



# Intellectual Property Rights and Commercialization in Sports: A Meta Analysis

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## ABSTRACT

*The concept of sport has transcended the context of mere leisure and entertainment to become a significant revenue stream and a major contributor to economies all over the world. Sports practitioners all over the world have been able to generate enormous revenues from the exploitation of aspects of intellectual property rights via merchandising and so on. The Sports industry has always been a massive sector across the world, bringing together entertainment, games, culture and monetary business, right from the barbaric era through the glorious days of Caesar to the twenty first century money making sports industry. Sporting games have always been encouraged by rulers, governments, private individuals and entities interested not only in the games themselves, but more in the monetary business quotient that sports entail. In the present article a meta analysis was done to emphasize the IPR and commercialization in sports.*

**KEYWORDS:** Intellectual Property Rights, Commercialisation, Economy and Sports.

## INTRODUCTION

In today's business-oriented world, Intellectual Property Rights (IPRs) are a matter of major concern because of the economic and ethical aspects involved in the exploitation of intellectual efforts. Intellectual property is the property resulting from creative, technical and artistic human efforts, such as an idea, sign, mime, method, process, expression etc. which is capable of being reproduced (1). Bill Cornish has defined intellectual property as 'the application of ideas and information that are of commercial value' (2). Intellectual property rights are a set of legal powers which help to extend protection to the inventor or creator of the work surrounding intellectual effort (3).

There has been an evolution of the most popular sports, such as tennis, cricket, basket, football, car racing, and so on into mega international events. These have now evolved into profitable domestic

sports events like: Indian Premier League (IPL), Major League Soccer (MLS), the English Premier League (EPL), The Spanish La Liga and many more. The organizers of these sports events on the international level have been able to reap immense financial rewards by inter alia exploiting and leveraging an aggressive marketing campaign taking advantage of the marketable potentials resident in these sports (4).

The Commercialization of Sports seems to be very reassuring and promising, as it will help in making gains not only at the individual level, but also at a country's level which will in turn give power to the business of Sports. People around the world have been able to generate an income through exploitation of aspects of Intellectual Property rights in Sports via different means such as Patents, Trademarks, Copyrights, Merchandising and so on. There is immense importance and scope of Intellectual Property Rights in the sporting

arena. Intellectual Property Rights are vested in almost every component of the sports industry. The Intellectual Property powers the business of sports (5).

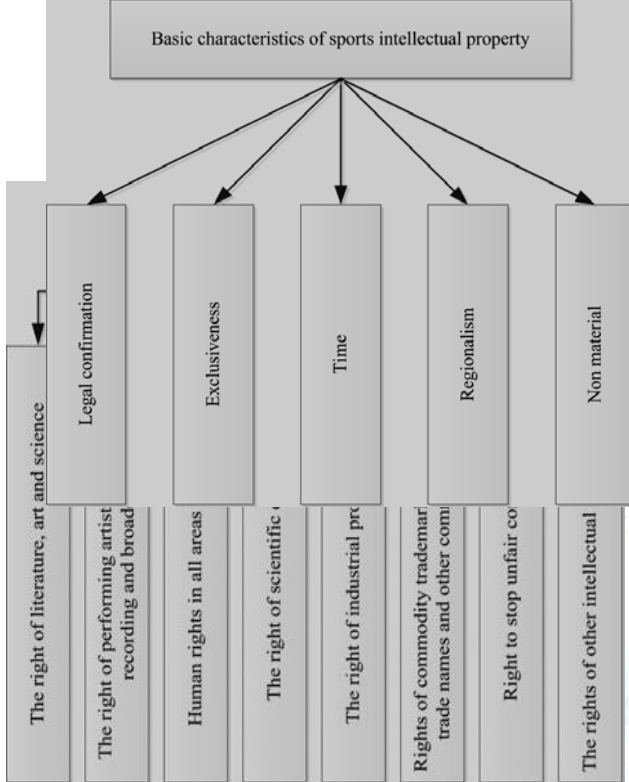
#### **OVERVIEW OF INTELLECTUAL PROPERTY :**

World Intellectual Property Organization (WIPO), a Geneva based specialized agency of the United Nations promotes innovation and creativity in the economic, social and cultural development of all countries through a balanced and effective Intellectual Property system. Intellectual Property Rights are usually associated with the manufacturing industry and the main aim of Intellectual Property is to protect the mercantile community. Apart from easing the way for protection of Intellectual property such as patents, copyrights, trademarks, designs around the world, WIPO works to ensure that the benefit of the sports industry is spread wide and deep. Intellectual property carries commercial value for sporting clubs and organizations and covers the range of intangible assets covered by copyright, trademarks, designs (6). Intellectual Property Rights such as copyrights, trademarks, and designs became a source of significant value to the sporting arena. Sporting gears, may be the subject of patent, design, copyright and trademark rights. The technology used in a swim wear is inventive in nature and therefore can be registered as a patent, the logo printed on the swim wear can be a registered trade mark, the designer can get copyright and the physical design can be registered as an industrial design. These registrations help to protect the value of the unique design and marketing capabilities associated with the sporting gear (7). Another example is a simple sports shoe which could be protected by several IP rights: Patents protect the technology used to develop the shoe and designs protect the look of the shoe and trademarks distinguish the shoe from similar products and protect the reputation of the shoe and the copyright protects any artwork and audiovisual creations used to publicize the shoe (8). Also Intellectual Property Rights are associated with many other aspects of sporting business, such

as event promotions, athletes, sponsorship deals and merchandising.

The Convention on the establishment of the World Intellectual Property Organization in 1960s, the use of the term "intellectual property rights". Now, intellectual property has become a common legal term in the world. The concept of intellectual property, legal monograph, law and international treaties in many countries in the world, are only from the delineation of the scope of the concept of a clear definition of intellectual property, not to the definition of intellectual property rights. In fact, it is difficult to give an accurate definition of intellectual property right, which is generally accepted by people, and it's hard to describe the concept of it. In some textbooks, the concept of "intellectual property rights", such as that "intellectual property rights, is based on the experience and knowledge of their own intellectual activities, and the rights of the people are entitled to the right of the people". "Intellectual property refers to the patent rights that people can enjoy in accordance with the results of their intellectual creation"(9). Huang Qinnan believes that understanding the concept of intellectual property, two point one is still should pay attention to the scope of intellectual property rights from the beginning to understand the concept of intellectual property, a clear meaning of the two is to see the intellectual property is a deepening connotation, extension of the concept of continuous development. It will expand and deepen with the development of science and technology, culture and art, and the type of intellectual property will be more and more extensive. Generalized intellectual property rights, currently has two major international conventions on intellectual property rights. The World Intellectual Property Organization Convention, the World Intellectual Property Organization Convention, in the scope of the World Intellectual Property Organization Convention in 1967, the article defines the scope of intellectual property rights in the form of second (10). Sports intellectual property rights should include the right as shown in Figure 1 (11).





**Fig. 1.** The Intellectual Property Rights of Sports Activities (11)

### CHARACTERISTICS OF SPORTS INTELLECTUAL PROPERTY :

**Non materiality:** the intangible property of the object of the intellectual property is the essential attribute of the intellectual property, is that the object of intellectual property is not material existence, it is only as a kind of information, moreover, this kind of non material information must have the corresponding material carrier, to be able to perform, and be perceived by people. The object of intellectual property is not the manifestation of thought or emotion that has no physical substance, is an objective existence, is not material, from the "virtual" in the "pseudo". This can be clearly aware of the legal protection is not the carrier of information, but the information conveyed by the carrier.

**Proprietary:** intellectual property rights, is the only person who is the subject of intellectual property rights or the use of its mandate, other persons shall not enjoy or use the rights of intellectual property rights. That is to say, the right holder of intellectual property right is protected strictly, no person shall infringe upon.

Intellectual property rights are recognized by relevant legal procedures, other people who want to acquire the exclusive right to intellectual property, can change the rights of the right people through the use of the license, statutory license, compulsory license, reasonable use, transfer and other legal procedures (12). For violations of intellectual property rights, the

right holder may be able to sue the people's court, or request the administrative department of intellectual property rights to handle.

**Regional:** intellectual property, is the law of a certain state to be produced and protected by law in the country. According to the feature, intellectual property rights acquired by a state in a country are protected by law in the field of the country and are not protected by the laws of the country in other countries, must obtain the authorization and permission of the state organization of intellectual property rights in the country. Such as the "Olympic Charter" stipulates: "a national Olympic emblem is used only in its effective, the National Olympic emblem after another national Olympic Committee unless agreed, otherwise it can not be used in other countries for any advertising and commercial activities for the purpose of making profit. "The commercial use of the Chinese Olympic Committee and market development can only be used in China, if used in other countries, with the consent of the other national Olympic Committee to carry out market development. For example, the right to apply for and obtain the sports goods industry in the United States, only in the United States by the legal protection, and in our country will not play a role, to be protected by patent law in our country, it is necessary to apply for and obtain approval from China. **Time:** intellectual property has certain time limit, the term of protection is only within the time stipulated in the law, intellectual property rights become the common wealth of the whole society (11,13).The basic characteristics of sports intellectual property are shown in Figure 2.(11).

### INTELLECTUAL PROPERTY RIGHTS OR IPR IN SPORTS:

Granting intellectual property rights to sports move is definitely a disputed topic. Sporting movements do not fall under the traditional topics under intellectual property laws, and thus even today, lacuna exists. IPR often excludes from its ambit any act which is caused to be made by the human body, such as surgical moves, but sporting movements are much more than that. Many foreign authors have extensively written about protection of sports moves under the ambit of IPR, but literature lacks in India relating to the same. Sports move is a combination of art, skill and judgment, which gives it's inventor/creator an

added advantage over their opponents. This move often decides the fate of the game and hence providing special protection to the so-called “signature moves” becomes a necessity.

Wikipedia explains “signature moves” as a move or ability that is almost analogous to the person or character that uses it and may imply that the move is usually a staple of the user’s repertoire, and on most occasions was invented by the performer. Hence, sports moves do fall under the ambit of an idea of expression (14).

This year’s World Intellectual Property Day delves into the world of sports and takes a closer look at how intellectual property (IP) rights – patents, trademarks, designs, copyright and related rights, and even plant variety protection (think turf on sports pitches) – support the global sports ecosystem, a unique landscape that brings together multiple players with overlapping interests.

### NEEDS OF PROTECTION IP :

In the context of this article, it is imperative to understand the stakeholders or sports rights owners whose IP is being infringed. The primary sports rights owners are evidently the event organisers or the governing body of the sport. Event organisers often contractually or otherwise grant rights in specific properties in the event to other entities, most notably: broadcasters, franchise/team owners, sponsors, partners and service providers. Further, the sportspersons participating in the event can also be considered sports rights owners in certain circumstances relating to the use of the sportspersons’ name, image or persona without licence or authorisation. In the context of sports and sporting events, the following properties are protected under the existing IP regime in India:

### MAPPING THE SPORTS ECONOMY

The Olympics and the Fédération Internationale de Football (FIFA) World Cup are two events that manage to unite the world in unique ways. From the “ping-pong diplomacy” of the 1970s to the rapprochement of the Koreas for the 2018 Winter Olympic Games, sports has proved to be a powerful instrument of peace and progress. While nations cheer their athletes trying to out-perform their competitors, younger generations get inspired to take on the task years down the road. This progress would not be possible without the investment in organizing and broadcasting these games to all corners of the world (15).

Additionally, according to World Intellectual Property Organization (WIPO), sports is an important generator of economic value: The sports sector fuels job creation—especially high-skill, high-value jobs—and stimulates a wide spectrum of economic activity.<sup>4</sup> More specifically, the makeup of the sports sector as defined in this report includes ( 16 ):

- Teams and leagues: The economic value created by teams and leagues, stemming from selling tickets at stadiums, hosting tournaments and championships, and merchandising. This economic value also includes support for related food, beverage, and hospitality services that cater to sports fans
- Broadcasting: The broadcasting industry that allows fans and enthusiasts to follow their teams wherever they play
- Sporting goods: The sporting goods industry, including manufacturers of bicycles, helmets, tennis racquets, golf clubs, surfboards, and sports equipment generally, as well as manufacturers of technology-based sports products such as electronic wearables, fitness trackers, apps, and software
- Apparel and sportswear: The sportswear industry, including manufacturers of clothing, footwear, and apparel.



Fig.-3: make-up of the sports sector (as defined in this report)

### COPYRIGHT :

Copyright is a bundle of certain exclusive rights granted to creators of original literary, artistic or scientific works. A striking feature of copyright law is the continuing expansion of the scope of its subject matter.

Original literary, dramatic, musical and artistic works, cinematographic films and sound recordings are classes of works in which copyright subsists under the Copyright Act, 1957. In addition, copyright law protects broadcasting and performers’ rights. Copyright can exist, with respect to sports, in recorded visual images or commentaries of sports events, photographs of



events, teams, athletes, materials used in administration and promotion of the sport and the team/franchise. In respect of the event itself, the fixtures, programs, published results, and computer programs may be subject to copyright protection. Logos and mascots may be protected as “artistic works” whereas slogans may be protected as “literary works” (17).

#### **TRADEMARK :**

The Trademark and Merchandise Act, 1958, was to provide for registration and better protection of Trademarks and for prevention of the use of fraudulent marks on merchandise. In 1999 this was modified to confer the protection to the user of the trademark on his goods and prescribe conditions on acquisition, and legal remedies for enforcement of trademark rights. The Trade Marks Act, 1999 and the Trade Marks Rules, 2002 govern the law relating to Trade Marks in India (18).

Trademarks in sports play an important role in the sports business. With the inception of branding of sports events through the presence of features like a logo, captions, taglines, slogans and team names etc. (collectively referred as trademarks), brand value is created in sporting teams, clubs, players, merchandise etc. Team names and symbols create a level of association with the public and fan following helping the popularity ratings of any given team, club, player etc. Even the names of the players have acquired the status of trademarks due to their celebrity status. This popularity and brand image eventually converts into monetary profit through advertisements, brand ambassadors, goodwill and reputation of the sponsors etc (19).

#### **PATENT :**

The Patent System in India is governed by the Patents Act, 1970 as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003, as amended by the Patents (Amendment) Rules 2006 effective from 05-05-2006 (18).

#### **Sports Patents**

Patents play a crucial role in sports, wherein protection under patent law can be sought for training equipments, golf clubs, stop-watches, nutritional supplements, sporting goods, and the like. Latest examples of **sports patents** also include sport drinks and muscle enhancers.

Inventions in sports can change the dynamics of the entire ecosystem. Multiple **innovations in sports** have proven to be a fuel for growing intangible assets, which can be protected by various intellectual property rights, including patents, trademarks, copyrights and designs (20).

- **Fitness Patents**

Rapid market growth in the fitness industry has led to **portfolio of fitness patents** that contribute to innovative fitness solutions. Data related to health and fitness can be processed to reveal interesting insights. Data analytics tools are protected under the patent system to bring innovative products to the markets across the world.

- **Sports Technology Patents**

Similar to other businesses, various aspects of sporting world provide a competitive edge to owners of intellectual property rights (IPR). Sports business owners connect with their fans by tapping the benefits of the intangible assets associated with IPR in sports. A common strategy to excel in sports business is to file **sports technology patents** that increase the revenue goals for the shareholders.

- **Sports Utility Patents**

A microscopic view of sports industry reveals that the sports business includes tangible as well as intangible assets. The intangible assets cover items that are eligible for **sports utility patents**. Companies leverage the **intellectual property rights** in sports for business advantage to excel multifold.

- **Sports Prediction Patents**

Patent searches conducted across US Patent Office reveals that companies file patents for prediction inventions (betting, gambling) in sports. Examples of **sports prediction patents** include predicting occurrence that happens during a **live sports event**, predicting **outcome of sporting events**, and the like.

- **Sports Equipment Patents**

Worldwide patent trends, illustrate that multiple patents are filed regularly for equipments. **Sports equipment patents** include various types, such as, for example, training equipments, gym equipments, safety bicycles, boards, exercise platforms etc.

- **Electronic Arts Patents**

Electronic Arts has a dedicated sports divisions named EA Sports that is involved in **creating and publishing sports games**. Gillette recently announced that it will sponsor the EA SPORTS FIFA 20 Global Series, which is a nine month long competitive gaming ecosystem of tournaments.

Sports game development and publication requires constant innovation and patent search results show that EA Sports Patents cover a diverse range of innovations, like, altering perception of **virtual**

**content, computer architecture** for animation of a character, generating digital elements, fraud detection techniques, **machine learning** based anomaly detection, etc.

- **Famous Sports Patents**

There have been various examples of sports patents that have caused a high degree of impact. Examples of famous sport patents include drone patents, 3D printer, bionic eye, GPS or global positioning system, gene editing, brain implants, Bluetooth etc.

- **Sport Patent Attorneys**

Sports goods and fitness industry regularly face legal challenges and patent attorney provides counselling to clients for IP protection by way of patent filing, patent drafting, patent analytics, patent infringement opinions, patent claim charts and patent licensing transactions. **Sports attorneys** gain significant experience in sports laws, sports league rules, player rights, IP ownership rights and brand protection strategies.

- **Branding and Image Rights of Sportspersons**

Commercial rights associated with a famous person's name or brand fall under the category of personal rights. Sports players and athletes have **personality rights** that are commercially exploited to generate revenues for the players. While considering **branding and image rights of sportspersons**, legal protection helps the players by way of trademarks, copyrights and designs.

- **WIPO in Sports**

The world intellectual property organization, or WIPO has stressed repeatedly on the economic importance of sports across the global scenario. Sports related inventions are protected across multiple jurisdictions by taking advantage of the **Patent Cooperation Treaty**, or the PCT, wherein a single application can be filed across 100+ countries in a total allowed duration of 30 or 31 months from the earliest priority date.

- **Sports and Fitness**

The sports, fitness, and wellbeing sectors can be enhanced by monitoring the physiological conditions of wearers. Optimizing behavior during training and competition is desirable for athletes to achieve high performance. Providing information in real-time for athletes and trainers to observe and make adjustments during training and competition is desirable.

Protection, a particular issue in impact sports such as football, ice hockey, and boxing, can be enhanced with wearable technologies. Helmets can

be functionalized with sensing capabilities to monitor head movement during collision events in games (with equipment, other players, or the ground).

The general health of consumers can be monitored with wearable technology to provide information about well-being, desirable with greater awareness of an individual's health. Wrist-worn activity trackers are the most frequently used devices in this category due to convenience and unobtrusiveness appearing similar to a watch.

- **Patent Protection**

A strong **patent protection** results from multiple patent applications that claim various inventive aspects. In use, the same basic components can be tailored to specific applications (e.g. health care; sport, fitness, and well-being; workplace; fashion). Wearable technology has a long history with rapid expansion since the beginning of the 21<sup>st</sup> century, which is expected to continue (19).

**Table 1:** Number of Utility Patents Granted to Date Across 17 Selected Patent Offices Around The World, Selected Sports Categories

<b>Kitesurfing</b>	14224
<b>Hockey</b>	17668
<b>Polo</b>	19793
<b>Soccer</b>	28779
<b>Boxing</b>	32694
<b>Baseball</b>	44468
<b>Tennis</b>	52526
<b>Skiing</b>	110501
<b>Golf</b>	112256

Source: Google Patents; Analysis: Pugatch Consilium

### **INDUSTRIAL DESIGN :**

The Designs Act, 2000 and the Designs Rules, 2001 presently govern the design law in India. The Act came into force on 25th May 2000 while the Rules came into effect on 11th May 2001. The object of the Designs Act to protect new or original designs so created to be applied or applicable to a particular article to be manufactured by Industrial Process or means (18).

In a legal sense, an industrial design constitutes the ornamental aspect of an article. An industrial design may consist of three dimensional features, such as the shape of an article, or two dimensional features, such as patterns, lines or color.

However, protection is given only in the country where the design is registered. WIPO's Hague



system provides an easy and cost-effective way to obtain protection for an industrial design in up to 57 countries.

During half-time or between innings, players sit down and stretch, reaching their heads toward multi-colored shoes. This simple shoe actually contains multitudes: It may be protected by several IP rights, such as patents that protect the technology used to develop the shoe. WIPO's Patent Cooperation Treaty (PCT) system provides an easy and cost-effective way to obtain patent protection for an invention in up to 148 countries. Registered designs protect the "look" of the shoe, while trademarks - distinguish the shoe from similar products and protect the "reputation" of the shoe (and the company making it), while copyright - may protect artwork and audiovisual creations used to publicize the shoe. Today, thousands of sport-related inventions are protected by patents, many of which have been granted on the basis of patent applications filed using WIPO's PCT system (21).

#### **PERSONALITY RIGHTS :**

Personality Rights in sports has proven to be a significant part in the brand formation of both individual sports person and teams. Even the individual players like Tiger Woods, Cristiano Ronaldo and Lionel Messi have become an international brand because of their celebrity status. This celebrity status of the players helps them to gain popularity worldwide and this popularity ultimately turns as a monetary profit for them by doing advertisements or becoming brand ambassadors for a particular brand. Celebrity status prompts different types of image creation, brand advertisement and also helps in generating the revenue. It is required that the federations, coordinators, team owners and athletic equipment producers must choose for registration of their team names, logos, settings, subtitles, slogans and mottos registered as trade names under the Indian Trademarks Act 1999, which will make their life simple for ensuring their trade names in Indian courts (22).

#### **DOMAIN RIGHTS:**

Domain names in sports which are also treated as trademarks by Indian courts plays a substantial role in protection of intellectual property rights associated with sports. Domain names builds brand image, portability and search engine optimization. WIPO, among others, operates a quick dispute resolution procedure for website

domain names based on internationally-accepted rules (23) As we know that the internet is a cost effective method to reach out to the public and it creates awareness about sports events, players etc. the sponsor companies conduct online competitions, online shopping portals, online ticket sales in an effort to reach out to the public. The websites became a great source of advertising as well as brand building. Events broadcasted through internet including online games related to sporting events have not only acquired an immense market share in branding and value creation but it gives an opportunity to cyber squatters to take the benefit of the confusion which is attributable solely to domain names (24).

#### **AMBUSH MARKETING :**

Ambush Marketing means "an attack from hidden position". Protection against ambush marketing is one of the most important aspects of Intellectual Property Rights in sports. Ambush marketing has acquired a huge space in sporting events and it refers to companies promoting their brands or products by associating them with a team, league or event without paying for the privilege(25). The controversy between Pepsi and Coca Cola in Pepsi Co., Inc. and Others. vs Hindustan Coca Cola Ltd. and Another. [2003 (27) PTC 305 Del], is a classic example of ambush marketing in India where in the court issued a permanent injunction to the defendant by restraining its advertisements being broadcasted (24).

#### **LICENSES AND SPONSORSHIP :**

Licenses and sponsorship in sports play a very important role in sports industry. By acquiring intellectual property rights and then using them strategically, sports organizations and other rights owners can protect and increase their income-generating potential. Exclusivity is the key factor in sales generation and brand building. In light of counterfeit product markets, it is important to ensure that all intellectual property rights involved are adequately protected under relevant agreements (24).

#### **TRADE SECRETS :**

Sports also generates an important volume of trade secrets that play a key role in competitive advantage and value creation. Teams gather proprietary information in the form of statistical analysis, scouting reports, dietary regimens, physiological metrics, and psychological assessment techniques—all to gain potential

competitive advantage over their rivals. Sports gear often features secret new compounds and materials to allow athletes to perform better. Companies invest heavily in elaborate focus groups to find the right mix of features and designs to make their products more attractive and marketable. In a way, trade secrets and patents/design rights are the two sides of the innovation coin. Patents and design rights are the publicly known aspects of the invention, while trade secrets encompass the undisclosed knowledge behind it. In exchange for disclosure (filing or registering at the patent or relevant IP office), the inventor obtains a patent that prevents others from copying the invention for a period of time. Conversely, there is no need to register trade secrets, and they can last indefinitely as long as the information is kept confidential. But protection is much more limited; others are only prevented from breaching the security measures in place. Moreover, competitors are free to independently develop that very same invention (19).

#### **ENFORCING IPR IN INDIA :**

India is a signatory to various international treaties on IPR. Furthermore, rights such as trademarks, designs, patents and copyright can be protected through registration. These rights are enforceable through the Indian courts, which, in the event of infringement, can provide interim remedies such as injunctions relatively quickly. The courts can also instruct perpetrators to account for profits generated from their infringement.

There are three IP enforcement channels – police, customs and judiciary. Trademarks and copyright can be enforced through civil or criminal litigation, whereas patents and designs can only be enforced through civil litigation (26).

#### **COMMERCIALISATION IN GLOBAL SPORTS MARKET:**

The Indian sports market is rapidly growing with different disciplines such as cricket, football, badminton, hockey, tennis and kabaddi proving popular. Sport in India has never really been taken seriously, however. It has always been seen as a source of recreation. Globally, the sports industry is a massive sector, bringing together entertainment, games, culture and monetary business together. It is only in recent years that the commercial viability of sport in India has begun to be explored and exploited.

#### **Commercialisation of sport and competition**

The commercial aspect of sports has not only added to individual gains, but has reaped benefits for the economic growth of the country. Almost every facet of the industry is being tapped into and capitalised. Intellectual property rights (IPR) are valuable assets that are used as marketing tools toward the branding of games and connected events, sports clubs, teams, celebrity status, etc.(26).

This section provides an in-depth analysis of three different case studies of IP infringement in the sports sector and the resulting negative effects on consumers and economies:

1. The global impact of counterfeit sporting goods and sportswear
  2. Piracy of live sports broadcasting: The impact on emerging economies; and
  3. The threat of a new generation of piracy from set-top boxes Whether by physical counterfeiting of goods or by pirating a live broadcast, sports IP infringement causes substantial economic losses that reverberate across the entire sports sector. This section attempts to delineate the two sides of the coin: on the one hand, estimating the economic losses and indirect impact of sports IP rights infringements on society; on the other hand, showing what economies stand to gain from providing adequate protection of sports IP rights.
- . Estimating the scope of counterfeiting and its economic impact on a global scale is highly challenging. The illicit nature of counterfeiting—from manufacturing to distribution and sale—entails reliance on customs seizure statistics and industry figures, which depend on dynamic success rates as well as on the methods used for calculating the value of seized goods. As a result, while customs authorities seize billions of dollars' worth of counterfeit goods each year, these may well represent only a small fraction of the actual number of counterfeit goods on the market (27).

#### **SPORTING GOODS AND SPORTSWEAR: DEFINITIONS**

The sporting goods and sportswear sectors encompass numerous products that can be classified under more than one category. Different estimations of market value for these sectors depend on the types of products included, but these data are not always provided, particularly in



the sportswear sector. In order to estimate the global economic impact of counterfeiting on the sporting goods and sportswear markets, this study relies on several different sources. For sporting goods, this study relies on the definition provided by the European Office for Harmonization in the Internal Market (OHIM),<sup>66</sup> which includes the following categories:

- Hard, soft, and inflatable balls
- Rackets, bats, and clubs
- Skis, ski-boots, bindings, and poles
- Sailboards and surfboards
  - Requisites for sport fishing, including landing nets
- Requisites for hunting, mountain climbing, etc.
  - Leather sports gloves and sports headgear
- Basins for swimming and padding pools, etc.
- Ice skates, roller skates, etc.
- Bows and crossbows
- Gymnasium, fitness center, or athletic equipment (28)

In contrast, the sportswear sector is more broadly defined. It includes everything from clothing, footwear, and accessories designed for workout and exercise to the wearable tech market—including “smart” wristband waistbands and watches (29). As is detailed in the next subsection, this study utilizes two estimates of 27 the global market for sportswear, by Morgan Stanley and by Société General, which both look at clothing, footwear, and accessories (30). Additionally, the study builds on an additional report by the OHIM that provides an assessment of the impact of counterfeiting on the clothing, footwear, and accessories sector in Europe, which includes the following categories:

- Clothing (including clothing in specialized stores)
- Footwear (including footwear and leather goods in specialized stores)
  - Underwear and outerwear
- Other wearing apparel and accessories (31).

### **SPORT, IP AND DEVELOPMENT**

The strategic use of IP rights in global sports has significant potential to support economic development in a variety of ways by:

- Generating income from the sale of sports-related goods and services;
- Supporting innovation and business growth, entrepreneurship and job creation;
- Enhancing a country’s reputation and boosting foreign exchange earnings;
- Boosting international trade;

Transcending national differences and fostering universal values of fair play, mutual respect and friendship; and

Improving health, social-well-being and social cohesion and encouraging discipline, teamwork and a competitive spirit.

Staging sports events, whether at grassroots, national or international levels, can enrich the social and cultural fabric of communities, making them more attractive locations for investors and tourists. However, the business of sports requires a solid legal framework to support the exploitation of and trade in IP rights, as well as a well-trained workforce to create a favorable policy and regulatory environment and to manage the operational and logistical issues associated with organizing sports events (33) .

### **CONCLUSION**

. The current regime of intellectual property creates substantial profits for those who control the production of sporting events, at least for those events which the sports fans of the world consider important. It would be a much more equitable sporting landscape if the law of sports were able to strike a more fair balance between the wishes of those who control the production of sport and those who view the consumption of sports as an important part of their lives. To suggest as much is not to propose a utopian fantasy, since the traditional relationship of sport and intellectual property recognized a much broader public domain than is currently fashionable. Only time will tell if the sports fans of the world will someday reclaim their natural entitlement to the unrestricted enjoyment of sports.

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