FZ-108 especially for the World Cup, which made it an offence to create an unauthorised association with FIFA or the World Cup when marketing goods or services in Russia. The protections afforded to FIFA under the World Cup Law were extensive and are intended to cover non-sponsors' marketing associations even when FIFA's trademarks are not used.

FIFA's 'soft' guidelines

FIFA also issued a set of guidelines on the use of FIFA official trademarks during the World Cup. Although these are not legally binding, the guidelines provide an indication of the types of commercial activity that FIFA is likely to monitor and enforce against.

Advertising regulations

Non-sponsor advertisers should be aware of the UK Codes on Broadcast Advertising and Non-Broadcast Advertising, Sales Promotion and Direct Marketing. If advertising implies that the brand or its goods or services are officially associated or endorsed by a World Cup rightsholder, it may be considered to be misleading in contravention of the Codes.



Poonam Majithia

Associate, CMS UK

T +44 20 7367 2248

E poonam.majithia@cms-cmno.com

FIFA's influence on alcohol regulation

The World Cup 2018 was full of surprises. Russia as the lowest-ranked team in the competition made it to the quarter-finals. Argentina and Germany both crashed out and England won a penalty shoot-out, and made it to the semi-finals.

Football fans might have noticed another surprising fact while cheering for their team: beer was heavily promoted throughout the World Cup matches in the stadium and very visible on TV. How did this come together with the fact that Russia has been continuously restricting its law on alcohol advertisement?

In response to riots of Russian fans during the World Cup 2002, the sale of alcohol in soccer stadiums and at other sport events was banned. In 2004, Russia banned advertisement for beer in stadiums and advertisement spots throughout the evening program on TV. A year later, depicting beer with humans or animals was prohibited, followed by a general ban for beer advertisement. In 2014, the Russian Parliament suddenly repealed the law so that during public sport events, beer may now be legally advertised. It is not hard to guess which public sport event the Russian delegates must have had in mind when passing the amendment. Still, what was it about the World Cup that motivated a nation to throw its alcohol restrictions overboard, given it ranked fourth in the World Health Organisation's most recent statistics on alcohol consumption?

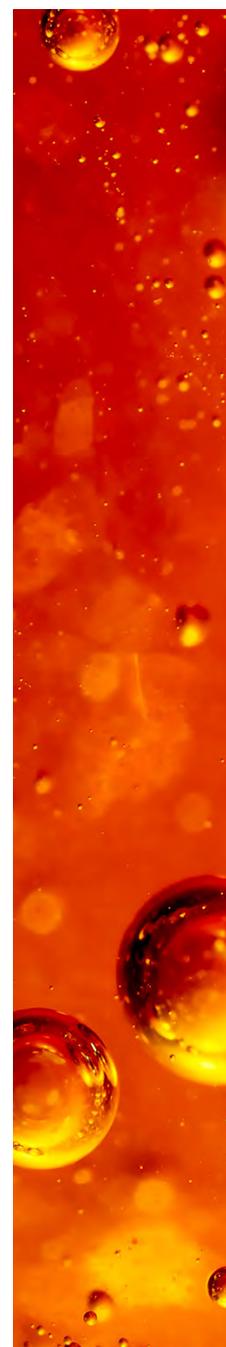
Money was surely a strong motivating factor. The costs of the World Cup 2018 in Russia were estimated at more than EUR 10bn and international beer producers traditionally are the major sponsors in football. Advertising revenue is generally needed to render large-scale projects profitable. According to estimates of the

Dutch brewery, Heineken, Russian breweries likely invested more than a EUR 100m in beer advertisements throughout the World Cup.

Far more persuasive, however, must have been FIFA's strong position on alcohol: 'Alcoholic drinks are part of the FIFA World Cup, so we're going to have them', stated FIFA's secretary Jerome Valcke in 2012. 'The fact that we have the right to sell beer has to be part of the law.' Although lobbying lawmakers is customary and justified to a certain extent, the undisguised clarity of interference of the FIFA is quite surprising - even more so given a nation's policy on health protection measures is a sensitive matter. 'It is inappropriate', finds Chris Brookes, Director of the UK Health Forum, 'that FIFA can demand countries relax rules which protect their citizens and in particular children from the harm caused by alcohol.'

Russia tried to mitigate the consequences of excessive alcohol consumption by issuing a ban on the sale of alcohol on match-days and the day before. But the impact of FIFA's position on alcohol naturally doesn't stop at country borders when a World Cup is in question. The advertisement of beer in the stadium was broadcast to any country irrespective of local alcohol regulations on advertisement and consumption. This conflict would only have been prevented by making use of a double production that is already common in the broadcast of soccer matches or by virtual advertising.

'Double production' means the technique that cameras are placed on each side of the pitch, while each nation's TV audience only has the perspective of one pitch side. This way, beer brands can advertise their products on the side of the pitch that is not visible for the nations with a strict regulation on alcohol advertisement,



whereas spectators of nations with loose laws on alcohol could still be targeted by the beer advertising present on one side of the pitch.

Another way to work around this problem could be virtual advertising that enables different brands to occupy the same space on perimeter boards marketing to different audiences. For example, you could have beer advertisement virtually layered on a perimeter board in the broadcast to a country where this is legal, and advertising for a completely different product virtually layered over on the same perimeter board in the broadcast to a country where alcohol

advertisement is banned. This way, each nation's specific laws would be respected while the multiple distribution of branding slots has the potential to boost advertising revenue at the same time. Augmented reality in the context of advertising offers many possibilities to add value for rights holders.



Sebastian Cording

Partner, CMS Germany

T +49 40 37630 325

E sebastian.cording@cms-hs.com



Drink responsibly (and legally) at football games

The tradition of alcohol consumption at football games goes way back, as far as the first organised football competitions. People would flock to games, enjoying drinks before, during and after the game (whether in celebration or to drown their sorrows). Alcohol consumption by fans during football games was not seen as problematic during most of the 20th century.

Unfortunately, problems on the football scene, including occasional violent incidents, have given rise to a debate on the control of alcohol consumption.

Indeed, in summer 2018, a Moscow government department issued statements that purchasing beer in shops or restaurants within a 2 km radius of the Luzhniki and Otkritie Arena stadiums, as well as the FIFA Fan Zone on Vorobyovy Gory would not be possible on match day and the day before during the World Cup. However, sale and consumption of beer produced by the official FIFA sponsor was allowed both at the stadiums and the fanzones.

The motivations behind this may have been multi-faceted but it is clear that problems associated with football matches are not just a local issue. Across the world, as more and more people flock to football games, some European countries have issued bans on alcohol consumption at football games. In 1996, the European Parliament adopted a report on hooliganism which advocated the ban of alcohol at football games.

In our home country, Croatia, the national legislator also implemented a ban on alcohol sale and consumption during football games in 2003 with the Croatian Law on Prevention of Violence at Sporting Events (the 'Law').

According to the Law, consumption and possession of alcohol at a football match is prohibited, unless the national sport federation obtains police authorisation for the sale and distribution of alcohol at a sporting event. Even when this police authorisation is given, certain restrictions and conditions on the consumption of alcohol will apply inside the stadium and in the areas surrounding the stadium.

Fans can consume only alcohol bought at the venue, which must not contain more than 6% alcohol. As a precautionary measure, alcohol must be served in containers that do not splinter and cannot be used as a tool for striking or tossing/throwing. In practice, alcohol is served in plastic containers. These rules also apply to the so-called fan zones. On a more general note, there are also specific laws regulating advertising/promotion of alcohol in electronic media (i.e. TV, radio and electronic publications) and in other media (e.g. newspaper, other press). The provisions for advertising of beer, wine and fruit wines are more liberal than for other types of alcohol.

Recently the football fans around Europe have raised their voices demanding for the lifting or mitigating of the bans. As it turns out, the bans have not yielded the desired results. Recent studies show that alcohol bans at stadiums and on transport had no real effect on reducing the overall intoxication of fans.

Many fans argue that the bans did not stand the test of time for a number of reasons; over the past couple of decades, the profiling of fans who can afford to attend the games, the infrastructure of the modern football stadiums, and general public awareness of these issues have changed. Certain jurisdictions have already





taken a more liberal approach, acknowledging that restrictions are not necessarily the most effective way of re-shaping problematic behaviour.

It remains to be seen whether the ban will be totally lifted in the future or if fans will still not be allowed to enjoy a drink during football games. In any case, CMS encourages you to drink responsibly.



Marija Mušec

Partner, CMS Croatia

T +385 1 4825 600

E marija.musec@bmslegal.hr



Jan Gebauer

Associate, CMS Croatia

T +385 1 4825 600

E jan.gebauer@bmslegal.hr

Image rights and the Mohamed Salah dispute

Mohamed Salah's season ended dramatically. Prior to crashing out of the UEFA Champions League Final with an injury, he was involved in a dispute with his national football association, the Egyptian FA, over the unauthorised use of his image.

Salah, through his image rights company, had a sponsorship agreement in place with telecommunications company Vodafone. However, the Egyptian FA had allowed his image to be used to endorse a competitor. This prompted outrage from Salah and his agent, and public outcry in Egypt in support of their most famous sportsman, with 'I support Mohammed Salah' trending online. This eventually prompted the intervention of Egyptian government officials to resolve the issue.

Image rights agreements have been used in sport for decades. We analyse the basic principles from a UK perspective below.

What is an image rights agreement?

Typically, under an image rights agreement, a player will license the rights to their 'image' to their club who, in addition to paying the player a wage, will pay royalties for the use of the player's image. In the UK, 'image rights' is a misnomer given that there is no standalone protection for use of one's image. As such, a player is not able to directly license rights to their image and in reality, the image rights agreement will in fact be a licence to a 'bundle of IP rights', ranging from trademarks and social media handles to player likeness.

Why enter into an image rights agreement?

Image rights agreements can often provide tax benefits to famous sportspeople. The player will often first license the rights to use their 'image' to an image rights company (IRC), and it will be the IRC who enters into the agreement with the club.

Through using an IRC, the player pushes any taxation of the royalties into the capital gains tax regime rather than income tax regime. Given these tax implications, HMRC has taken an interest in these image rights schemes to avoid players benefitting from 'disguised remuneration' and has introduced stringent conditions on their operation. These conditions include which individuals can make use of these schemes and guidance on the level of royalty payments that can be made.

Further, for UK residents, the IRC must be UK based. For a UK resident non-domiciled individual, however, a non-UK based IRC can still be effective for any funds that are not sourced in the UK. For example, Salah is based in the UK through his club Liverpool but the IRC involved in the dispute was based in the Cayman Islands. However, the agreement at the centre of the dispute was Salah's endorsement agreement with Vodafone Egypt and therefore was outside the jurisdiction of HMRC.

Commercial realities

The Salah dispute exemplifies the commercial complexity of image rights agreements. Through using Salah's image without authorisation, the Egyptian FA was likely breaching its agreement with its sponsor as it would have assured the



sponsor it had the ability to use the image of its player. Salah's IRC could also pursue legal action against the Egyptian FA for its unauthorised use, but such action would have come in the weeks before the FIFA World Cup and pit a country's idol against its national ruling body. Further, and although not relevant here, clubs will also have comprehensive image rights agreements in place with its major players and therefore may have competing interests in scenarios such as the Salah dispute.

The disputes emphasises the need for clubs, national associations and IRCs to ensure they correctly 'back to back' sponsorship agreements to ensure that they have the necessary rights they are purporting to license.



Tom Scourfield

Partner, CMS UK

T +44 20 7367 2707

E tom.scourfield@cms-cmno.com



The rise of human enhancement in sport

Since the beginning of time, athletes have tried to gain a competitive advantage over their opponents. The motivator isn't just making money - it's also about the glory and praise that comes from being the champion. This mentality, of course, not limited to the world of sports.

Meticulously planned diets, perfectly controlled workouts, carefully selected nutritional supplements, and the latest high-tech sports equipment are the new best friends of any professional athlete seeking to gain any possible advantage.

Unfortunately, the combination of fast progress in scientific research with the constant pressure placed on athletes (from various sources) to win has, in some cases, had negative effects. Notably, we observe, across almost all sporting disciplines, the abuse of chemical substances which artificially improve the condition of athletes. Thanks to the evolution of testing systems and their sophistication, and increased media coverage of athletes' personal and professional lives, doping is now dramatically more visible and demands to hold perpetrators to account are louder.

There have been four phases in the history of doping: (i) natural doping; (ii) single or first generation chemical doping; (iii) systematic and second generation chemical doping; and (iv) biotechnological doping. You may be surprised to read that it was not until 2003 that the World Anti-Doping Agency (WADA) clarified that genetic doping was included within the list of prohibited practices.

Prosecuting an athlete for doping (particularly, genetic doping) can be extremely technically challenging. The main problem lies in the fact that proteins expressed by the introduced transgenes are essentially the same as their endogenous counterparts. Distinguishing between the two

comes with great difficulty, although there are now some new techniques that allow detection of genetic manipulation.

From a legal standpoint, there are also several hot topics in discussion.

Firstly, what is the right channel for prosecution of these bad behaviours? Some jurisdictions, such as Spain, have incorporated a specific doping category to their criminal codes. However, there are voices who loudly assert that anti-doping administrative proceedings are more than adequate to hold those accused of doping to account. They argue that doping specific categories are unnecessary in a criminal code since they already include specific categories which cover the issue (prosecuting 'regular' genetic manipulation, for instance).

The second legal challenge is how to create systems that are simultaneously legally effective and rigorous (ensuring that tests and their results are useful from a legal point of view) whilst affording the necessary respect to the fundamental rights of athletes as human beings. The continued geo-localisation of athletes and the level of intrusion in their private lives by the authorities (and now media) has long been fiercely criticised by athletes. With the General Data Protection Regulation now in full force since 25 May 2018, privacy will play an even more relevant role and become a driver when designing these types of control systems.

As in many other fields, technology, fundamental rights and ethical values are fighting to prevail.



Bartolomé Martín

Counsel, CMS Spain

T +34 91 451 92 75

E bartolome.martin@cms-asl.com

Image rights licensed to the club: what is at stake for clubs and players/coaches?

Up until a new French law which was adopted in 2017¹, the employment contract with a club and the deriving salary covered the activity performed on the football field and use of the player's image by the club. With the reform, the use of the image rights by the employer-club may give rise to distinct image rights licensing agreement (IRL) allowing the club to save the employer's 40% social tax on royalty formerly due on salary. The aim of the reform is clearly to allow French clubs to be more in line with their opponents in Europe who are subject to lower employment tax burdens.

A decree for an actual application of the reform is still expected. It should bring guidelines and set boundaries such as a cap for the royalty amount.

The employment contract should remunerate the activity of the player or the coach when their physical presence is required (games and training sessions mainly) whereas IRL should govern the use of the player's image, voice or name for which their physical presence is not necessary. Image rights benefitting the club at events where the player is on the field are likely to remain covered by the employment contract such as live broadcasts of games.

The personal image of the sportsman by the club may be both used separately or collectively (a minimum of five players is required). Use of the image rights in a collective context by the club is currently covered by the employment contract. Further legislative amendments would be necessary for shifting to the IRL. Royalties must be assessed exclusively on the revenue generated by image rights. The expected decree should list

the types of endorsements/commercial income derived by the club generated through the exploitation of the player's image.

However, clubs should look carefully the actual extent of the savings especially with international players.

For 'Ligue 1' players/coaches having negotiated an after taxes compensation from the club, the question is as to whether the club would include the remuneration of the use image rights into the compensation package. Star players already negotiate the use of their image rights with sponsors on an after taxes basis. Therefore, it is likely that international players claim an after tax figure or range on the image rights component as well. This anticipated evolution should not go without complications if players/coaches have assigned their rights to a controlled image rights company (CIRC). The actual calculation of the effective tax burden might be complex due to anti-abuse mechanisms resulting in reporting to French tax authorities, the CIRC earnings for increased taxation purposes. Also, the personal income tax allowance from 30% to 50% granted to impatriates for the first 8 years of residence in France is not applicable to the royalty (but only on salary). Therefore, clubs should weigh carefully, for each case, the extent of their employer's social tax savings with the extra cost deriving from the increased player/coach income tax (as compared to a salary) to be borne.



Michel Collet

Partner, CMS France

T +33 1 47 38 55 00

E michel.collet@cms-fl.com

¹ Law 2017-261 of March 1st, 2017 aiming at preserving the ethics of sport, improving the regulation and transparency of professional sport and increasing the competitiveness of clubs.

The risks of reselling tickets

At the European Cup Final at the Heysel Stadium in Brussels in May 1985, 39 people were killed and hundreds injured during violent confrontations between English Liverpool football fans and Italian fans of the opposing team, Juventus. In the wake of that disaster, European and national legislators adopted legislation to increase international police cooperation and prevent and control violence and disturbances in connection with football matches.

In Belgium, the Act of 21 December 1998 on the safety of football matches imposed several obligations on the organizers of professional matches, including concluding agreements with local public authorities and the police, recruiting and using stewards, and denying convicted supporters access to stadiums. The 1998 Act also prohibits the resale of tickets, imposing a fine of EUR 40 to EUR 4,000 and/or a prison term of six months to three years. Reselling tickets is only allowed in Belgium, either with the consent of the event organizer or on a not-for-profit basis.

The statutory prohibition on reselling tickets is often matched by a similar contractual obligation. The organisers of international football matches provide in their terms and conditions that the ticket is personal and cannot be transferred. Otherwise, football supporters may be seated near aggressive supporters, risking violence and disturbances.

The terms and conditions for the 2018 FIFA World Cup Russia prohibited the resale of a ticket holder's ticket, except in particular circumstances, such as illness. The reasons for this limitation ruling include: (i) event security, (ii) consumer protection, (iii) preventing the sale of counterfeit tickets and (iv) protecting a fair pricing scheme.

The statutory and contractual rules made it very clear that reselling tickets for 2018 FIFA World Cup Russia was a risky business for both reseller and buyer. With fines, possible imprisonment, and denial of entry to the stadium, both sellers and buyers infringing these rules lost out.



Tom Heremans

Partner, CMS Belgium

T +32 2 743 69 73

E tom.heremans@cms-db.com

0812

NT CODE

216

SECTION/AISLE

P

ROW/BOX

7

SEAT

A

ADMISSION

67.50

C0812

EVENT CODE

00CCT

LOWER

LEVEL

FC 2.00

CONVENIENCE CHARGE

8.35

16

SECTION/AISLE

10

SEAT

P 7

616

0JUL

N 2399

216

SEC.

ADULT

ROW

P

CA 67.50

SEAT

7

6360359061

Endorsement dollars vs major success

Endorsement deals with top sports stars can provide companies with priceless exposure for their brands to the global market. To have the top star wearing your clothes or using your equipment drives huge sales as consumers trust the faces they recognise and want to replicate the world's best by wearing the same clothes and using the same equipment as their idols.

Golf has traditionally always had endorsement deals between manufacturers and its leading professionals. The golfing greats from the early 20th Century, Walter Hagen and Bobby Jones, endorsed clubs with their names and signatures featuring on the clubs manufactured by Wilson and Spalding. Ben Hogan started his own club making businesses in the 1950s and the late great Severiano Ballesteros put his name to Slazenger clubs. Modern day players are almost exclusively seen wearing their branded baseball caps or visors and with sponsors' logos on their clothing. Watch any golf event on television and you will be bombarded during advert breaks with the leading golfers in the world explaining why they wear the shoes they do and how the clubs they use are the best on the market. The golf club market alone is estimated to be worth some USD 6bn in worldwide sales by 2020. It is seriously big business.

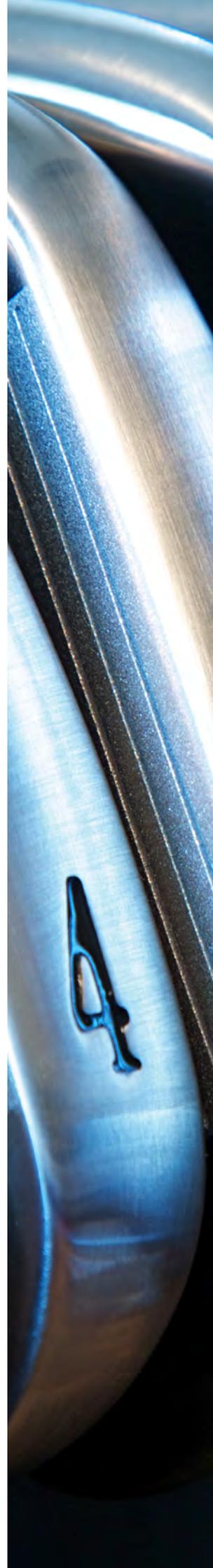
Of course the players in these adverts are being paid handsomely by the brands to wear their clothes and shoes and to use their clubs and golf balls. The maximum number of clubs a golfer can carry in competition is 14. Golfers typically sign endorsement contracts either to play exclusively all of a manufacturer's clubs or to use a certain number of that manufacturer's clubs within the permitted allocation.

Something interesting has been happening this year in relation to golf equipment. What do Patrick Reed, Brooks Koepka and Francesco Molinari all have in common?

Yes, they are all professional golfers. Yes they have been the winners of golf's last three major championships (the 2018 Masters, the 2018 US Open and the 2018 Open Championship). Yes, they each have worldwide exemptions to play in the biggest events in the world and will go down in golf's history books as winners of majors. Those are all true but they are not the most interesting thing they have in common.

What is most interesting about these three golfers and what brings them together in an exclusive club is that they have no endorsement deal to play a certain manufacturer's golf clubs in competition. Other than Molinari's putter (he has a contract with Bettinardi), these three players won the first three majors of the 2018 season being free to choose whatever combination of clubs in their golf bags they wanted.

This surely cannot be a coincidence. It has often been the case that after a top player signs a new endorsement deal their performance dips. Rory McIlroy struggled when he moved from Titleist to Nike in the biggest deal of its time. The same was true with Phil Mickelson on his move to Callaway in what was a controversial deal when he changed brand shortly before the Ryder Cup. Not long after McIlroy's struggles with Nike golf equipment, the sports giant announced that it would no longer manufacture clubs. Perhaps a sign of the difficulties that they were having with design. It was no secret that the





top players who were signed with Nike had issues with the clubs provided to them. Our three major winners all wear Nike golf clothing but do not have any Nike clubs to play as a result of the manufacturer pulling their clubs and so the three players are free to choose whatever equipment they want and play any combination of brands which best suit their game.

Does this therefore mean that the top golf professionals are putting financial gain with lucrative endorsement deals ahead of performance by being able to choose the clubs which best suit their game, rather than their sponsor's equipment? Well, if the evidence of the last three majors is anything to go by this may well be the case. The big question is whether others will follow suit. At the moment, it doesn't seem likely that players will cut off a healthy revenue stream by ditching their endorsement deals to freely choose their equipment. However, if the majors continue to go to those who are able to make a free choice then others might start to follow suit and try to negotiate different deals with the manufacturers to allow more flexibility with the equipment they use in the quest to join the elite club of the major golf champions. Manufacturers may well be looking at the current trend with a worry and some inventive thinking to keep the top names playing their clubs.



Will Anderson

Senior Associate, CMS UK

T +44 131 200 7429

E will.anderson@cms-cmno.com

Loot boxes – a treasure trove of gambling regulatory issues

The popular FIFA computer game published by Electronic Arts (EA) is one example of a game which might face enforcement actions of the Dutch Gaming Authority as well as Belgian authorities due to its use of loot boxes. Many computer games use so called loot boxes which are in-game virtual treasure chests containing a random and unknown selection of virtual items. In the FIFA Ultimate Game modus players can buy packages that provide them with a number of in-game footballers that players can add to their FIFA Ultimate Team squad.

The Netherlands

The Dutch Gaming Authority conducted a study into loot boxes in computer games and published its conclusion on 19 April 2018. The Gaming Authority found that loot boxes in certain situations fall under the definition of a game of chance in Article 1 of the Dutch Betting and Gaming Act (WOK). According to the WOK, an activity is a game of chance if a prize can be won, and the participants cannot influence who the winner is. Offering a game of chance without a government permit is not allowed and might result in administrative fines up to EUR 830,000.

According to the Gaming Authority, a loot box is considered a game of chance if (i) the content of the loot boxes is determined by chance and (ii) the object or property obtained by the loot box can be transferred. The Gaming Authority does not distinguish between transferability inside the game or transferability outside the game (i.e. through a platform of a third party). This means that, strictly speaking, a government permit is required for any computer game that offers a loot box of which the content is determined by chance and of which such content is **transferable**.

In addition, the Gaming Authority concluded that there is a possible link between loot boxes and gambling addiction. The Gaming Authority advised the providers of these games to remove the addiction-sensitive elements ('near-profit' effects, visual effects, and the possibility of opening loot boxes in quick succession) from the games, and to take all measures to protect vulnerable groups, such as underage players and players with gambling addiction.

The Gaming Authority stated that publishers of computer games had until 20 June 2018 to comply before the Authority began enforcing this decision although it is still not clear how the Authority will intervene in the case of non-compliance. What is clear is that the stakes for game publishers such as EA are high, since loot boxes and similar elements are likely responsible for generating a substantial turnover. Moreover, the Gaming Authority has issued a direct warning and threat of enforcement.

Belgium

In its research report of April 2018, the Belgian Gaming Commission (BGC) reached a conclusion similar to, or that reaches even further than, that of the Dutch Gaming Authority. Referring to 'FIFA 18' as one of the games that it examined, the BGC concluded that paid-for loot boxes – i.e. loot boxes purchased through real money or in-game currency, but not through game-play currency – meet the requirements set out in the Belgian Gambling Act (BGA) to be qualified as games of chance.

According to Article 2, 1°, of the BGA, games of chance are defined as requiring (a) a game, (b) a stake, (c) a gain/loss and (d) a factor of chance (albeit ancillary). Most of the debate about the applicability of the BGA to paying



loot boxes centers on the requirement of the presence of a gain/loss. The conclusion reached by the BGA is based on a very broad interpretation of such requirement, under which the possibility of a gain and the possibility of a loss are purely alternative conditions: it is sufficient that the player has the possibility either to make a gain or to lose his stake. This view is however not supported by all legal commentators nor by previous case-law decisions which rather considered that these conditions are cumulative or, at least, alternative in one way only (i.e. there must be a possibility of a gain, whereas the sole possibility of losing the stake does not suffice).

If the position of the BGC is followed, offering paid for loot boxes in Belgium constitutes a criminal offence which might be sanctioned, at least in theory, by (i) imprisonment for a period of between 6 months and 5 years and/or (ii) a fine of between EUR 800 and EUR 800,000. That said, as indicated in a press statement dated 28 April 2018, the Ministry for Justice (Koen Geens) seems to be willing to set up a dialogue with game developers, platforms and licensors in order to ensure proper regulation of loot boxes. Moreover, the BGC has recently declared that a more substantial review and update of the current version of the BGA may need to be considered but it is currently unclear whether this could also include a rethinking of the aforementioned position.



Rogier de Vrey

Advocaat, CMS Netherlands
T +31 20 3016 259
E rogier.devrey@cms-dsb.com



Tim Wilms

Advocaat, CMS Netherlands
T +31 20 3016 398
E tim.wilms@cms-dsb.com



Dirk Van Liedekerke

Partner, CMS Belgium
T +32 2 674 85 70
E dirk.vanliedekerke@cms-db.com



Alexis Laes

Associate, CMS Belgium
T +32 2 674 85 77
E alexis.laes@cms-db.com

The development of sports digital media companies

In our Sports Trends article, published in January 2018, we discussed the development of digital media companies thriving in the non-live sports sphere. Whilst large TV broadcasters have dominated the live broadcast of sports, online players have grasped social media to commercialise the coverage of not just sport alone but the atmosphere and culture around sports.

We predicted 2018 would see increased interest in these online offerings from larger, more traditional players and also the branching out of these platforms into live streaming of sports. As we move through 2018, both of these predictions appear to have materialised.

Corporate activity

The UK based website Copa90 is reported to have undergone another round of funding in April, securing a 10% cash investment from Infront Sports, the marketing group owned by Dalian Wanda. The funding allowed Copa90 to boost its coverage of the 2018 FIFA World Cup and its presence in Latin America and China. This is the latest in a series of investments in Copa90 from the likes of Liberty Global, Major League Soccer and Turner, the latter a deal on which CMS acted.

Whilst TV has dominated live coverage of sports, platforms such as Copa90, Bleacher Report and Barstool Sports have thrived in sports coverage across social media and apps. Traditional sports media outlets may have more 'followers' than the likes of Copa90, but it is the 'impressions' these platforms are creating across social media and the resulting engagement with fans that is impressive and attracts investment interest.

They are also very popular in the 16-34 market that has proven to be lucrative in advertising terms which is another reason why larger players are taking an interest. These platforms are agile enough to appeal to a younger audience, offering easily digestible content in a 'peer-to-peer' voice.

However, investments in and partnerships with these companies are not always without issue, especially with platforms that have thrived using the 'peer to peer voice'. For example, in the US, ESPN announced a partnership with Barstool Sports that was cancelled almost immediately as previous offensive articles published on the platform re-emerged.

Live broadcast of sports

Whilst these online platforms have been able to excel in parallel to live broadcasting of sports, moves are afoot for an overlap between the two.

For example, in the US, the Turner-backed Bleacher Report has recently announced the launch of B/R Live, which will be a direct to consumer live sports streaming service. Pundit Arena, the Ireland based fan generated content platform, has also recently branched out into live streaming, albeit on smaller scale sports events.

There has been much discussion recently around movements from Amazon and Facebook into live sports. However, platforms which have dominated the non-live sports sphere may also have a part to play in the push towards OTT sports broadcasting.





Next steps

Moving forward, there is likely to be more significant investments in these digital media companies as they grow in popularity. It will also be interesting to see if a B/R Live type offering is replicated in Europe.

Of particular interest in Europe was the Players' Tribune expansion from the US in time for the 2018 FIFA World Cup. This platform offers content provided by players and athletes and has proved popular in the US as consumers are given a direct insight into the sports they love. Whilst entering the live-sports market may not be an aim for this platform, executives have spoken of the aim to sign deals with networks, online streaming services and other content distributors and it is an example of the further diversification of sports media.



Paul Guite

Partner, CMS UK

T +44 20 7067 3465

E paul.guite@cms-cmno.com

Virtual advertising enters the game

On 15 April 2018, for the first time in France, the French football champion, Paris-Saint-Germain, displayed virtual advertising on the perimeter boards of the pitch during the Ligue 1 match against its runner-up Monaco at the Parc des Princes in Paris. In practice, it means that TV viewers watching the match saw different ads on the perimeter boards depending on which country they were located in.

This live test in France comes just after another test implemented successfully earlier in February 2018 in Germany during the football Bundesliga match between Borussia Dortmund and FC Augsburg. Since then, the German Football League (DFL) has given the green light to use this technology for Bundesliga matches during the coming season 2018/2019.

The development of virtual perimeter advertising has been long-awaited and is of particular interest for football clubs since it could open up new revenue streams. Indeed, they could target specific markets by broadcasting audience-oriented ads tailored for each territory where the TV signal is received.

European football clubs could now segment the distribution of ads depending, for instance, on the type of broadcasting (live or delayed). They could offer advertisers context-based brand communications associated with an event (e.g. when a team scores) as well as personalised advertising (based on the profile of the TV viewer and his or her specific behaviour).

In addition, virtual advertising could let advertisers and broadcasters adapt or select the ads to be broadcast to comply with local regulations and restrictions on ads, such as those regarding alcohol and tobacco in France.

The use of this technology on TV is, however, subject to broadcasting regulations in force in EU countries. The impact of this leaves room for uncertainty, especially in France.

In February 2003, the French TV broadcasting regulator *Conseil Supérieur de l'Audiovisuel* (CSA) indicated that it did not object to the French Rugby Association using virtual advertising to display ads for alcohol during the 2007 Rugby World Cup in countries other than France (where such ads are prohibited on TV). Nevertheless, it further specified that, should a TV broadcaster introduce virtual advertising outside spaces dedicated to advertising and broadcast it in France, such communication would constitute surreptitious advertising, which is prohibited under EU and French law.

Furthermore, personalised advertising could face a regulatory hurdle in France, apart from data protection issues: TV broadcasters are legally bound to broadcast ads simultaneously to all TV viewers in the same territory, which could exclude targeted advertising based on the viewer's behaviour.

After its public opinion in 2003, the CSA did not further advise on virtual advertising in sports. In July 2016, it merely indicated that legal impediments to virtual advertising should be first discussed between broadcasters and leagues. Since then, no specific regulation regarding virtual advertising has been enacted in France, nor has the CSA clarified its position on this matter.

The recent use of virtual advertising in European football leagues could encourage competent authorities to clarify or amend rules in this respect.



Florentin Sanson

Associate, CMS France

T +33 1 47 38 40 33

E florentin.sanson@cms-fl.com



Tackling gender inequality in sport

Every year Forbes publishes its list of the highest paid athletes in the world. The overall pay of these athletes is comprised of their salary/winnings together with their endorsements over the year. This year's list, published at the beginning of June, throws up some interesting statistics and one unignorable shocker.

The first surprise comes at the top of the list and involves one of the most controversial personalities in sport, as well as one of the most controversial matches to take place in world sport last year. It is none other than unbeaten boxing legend, Floyd 'Money' Mayweather who tops the list with an astonishing USD 285 m earned. What is amazing is that he achieved these earnings with just one professional fight in 2017, having come out of retirement for the bout with MMA and UFC star, Conor McGregor.

Mayweather's position at the top of the list dwarfs the competition as at USD 285m he earned more than second place Lionel Messi (USD 111m) and third place Cristiano Ronaldo (USD 108m) combined. Of course, Mayweather couldn't have done it without his opponent on the night, McGregor. The UFC star sits at fourth in the list with total earnings of USD 99m. Mayweather is unquestionably one of boxing's greatest fighters and its greatest ever self-publicist. He was a huge driving force behind these astronomic numbers. However, with this cross codes fight the world of boxing is now well aware that the rise of MMA and UFC and the popularity of individuals such as McGregor is a threat to its dominance in the global sports market. It will be interesting to watch how the Forbes list develops in years to come as UFC takes a greater hold on world audiences.

The second fact that stands out from Forbes' list is that over 70% of entrants are from the US heavyweight sports of American football,

baseball and basketball, with Cleveland Cavaliers small forward, LeBron James, leading the way at eighth in the list with earnings of USD 85.5m. This is a staggering proportion of the list to be taken up by just three sports which have traditionally had limited reach outside the USA. However, with recent NFL games in London and more to come, as well as talks for baseball at London's Olympic stadium and basketball at the O2 Arena, it is clear that the commercial powerhouses of US sport are making their move on the rest of the world.

However, these statistics are mild compared to the fact that, amongst the USD 3.8bn shared by the top 100 athletes, there is not one single woman in the list.

Serena Williams, the sole woman in last year's list, is absent from the 2018 roster. The very fact that in a year where Williams took time off to have a baby, she drops off the list and no other woman is in the top 100 is clearly a serious issue. Williams has global appeal and is undoubtedly tennis' greatest female star. Leading the way in American tennis and with an astonishing 23 singles grand slams to her name one would expect she should be at the top table of highest earners in sport. That she is there is thanks in no small part to Billie Jean King and those who formed the WTA in 1973. Tennis leads the way with equal prize money at Grand Slams and a women's tour which is globally supported by sponsors and broadcasters.

It certainly was not an easy road for tennis to get where it is now but it shouldn't be an uphill struggle for women's sports. Sponsors and broadcasters must realise that women in sport need better remuneration both in terms of prize money on offer or salaries as well as endorsements. The prize fund at 2018's golf US Open in the men's tournament will be over





USD 12m. The women's tournament prize fund is less than half at USD 5m. The disparities are closing but is it quick enough?

Things are hopefully changing. Manchester United have announced that they will relaunch the women's team that they scrapped in 2005. The English Women's FA Cup final attracted a record crowd of 45,423 at Wembley this year. Compare that to the attendance in 2013 of 4,988 and the rise of women's football is evident. The English Women's cricket team is full time professional and making fantastic strides in the game but without the endorsement deals and salaries seen by their male counterparts.

If women's sport is to continue to grow and to encourage others to become top sports stars, it is vital that sponsors, broadcasters and tournament organisers recognise the value in these stars and that gender inequality is something they can help tackle. It shouldn't take the Forbes list, containing this gaping omission, for things to change but let's hope this is a catalyst to speed up the process and that in the future the top 100 will have an equal representation of women and men.



Will Anderson
Senior Associate, CMS UK
T +44 131 200 7429
E will.anderson@cms-cmno.com



Our sports expertise

Media rights

We have market leading expertise in every aspect of media rights, including content production, distribution and in particular, broadcast rights deals which has seen us act for some of the world's biggest sports media rights holders. We have helped clients to seal record breaking deals and we have significant expertise in new media. This means we are also at the forefront of the digital sports broadcasting revolution as the latest technologies redefine the way that rights holders and media companies engage and interact with their customers.

Commercial contracts

Our commercial lawyers negotiate contracts from every perspective within the industry. We advise on negotiating sponsorship agreements, brand licensing agreements, advertising agreements and player transfers.

Data protection

We regularly advise clients as to their obligations in respect of data protection law and privacy issues. We have defended clients against investigations by the ICO and have particular expertise in advising clients on their use of data in marketing practices. We can advise you on all of your GDPR compliance requirements.

Event organisation and staging

Our experience in event organisation and staging means we can be with you every step of the way. We have experience in all aspects of event organisation, from stadium development and finance to catering contracts for the event itself.

Intellectual property and brand protection

Our intellectual property team offers market-leading advice to sports stars, sports teams and rights holders. Our experience ranges from helping individuals negotiate image rights transfers to helping multinational associations compile their virtual advertising policy.

The team also has particular expertise in antipiracy strategy, advising rights holders on how to protect their valuable rights, including rights in sports data.

Corporate

Our full service corporate group is able to assist clients with any corporate goal they are seeking to achieve. The firm has an established pedigree in advising on M&A transactions within sport, including extensive experience in acting for both Premier League clubs and investors in negotiating the legal, commercial and regulatory environment that football clubs operate within. Our team also advises on constitutional and governance issues affecting unincorporated associations, and on debt financing, where we have extensive expertise in debenture issues and receivables and player transfer financing deals.

Merchandising, licensing and sponsorship

We are able to draw on our experience in the technology and intellectual property fields to help rights holders create sophisticated cross media sponsorship campaigns for both the sponsor and the rights holder. Our domestic and international reach means we are a true one-stop service for all your brand's needs.

Real estate

Our real estate team has acted on major stadium developments as well as developments of national sporting arenas. We have also acted for some of the most prestigious golf clubs in the UK on their developments.

Employment

Our team has advised on the contracts of some of the country's leading sports stars as well as for football clubs on key matters related to player and manager contracts. We have acted for both employer and employee, ensuring we know the commercial realities of the whole employment relationship.

Dispute resolution

Our sports litigation team has experience resolving disputes not only through the courts and major arbitration fora but also specific sports tribunals including the Court of Arbitration for Sport and FA Commissions of Inquiry. We have expertise in acting for clients and sporting associations in a variety of disputes, ranging from anti-doping to compensation disputes following cross border player transfers.

Tax/image rights

Our tax and intellectual property specialists have significant expertise in designing and establishing robust and tax-efficient image rights structures for sporting personalities, including those who are not domiciled in the UK.

Reputation management

Sports litigation tends to be extremely high profile, generating substantial media coverage. Our reputation management team is widely recognised as a leader in its field, particularly in relation to privacy issues, with expertise in all areas of law likely to affect the reputation of individuals and organisations in the sports sector.

Rules and regulations

Our work in the sector ranges from the interpretation and enforcement of governing bodies' regulations and player salary caps, through to arbitration and judicial review cases. We also advise regularly on the construction and interpretation of the rules and regulations of sporting competitions.

Esports

We are at the forefront of the esports revolution. Esports sits at the intersection of many of our core areas of expertise, including sports, media, advertising, technology, video games and gambling. We can advise on the full range of issues, including player rights, media distribution, contractual matters and disputes, investment, IP and advertising.

Get in touch



David Zeffman

Co-Head of Sports, CMS UK
T +44 20 7067 3198
E david.zeffman@cms-cmno.com



Sebastian Cording

Co-Head of Sports, CMS Germany
T +49 40 37630 325
E sebastian.cording@cms-hs.com



Pietro Fringuelli

Co-Head of Media, CMS Germany
T +49 221 7716 165
E pietro.fringuelli@cms-hs.com



Victoria Gaskell

Co-Head of Media, CMS UK
T +44 20 7067 3230
E victoria.gaskell@cms-cmno.com

Selected examples of our experience

All England Law Tennis and Croquet Club

- On securing planning permission for the new roof on Court 1 and worked on various other developments on the Wimbledon estate.

Electronic Sports League

- On the formation of the World eSports Association as an exclusive platform for international tournaments and the tendering of their sponsorship and TV broadcasting rights.

England and Wales Cricket Board

- On the GBP 1.1bn sale of its broadcasting and media rights. Sky Sports and BBC were awarded new five-year media rights agreements for all of ECB's domestic and international matches played at home from 2020 to 2024.

International Cricket Council

- On its global media rights tender for 2017-2023 in respect of the major international cricket tournaments organised by the ICC. This process resulted in the ICC concluding cricket's biggest ever broadcast deal.

UEFA

- On obtaining a blocking order from the High Court against several Internet Service Providers to prevent access by their customers to streaming servers which deliver live streams of UEFA matches.

BT Sport

- On its high profile multi-year agency deal for BT to market and sell Sky's NOW TV service to BT TV Customers. This includes Sky Sports. At the same time, BT has agreed to wholesale its BT Sport channels, which shows UEFA Champions League and Premier League football, to Sky.

Sky

- In its lawsuit against ÖSV, the Austrian Ski Association, over their practice to sell Austrian TV rights in a package and on a long-term basis to the state-owned broadcasting corporation, ORF.

FC Twente

- On an ongoing basis on arbitration and litigation. This includes arbitration before KNVB, the Netherlands Arbitration Institute and the Court of Arbitration for Sport.

NBA

- On French sourced royalties related to all aspects of the exploitation of the franchise including games, arena, social media, TV, and merchandise.

UEFA

- In relation to virtual advertising in over 30 jurisdictions.

IMG

- On its joint venture and substantial investment in the marketing of the Euroleague and Eurocup basketball competitions.

Various investors

- On the purchase of Russian hockey and football clubs, including legal due diligence.

The Dutch Olympic Committee and Dutch Sports Federations

- On drafting a privacy handbook which looks at privacy regulations, processes and issues within the organisations.

The Royal Dutch Hockey Association ('KNHB')

- And its associated members on an ongoing basis legal on various legal issues.

Deutsche Fußball Liga GmbH

- On the preparation of a public invitation to tender and the award of media rights to the Bundesliga football games.

Global presence

The Americas

Bogotá
Lima
Mexico City
Rio de Janeiro
Santiago de Chile

Europe

Aberdeen	Edinburgh	Madrid	Seville
Amsterdam	Frankfurt	Manchester	Sheffield
Antwerp	Funchal	Milan	Skopje
Barcelona	Geneva	Monaco	Sofia
Belgrade	Glasgow	Moscow	Strasbourg
Berlin	Hamburg	Munich	Stuttgart
Bratislava	Kyiv	Paris	Tirana
Bristol	Leipzig	Podgorica	Utrecht
Brussels	Lisbon	Poznan	Vienna
Bucharest	Ljubljana	Prague	Warsaw
Budapest	London	Reading	Zagreb
Cologne	Luxembourg	Rome	Zurich
Duesseldorf	Lyon	Sarajevo	

Algiers
Casablanca
Luanda

Africa

Dubai
Istanbul
Muscat
Riyadh
Tehran

Middle East

Beijing
Hong Kong
Shanghai
Singapore

Asia-Pacific









Law. Tax

Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.

cms-lawnow.com



Law. Tax

Your expert legal publications online.

In-depth international legal research and insights that can be personalised.

eguides.cmslegal.com

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

CMS locations:

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Monaco, Moscow, Munich, Muscat, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Skopje, Sofia, Strasbourg, Stuttgart, Tehran, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

cms.law

1807-0061619-5