CHAIRMAN'S REPORT

We're looking forward to a terrific year. Beginning with the Entertainment Law Institute on October 15 and 16, the Council is hard at work on several projects. Of course, you're holding one of those projects in your hand now, the Texas Entertainment and Sports Law Journal. Under Syl Jaime's stewardship, what began as a newsletter has grown into one of the top journals in the country.

Likewise, the Entertainment Law Institute, this year focusing on the Legal and Business Aspects of Music, Film, and Interactive Entertainment, brings together an all-world cast of panelists to your door-step in Austin, Texas. Hype, you say? Nyet! Our speakers include Jeff Brabec, Vice President of Business Affairs for the Chrysalis Music Group, Dan Butler, VP of Warner Bros. Pictures Business and Legal Affairs for Music, Ted Cohen, Senior Vice President of Digital Development & Distribution for EMI, Darryl Franklin, Senior Business and Legal Affairs Executive at Interscope, Geffen, and A&M Records, Kevin Saul, Vice President of Business Affairs at Apple's iTunes and, of course, Stan Soocher, the editor-in-chief of Entertainment Law and Finance, just to name a few. If you want more information on the program and a list of all the speakers, please contact Institute Director Mike Tolleson or any of the council members.

We're also hard at work on a web site for the section. Our goal is not only to post our by-laws, announcements, journal, links, and other section information, but also to have all interested section members submit information on their practice. Each members name, contact information, and practice description will then be posted and made available to the public so that, for example, a potential client looking for a sports attorney in Fort Worth will be able to visit our site and find all of our members who have that practice.

Finally, please take the time to introduce yourselves to the council at the Entertainment Law Institute. We're here to serve you and would very much like to hear your ideas. Also, if you have any entertainment or sports law related questions you want to "bounce off" someone, don't hesitate to look us up. If we don't have the answer, we'll probably be able to direct you to someone else at the Institute who does. See ya there!

FOR THE LEGAL RECORD ...

Class Actions?

Any move a foot to bring a class action versus the NBA and its Players' Association? Contact the Commissioner and the NBA Players' Rep. Any class action lawyers willing to claim the "best" players violated their patriotic duty to play on the 2004 Olympic team and the players selected violated their patriotic duty to give maximum effort and win the Olympic Gold? ...

Quarterback Without a Team?

Despite the unsubstantiated allegations, former Dallas Cowboy QB Quincy Carter is looking for a new job. No formal charges have been brought against the former Georgia Bulldog. Carter denied cocaine use allegations despite the Cowboys releasing him just prior to the start of the pre-season. The NFL reported that Carter has failed a drug test, which prompted Dallas owner Jerry Jones to publicly state "We've made a decision to move in a different direction. We're not going to get in a lot of detail on the process ..." In response to the Cowboys' action, Carter's agent Eugene Parker took a more reserved approach and did not comment about the matter. The NFL Players' Association have filed a formal complaint ...

NCAA Considering Players and Agents?

Agents are closely watching the news from defending national champ USC. All-American wide receiver Mike Williams' return to college football may set precedent if the star player is allowed to return to NCAA football, making the 2003 co-national champion Trojans even stronger. Despite not yet being reinstated at USC, Williams has been practicing with the team in its quest for a second national championship. The team, his former agent, and Williams await the NCAA's ruling on his eligibility after declaring for the 2004 draft and hiring an agent following the Maurice Clarett Ruling. Following the ruling, Williams hired an agent and the NFL eligibility rule, adopted in 1990, Williams repaid the agent the $100,000.00 advance and return to class. After the higher court upheld the NFL, Williams was held not be eligible because he was not three years from his senior year in high school. ...

Olympic Sports: Mexico v. Greece!

In the courtroom, Mexico journalists took on the Hellenic Coast Guard. Greek coast guards reportedly beat two Mexican journalists after the journalists were stop for filming the Port of Pireus. Security was the excuse given for the coast guard officers' offensive conduct. Public Order Minister George Voulgarakis apologized for the incident and stated "We have to take into account that these days the persons in charge of security are extremely sensitive." ....

Olympic Sports: Competitor v. Competitor!

Mountain cyclist Mary McConneloug claimed the U.S. team improperly computed her competitors ranking, and the arbiter hearing the claim upheld the claim. However, the Denver federal court ruled that Haywood would not be removed from the USA Olympic team and upheld USA Cycling's decision to include Haywood on the team headed to Athens based on her International Cycling Union ranking ...

Justice Department Tracks:
Is your favorite conference involved?
The Big 12, already met with Justice Department lawyers;
The ACC, confirmed contact but no interview yet;
Western Athletic Conference, contacted and is setting an interview;
PAC-10, league asked about an interview;
Big East, league contacted but declined further comment;
SEC, declined comment;
The Big Ten, not returning calls;
Mountain West, ditto;
Others 3 1-A leagues, have not yet been contacted.

The Justice Department is purportedly inquiring about ESPN's power over buying league rights to college basketball and football. The Justice Department is apparently looking into ESPN's impact on a conference's ability to contract with other TV outlets. Does ESPN's power rise to antitrust levels? ...

Cable at the Sports Venue!

Time Warner Cable and the Houston Astros are offering a "businessman's special." Go to a game and get connected. "Wireless fidelity," is now available for a nominal charge. PC users can go online from the ballpark. The Astros and Time-Warner WiFi's look to offer multiple services to their fans such as online scoreboard watching, concession ordering, and instant replay. The parties will have to get approval from the league for replays. WiFi services were first offered at San Francisco's SBC Park free of charge this season. Those services will likely follow the Astros'/Time-Warner example with appropriate charges next season. ...

The Journal can be accessed on-line at www.stcl.edu....

The Entertainment and Sports Law Section's website is under construction and should be available soon. To check its status contact the Section Chair Yocel Alonso at Yocellaw@aol.com

Sylvester R. Jaime—Editor

An Examination of *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, et al., 259 U.S. 200 (1922)* and the continuing impact of that landmark case on Major League Baseball today.

As our national pastime the sport of baseball remains an integral part of the culture, one that is forever ingrained in the fiber of the United States. The oldest of the sports leagues, organized professional baseball began in 1876 with the creation of the National League, and since then has endured quite a storied history. The most striking aspect of the game of baseball has been in the unique features of the rules that govern "both the absolute and the relative quality of play on the field, as well as profit."[1] Specifically, the 1992 Supreme Court decision of *Federal Baseball Club of Baltimore v. National League et al* [259 U.S. 200] which had, for many years, subjected baseball to a complete exemption from antitrust laws and regulations, therefore leaving the game as self-regulated. Even to this day, in the midst of multi-mullion dollar salaries and revenue sharing, the landmark 1922 decision still holds a firm grasp on the legality of many actions that take place within Major League Baseball. While it is true that narrow applications of relief from full antitrust exemption were provided in the recent Curt Flood Act of 1998, the history and precedent of protection from the standard rules and regulations associated with antitrust regulations largely persists.

In looking at the 1922 decision it is most beneficial to begin analysis with an overview of the early history of baseball and how that era of the sport paved the way for the case. The early history of baseball dates back to what historians have commonly referred to as the baseball fraternity, that is the voluntary configuration of social and athletic clubs that participated in the sport mainly just in their spare time. The earliest of these is believed to be the New York Knickerbockers, founded by Alexander Cartwright in 1845. However, what began as a way to provide entertainment and diversion from the "world and culture of the urban workplace"[2] soon became widely recognized as America's national pastime. With that lofty ideal of baseball as the game of choice within the American psyche, a formal constitution was created by the National League of Professional Baseball Clubs on February 2, 1876. Thus began what is recognized as the true inauguration of organized baseball.[3] Soon after the foundation of the National League, the American League was formed in 1901, creating a greater sense of competition amongst the nation's professional baseball teams, as many large cities in the United States supported a club participating within each league. For approximately ten years after their inception, the two leagues thrived due to cooperation, common labor policies and the creation of the first standard form player contract.[4] However, despite the various agreements, the game of baseball nonetheless stood as a completely self-regulatory professional organization. Under that type of system it didn't take long for many team owners to succumb to the temptation of engaging in illicit and dishonest activity such as secret bidding wars for top players. Additionally, a third competitive baseball league known as the Federal League was established in 1914 and 1915, creating further strife. With teams in Brooklyn, Pittsburgh, Baltimore and Kansas City, among other major United States cities, the two previously established leagues "refused to permit the Federal League to become a party to the National Agreement."[5] The Federal League consequently responded by attempting to enlist players from both the National League and the American League to play for them instead by offering a slightly higher salary. Along with simply blacklisting player who jumped to the newly formed Federal League, the increase in the overall number of teams, as well as the heightened competitive bidding for players prompted the National League and American League to pay the Federal League owners to simply dissolve. By way of either incorporating the new owners into American League or National League teams, or buying a franchise outright, the Federal League was successfully disbanded.[6] However, the overall transaction was far from smooth as the owner of the Baltimore Terrapins, claiming that professional baseball had restricted trade, began what has since become a "time honored tradition"[7] in professional baseball, the filing of an antitrust lawsuit.

Filed in the District of Columbia Court in 1916 the Federal League's Baltimore Terrapins declared that the established reserve system in professional baseball "was an illegal restraint on the labor market and as such violated

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the Sherman Act."[8] Effectively blocking the Federal League's ability to hire quality players, the owner of the Terrapins claimed that the potential violation of Section I of the Sherman Act was the main reason for the Federal League's poor attendance and ultimate demise.[9] Moreover, the suit alleged that a violation of Section II of the Sherman Act had also taken place as the National League and American League's action of paying the Federal League to go out of business "had monopolized all baseball trade and commerce in the United States."[10] The case reached a verdict in 1920 under the honorable Judge Stafford who held that both the National and American League teams had engaged in interstate commerce and subsequently monopolized the game of baseball. Additionally, it was determined that the defendants had "conspired to destroy the Federal League, and as a result the Baltimore owners had been damaged by $80,000."[11] That amount was then increased to $240,000 under Section IV of the Clayton Act whose provisions require a monetary decision to be tripled.

Unsurprisingly the defendants challenged the decision in the District of Columbia Circuit Court of Appeals in 1921. The Appeals Court subsequently reversed the decision, claiming that the Sherman Act applies "only to trade or commerce among the states,"[12] and that professional baseball does not constitute an act of interstate commerce and therefore doesn't apply. More specifically the Appellate Court declared that in reference to the game of baseball being interstate commerce that:

The players, it is true, travel from place to place…places which were in different states. But the players are not the game…not until they come into contact with their opponents on the baseball field and the contest opens does the game come into existence. It is local in its beginning and in its end.[13]

Similar to the decision that baseball is not to be considered an act of interstate commerce, the Appellate Court also took care to clarify why it was decided that professional baseball is neither trade nor commerce:

> Trade and commerce require the transfer of something, whether it be persons, commodities, or intelligence, from one place or person to another…A game of baseball is not susceptible of being transferred … Nothing is transferred in the process to those who patronize it. The exertions of skill and agility which they witness may excite in them pleasurable emotions, just as might a view of a beautiful picture or a masterly performance of some drama; but the game effects no exchange of things according to the meaning of 'trade and commerce.'[14]

While this decision may have been unpopular amongst those in support of the Federal League, it represents only the beginning of a long history of decisions in support of the antitrust exclusion that baseball continues to endure. The most significant of these decisions, the one which upheld the Appellate Court decision and subsequently set a strong precedent for decades to come, is the 1922 Supreme Court decision of *Federal Baseball Club of Baltimore, Inc., v. National League of Professional Baseball Clubs et al., 259 U.S. 200.*

In a decision written by the infamous Justice Oliver Wendell Holmes, who himself was a former amateur baseball player, the Appellate Courts decision was upheld. Yet again it was asserted that professional baseball games are merely state affairs, and thus not interstate commerce, a requirement for a case to be applicable under antitrust legislation. While many felt the fact that in order to compete in games the players, as well as the "bats, balls, and the uniforms must all cross state lines,"[15] an action of interstate commerce had been committed, the Supreme Court however took a much more restrictive approach. The early 1920's decision in *Federal Baseball Club* may seem to be a curious one at first glance, particularly when viewing the decision in light of the modern industry of baseball that has since evolved. However, while many feel that the decision has subsequently bred "absent competitive pressures, arrogance, laxity, and inefficiency,"[16] in the regulation of the game of baseball, when analyzed in consideration of the time period, specifically that it occurred within the Lochner Era, the ruling appears to be quite appropriate.

According to Justice Holmes, one of the most well respected and renown Supreme Court Justice's of all time, as well as the Court of Appeals from which the case came, the fact that baseball players travel across state lines in order to participate in games is "a mere incident, not the essential thing."[17] Though professional baseball games clearly are held in order to make a profit, the Supreme Court declared that baseball, which requires the explicit efforts of individuals "is not a subject of commerce."[18] The specific reason for this, as Justice Holmes stated, is that the Rule of Reason is not necessarily applicable to

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what he deemed as a profession. Comparatively, this contention also then applied to the legal profession, which was "similarly not related to production and was therefore exempt from antitrust laws."[19] These beliefs are clearly indicative of a concept of interstate commerce, as well as the broader scope of antitrust laws, that in general are narrower than normally witnessed today. In fact, it was not until the late 1930's that "the concept of interstate commerce was broadened…to include production activities that affected (or were affected by) interstate commerce."[20] Nonetheless, the *Federal Baseball* decision was very much in line with the constricted view of antitrust laws seen throughout the Lochner Era, which is generally recognized as thriving between the years 1905 and 1937. Due to the fact that the case is positioned alongside much of the popular judicial views of the time period, the Lochner Era is therefore deserving of a further analysis to fully understand the 1922 decision.

Throughout the Lochner Era the Supreme Court can be categorized as exhibiting a formalistic, mechanistic view of what specifically constituted an act of interstate commerce. The distinction between commerce that was classified as local, and commerce that was determined to be interstate was often rather severe. This type of rigid distinction can most clearly be seen in the Supreme Court case of *U.S. v E.C. Knight 156 U.S. 1 (1895)*, another case that Justice Holmes was involved. Briefly stated the *E.C. Knight* case, which represents one of the most important Supreme Court cases of all time, dealt with a large company controlling some 98% of the sugar refining business in the United States. Though the company was believed by many to then constitute a monopoly and thus be subject to antitrust laws and regulations, the Supreme Court felt otherwise. In particular the majority decision declared effectively that manufacturing was not commerce and that the law therefore did not reach admitted monopolization of manufacturing.[21] Similar to the 1922 *Federal Baseball Club* decision the Court again maintained that the act of traveling across states lines was merely incidental and indirect, not an essential component and therefore did not constitute a true act of interstate commerce. As Justice Holmes was also an integral component in the infamous *E.C. Knight* decision, one can more clearly see that the Supreme Court's overall doctrines regarding antitrust law held stable throughout much of the Lochner Era. Additionally, this Lochner Era type judicial philosophy can be seen in that Justice Holmes, in delivering the 1922 decision, relied heavily upon a variety of other precedents, one of which was *Hooper v. California 155 U.S. 648 (1895)*.

In *Hooper v. California* the Supreme Court ruled, "an insurance company was not engaged in interstate commerce, even though it sold insurance policies in several states."[22] Though this decision was later overturned in 1944 in the case of *United States v. South-Eastern Underwriters Association 317 U.S. 519 (1943)*, Holmes nonetheless utilized *Hooper* to support his opinion that "personal services unrelated to the production of some object were not trade or commerce,"[23] an allegation that comes directly into play just a few years later in the *Federal Baseball Club* decision. With this, and other similar precedents that existed prior to 1922, the somewhat narrow view of antitrust laws that Holmes, as well much of the Supreme Court, held is not at all surprising. However, while the ruling in *Federal Baseball Club* may have been appropriate, or at the very least understandably in its day, it does not mean that it is suitable for that decision to have remained largely intact for some eighty odd years.

It is impossible to overstate the fact that since the 1920's the game of baseball has changed drastically. In fact, unlike the game of old, the sport of professional baseball today "resembles any other highly successful business enterprises capable of generating many millions of dollars in revenues."[24] Simply put, the once little known game played purely for the purpose of entertainment and enjoyment, a historic relic from a simpler time when no one fathomed that a professional sport could constitute a business, has now genuinely become an industry. The multifaceted activities that are included in the colossal business that has become professional baseball is not limited to an athlete "applying his…skills in a sporting competition or display,"[25] but also includes the sale and relocation of a franchise, television and broadcast rights and advertising, as well as numerous other actions that occur in the day to day operation of any standard business. Along that timeline of growth and change, a plethora of significant court cases that dealt directly with the self-regulatory anomaly governing Major League Baseball have taken place. These include the 1953 Supreme Court case of *Toolson v. New York Yankees, 346 U.S. 356 (1953)*, the 1972 *Flood v. Kuhn 407 U.S. 258 (1972)* and numerous Congressional hearings before the Subcommittee on Economic and Commercial Law of the Committee on the

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Judiciary House of Representatives in the 103rd Congress. Each of those instances represents a significant attempt at changing antitrust policy within Major League Baseball, with very little or no tangible results produced. In fact, to this day there has only been one notable instance of policy change in the area of antitrust exemption, that being the Curt Flood Act of 1998.

The purpose of the Curt Flood Act, as acknowledged in Section II of the Act, is "to state that major league baseball players are covered under the antitrust laws."[26] However, the Flood Act ultimately provides "little hope of pacifying Major League Baseball's labor relations,"[27] or providing any type of extensive antitrust coverage. In fact, many attribute the passing of the act as a tribute to former Major League outfielder Curtis Flood, rather than a genuine gesture or attempt at altering antitrust regulations. This somewhat pessimistic view is supported by the fact that six specific areas, as defined within Subsection (b) of the Curt Flood Act, continue to remain completely void of any antitrust protection. These areas include the standing jurisprudence in relation professional minor league players, franchise ownership issues, expansion and relocation, specific broadcast rights and relationship between Major League Baseball and the umpires.[28] Alongside those restrictions, the Flood Act also stipulates several items that seem to greatly favor the franchise owners. Most notably is the unrelenting repetition of the provision that the newly established antitrust laws are only to be utilized in non-labor areas, thus limiting its overall effectiveness and virtually removing responsibility from the owner's altogether.

The Curt Flood Act has ignited countless debates as to whether or not complete removal of the antitrust exclusion would be a proper move for continued success in Major League Baseball. In light of these debates, which are strongly supported on each side, the impact of the single decision dating back over eighty years in *Federal Baseball Club* becomes painstaking evident. The Blue Ribbon Panel for example, a collection of highly qualified experts employed by MLB Commissioner Bud Selig, concluded in July of 2000 that the league was enduring both a broken economical system, as well as terrible competitive balance problems. These issues were deemed so severe that they were classified as potentially threatening the livelihood of the entire league. The Blue Ribbon Panel also came to the conclusion that the "large and growing club revenue…and payroll disparities"[29] were largely to blame for the apparent loss of competitive balance within the league. However, many dispute these finding as bloated and inaccurate, claiming both that the monetary figures presented are misleading and that the level of competitive balance within the league is in actuality at an all-time high. The often-proposed solution to the problems are to increase the amount of revenue sharing. This, however, is quite problematic and is easier said than done. For example, should an increased revenue sharing policy be instituted, which would seemingly allow smaller market teams to afford better players, winning more games and thus lessen the competitive gap, the values of the larger market teams such as New York and Boston would be reduced tremendously. The overall values of the larger franchises are then compromised and to many, that hardly seems like a fair or equitable solution.

While the Curt Flood Act of 1998 may have successfully provide relief from the longstanding antitrust exemption in a limited number of areas, it obviously did little to quell the remaining larger issues within the industry of baseball. A plethora of questions remain, all of which stem from one anomalous exemption that was created in a seemingly distant time period, then consequently upheld in its entirety for over seventy-five years. Upholding the precedent is curious further in light of the fact that every single other major professional sport league within the United States has denounced the rationale within *Federal Baseball Club* as it applies to sports today. Thus, very similar professional sport leagues, such as the National Basketball Association and the National Football Association have one by one over time refused to uphold its precedent within their own league.

On account of the divergent opinions produces by very similar professional sports leagues the notion that the antitrust exclusion within Major League Baseball will forever remain an isolated incident of law is certain. Sports leagues represent a unique business environment, one in which antitrust actions arise with regularity. Additionally, the fact that the individual teams within those sporting leagues operate in a cartel like fashion, in which each is an integral part of the whole, is therefore quite significant. Despite what each team or organization produces in a given year, whether it is deemed a successful or unsuccessful campaign is only one minute aspect, the larger culmination of the league is the most important aspect for its overall survival. The rules and regulations that govern the league, for example the

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particular policies on player restrictions or franchise movement, also therefore becomes a chief feature as it affects how the game is played and consequently the products eventual outcome. While one may be tempted to look at the apparent success of Major League Baseball throughout the years, particularly over the last decade, as an indication that the rules and regulations which govern the game are working successfully to produce a quality product, that is simply not the case. Rather, "the true value of any particular game is based upon the playing skill of the players, the nearly equal distribution among the teams, and the essential fact that the outcome of each game is in doubt,"[30] a set of circumstances that may be questionable given the antitrust exclusion.

The antitrust issue within Major League Baseball is one that will likely be around for quite some time as further regulations within the league are sure to come. Though it is unlikely that baseball will ever lose its status as our beloved national pastime, fans of the game may long be agitated by the continual debate over policy and regulation taking away from the joy of the game itself. Regardless of whether one supports the believe that removal of the antitrust exclusion is ultimately a necessary or beneficial change, or is a foolish removal of a policy that has led to decades of tremendous success, the fact remains that the exclusion has rested largely intact since 1922. Despite the fact that baseball is, after all, only a game, it is undeniable that Major League Baseball has become a truly enormous industry. Does that mean that, like the vast majority of other businesses, it should be subject to all of the antitrust rules and regulations that come along with that? According to the strong Supreme Court precedent set by *Federal Baseball Club* in 1922, apparently not.

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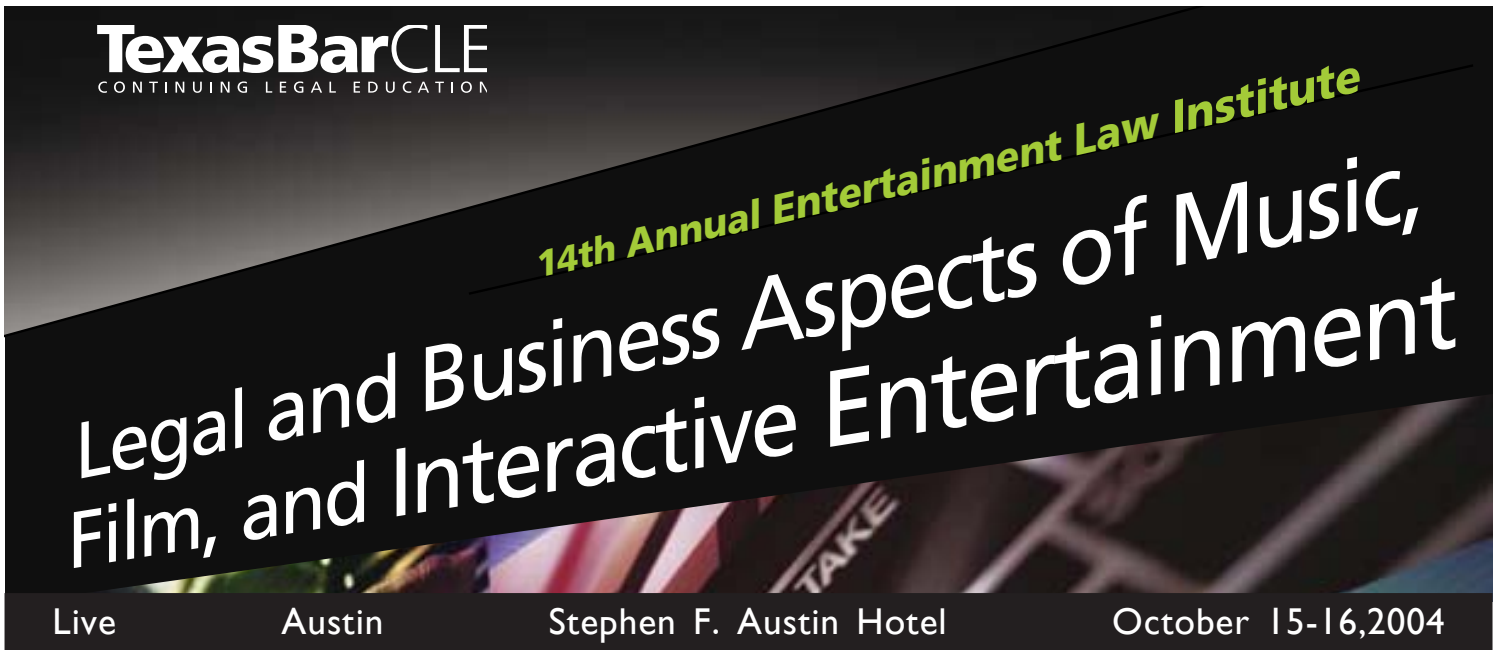

MCLE CREDIT
13.5 Hours (1.25 Ethics)
MCLE Course No.: 000066786
Applies to the College of the State Bar of Texas.

Friday, October 15

6.75 hours including .5 hour ethics

8:00 **Registration**

8:30 **Welcoming Remarks and Announcements**
Institute Director
Mike Tolleson, *Austin*
Mike Tolleson & Associates

SOUND RECORDINGS

8:45 **Distribution and Marketing Strategies for Indie Labels and Artists.** In the rapidly changing world of the music business, new artists and indie labels have many options when it comes to selling records. This panel of indie label and distributor representatives will discuss their strategies and the terms of doing business. *1.25 hrs*
Moderator
Yocel Alonso, *Houston*
Alonso, Cersonsky & Garcia

Panelists
Cameron Strang, *Austin*
New West Records

Patrick Clifford, *Austin*

Geoff Cline, *Dripping Springs*
Sovereign Artists

Michael Fitts, *Denver, CO*
Synergy Distribution & Media

10:00 **Break**

10:15 **What's Going on at Major Labels?** The major labels are consolidating, downsizing and reorganizing in the face of shrinking profits and technological changes. How is this impacting the traditional label approach to business? How have their artist agreements been affected with regard to internet sales, new artist budgets, marketing strategies, artist website sales, and royalty advances? *1 hr*
Moderator
Edward Z. Fair, *Austin*
Law Offices of Ed Fair

Panelists
Ken Parks, *New York, NY*
EMI Music

Darryl Franklin, *Los Angeles, CA*
Interscope, Geffen, A&M Records

11:15 **Electronic Record Companies - The New Frontier.** The internet has changed the music industry model for selling records. Representatives from cyberspace music companies explain their economic models and ways of doing business. *1 hr*
Moderator
Chris Castle, *Los Angeles, CA*
Akin, Gump, Stauss, Hauer & Feld

Panelists
Kevin Saul, *Cupertino, CA*
Apple Computer, Inc.

John Jones, *New York, NY*
MusicNet

Lucas Mann, *Emeryville, CA*
Clique, Inc.

12:15 **Lunch on Your Own**

1:30 **What's New at TexasBar.com and TexasBarCLE.com.** Learn about new benefits from your State Bar. *.25 hr*

MUSIC PUBLISHING

1:45 **Music Publishing Basics.** Music publishing is a major and growing source of revenue to writers and publishers. Speakers will review terms of a typical songwriter/publisher agreement, copyright law basics, co-publisher agreements and related negotiable points. *1 hr / .25 hr ethics*
Steve Winogradsky, *North Hollywood, CA*
The Winogradsky Company

Tamera Bennett, *Lewisville, TX*
Bennett Law Office

2:45 **Impact of Digital Technology and the Development of Digital Media.** Brief introduction to the Digital Millennium Copyright Act and a discussion about the current status of performance, synchronization, and mechanical royalties resulting from recent legislation and new media. *1 hr*
Moderator
Stan Soocher, *Denver, CO*
Editor-in-Chief, "Entertainment Law & Finance"

Panelists
Jeffrey Brabec, *Los Angeles, CA*
Chrysalis Music Group

Neeta Ragoowansi, *Washington, DC*
Sound Exchange

3:45 **Break**

4:00 **Performing Rights Organizations.** Representatives from the three performing rights organizations explain their companies' role in the industry, sources of performance revenue for writers and publishers, and new opportunities resulting from performance of music on the internet and mobile devices. *1.25 hrs / .25 hr ethics*
Moderator
Steve Winogradsky, *North Hollywood, CA*
The Winogradsky Company

Panelists
Dennis Lord, *Nashville, TN*
SESAC

Alison Smith, *New York, NY*
BMI

To be announced
ASCAP

5:15 **Adjourn**

Saturday, October 16

6.75 hours including .75 hour ethics

8:30 **Announcements**

COURT CASES & LEGISLATION

8:40 **Court Cases & Legislation: Year in Review.** Review of recent court decisions and legislation impacting the entertainment industry. *.75 hr / .25 hr ethics*
Stan Soocher, *Denver, CO*
Editor-in-Chief, "Entertainment Law & Finance"

MOBILE & INTERACTIVE ENTERTAINMENT

9:25 **Mobile Entertainment.** Fast new phones come with 3D stereo surround-sound speakers, motion cameras, faster processors, color screens, improved interfaces, and feature games, music, ringtones, and motion pictures. What are the creative and financial opportunities? *1 hr*
Moderator
Ken Parks, *New York, NY*
EMI Music

Panelists
Jeremy Welt, *Los Angeles, CA*
Maverick Records

Ted Cohen, *Los Angeles, CA*
D3 - Digital Development & Distribution / EMI Music

10:30 **Break**

10:45 **Game Development and the Future of Interactive Entertainment.** Interactive game sales now exceed motion picture box office receipts. Virtual worlds are growing in cyberspace as millions of people go online to play. Game soundtracks are featuring established artists. This panel will present an overview of the industry, as well as a discussion about where it is going and the kinds of deals being made. *1 hr*
Moderator
Don Karl, *Santa Monica, CA*
Perkins Coie

Panelists
Fred Schmidt, *Austin*
NCSoft

J.D. Alley, *Redmond, WA*
XBox / Microsoft

ETHICS

11:45 **Ethics 101.** The State Bar Disciplinary Czar explains how the attorney disciplinary works, including dramatic changes which were the product of the Bar's recent Sunset review. *.5 hr ethics*
Dawn Miller, *Austin*
Chief Disciplinary Counsel
State Bar of Texas

12:15 **Lunch on Your Own**

MOTION PICTURES

1:30 **The Role of the City in Developing an Entertainment Industry** *.25 hr*
Jim Butler, *Austin*
Manager, Creative Industries Development
City of Austin

1:45 **Acquiring the Screenplay.** Understanding the Writer's Guild rules, screenplay option agreements and work for hire agreements. *.75 hr*
Brenda Feigen, *Los Angeles, CA*
Feigen Law Office

2:30 **Securing an Actor.** How to negotiate a deal with an established actor and the terms of a SAG agreement at various budget levels; dealing with agents and the "pay or play" provisions in actor agreements. *.75 hr*
Marilyn R. Atlas, *Los Angeles, CA*
Marilyn Atlas Management

3:15 **Break**

3:30 **Acquiring the Music.** Who pays the piper and how much? Finding the right music at the right price for your film. *.5 hr*
Dan Butler, *Los Angeles, CA*
Warner Bros. Films

4:00 **The Film is in the Can: Now What?** *.5 hr*
John Pierson, *Austin*
Grainy Pictures

4:30 **DVD Distribution Deals.** Given that many indie films never go to theatrical release, DVD distribution is often the only alternative. A review of the major deal points and issues. *.75 hr*
To be Announced

5:15 **Adjourn**

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MIKE TOLLESON, Institute Director, has a long-standing practice in the music, motion picture, television and digital-media industries. He is a former chairman of the State Bar of Texas Entertainment and Sports Law Section and the founder of the Entertainment Law Institute. For more information see www.miketolleson.com.

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YOCEL ALONSO represents a diversity of clients in the entertainment business, including recording artists, record companies, publishers, media personalities, venues and promotion companies, the majority of which involve Latin music. He is a member and current Chair of the State Bar of Texas Entertainment and Sports Law Section Council, and former director of the Hispanic Bar Association.

MARILYN R. ATLAS is an award-winning producer and personal manager. Among her credits as a producer are "Real Women Have Curves" for HBO, which won the Audience Award at the Sundance Film Festival. As a casting director for feature films, her credits include John Frankenheimer's "The Equals" and "The Wiz."

TAMERA BENNETT has been actively involved in the music and entertainment industry for over fourteen years. Prior to becoming an attorney, she worked for numerous music publishers in Nashville in the fields of copyright and royalty management and administration.

JEFF BRABEC is Vice President of Business Affairs for the Chrysalis Music Group. Brabec co-authored with his brother Todd, Executive Vice President of ASCAP, of the book "MUSIC, MONEY, AND SUCCESS: The Insider's Guide To Making Money In The Music Industry".

DAN BUTLER presently serves as Warner Bros. Pictures VP of Business & Legal Affairs for Music, where he negotiates and drafts a complete range of music agreements for composers, songwriters, co-publishers, music supervisors, recording artists and record producers. He has helped put together soundtrack albums for "The Matrix," "Rock Star," and others, and also handles the music deals for all of Warner Bros. Animation, projects, such as "Scooby-Doo," and "Batman."

JIM BUTLER is the Manager of Creative Industries Development for the City of Austin. His job is to find the most effective ways that the city government can make Austin better by working with individuals, companies, and non-profits involved in music, film, and technology.

CHRIS CASTLE is an attorney representing artists, record producers, major and independent record labels, music publishers, and music industry executives and technology companies in the music group at Akin Gump in Los Angeles.

PATRICK CLIFFORD, artist management and record company consultant, recently relocated to Austin after 25 years as Vice President A&R for a number of major labels including the BMG/RCA Record Group, Capitol Records, A&M Records, Chrysalis Records and Epic Records.

GEOFF CLINE has practiced law in private practice, as General Counsel for Patagonia, Inc. and Assoc. General Counsel for House of Blues. Recently, he and colleagues formed Sovereign Artists, Inc. a new record company with new studio albums by Heart and Buddy Holly's band, The Crickets, released in Summer, 2004.

TED COHEN As Senior Vice President of Digital Development & Distribution for EMI Music, Mr. Cohen oversees worldwide digital business development for this "big five" record company which includes labels such as Capitol, Virgin, Angel/Blue Note, Parlophone and Chrysalis.

EDWARD Z. FAIR is an Austin-based attorney whose practice involves all aspects of music, film, television, and the Internet.

BRENDA FEIGEN represents clients in the motion picture, television and literary fields, including rights owners, writers, directors and authors. She was a producer of "Navy Seals" (Orion, 1990) and is a frequent lecturer on subjects ranging from the respective roles of agents and attorneys to the contents of different kinds of entertainment-related contracts.

MICHAEL FITTS is president of Synergy Distribution and Media which was launched in 2002 as an independent record label distribution company. Recently, it has begun to distribute video/DVD product and is based in Boulder, Colorado.

DARRYL FRANKLIN is a Senior Business and Legal Affairs executive at Interscope, Geffen, A&M Records, part of the Universal Music Group base in Los Angeles where he handles the day to day affairs of Tupac, Snoop Dogg, and Black Eyed Peas among others.

JOHN JONES is Vice President of Programming, Artists and Label Relations at MusicNet, an online music delivery service, where he is responsible for managing relationships with MusicNet's music partners, including major and independent labels and managers.

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DENNIS LORD is the Senior Vice President of Business Affairs at SESAC. Lord works with SESAC's Writer/Publisher Relations staff in a creative capacity, focusing across all musical genres, as well as in film and television. He was also a founding council member and a past president of the Americana Music Association.

Incentives of Governments to Regulate Sports Broadcasting Markets in Europe: A Proposal for Two Positive Externalities.

By Abdourazakou Yann

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This paper focuses on the migration of sports TV rights towards pay television in Europe and its consequences for consumers. It examines a question that European national competition authorities and State members are facing today through the making of national lists of relevant sporting events[1]: should viewers always have a free to air access to major. We assume that sports broadcasting consumption create a rational addiction (Becker & Murphy, 1988). Sports broadcasting give viewers the possibility of acquiring a consumption capital (Becker & Murphy, 1988). The sports broadcasting consumption capital' increases the future utility of purchasing sports broadcasts (subscription, pay per view) while producing an addictive effect for consumers. Viewers also consume a peculiar "instant utility information good" that provide social capital (Bourdieu, 1981, Putnam 1993). The listing events policy meets these theoretical framework conclusions and confirms that free to air access, i.e. the largest access in Europe, increases viewers' welfare.

The rapid growth of the sports broadcasting in Europe in the past two decades – enhanced by the introduction of the digital technology – has been particularly illustrated by the development of pay television channels and also tensions that shake the professional sports markets. The increase of the competition in the market during the 1990s gave rise to a migration of sports TV rights towards cable and satellite networks. In that context, European competition authorities and governments face the following question: do consumers always have to have free to air access to sports broadcasting? In the first part, we make a literature review on the traditional arguments that applies to television broadcasting regulation. We'll then focus on the sport content in respect with rational addiction models (Becker & Murphy, 1988) and social capital concept (Bourdieu, 1981). Taking into account the peculiarity of sport information, we examine the conclusions of the directive television without frontier of 1997 and different laws for sports TV access. Our conclusions are that sport broadcasting is an addictive good related to a social capital investment through the consumption and experience of an "instant utility information good". This drives us to consider different consequences in terms of regulation and welfare for consumers and sports fans in Europe.

1. Traditional arguments of broadcasting regulation policies.

Traditional arguments of regulation the broadcasting markets have been widely treated in literature[2]. Four main arguments mainly justify a regulation of TV broadcasting: public good characteristics, rents, diversity and equity, the promotion of culture and identity by broadcasters. One of the main arguments for regulation politics has been the characteristic of public goods in literature (Samuelson, 1954). The concept of public good associated with the TV broadcasting services is a key elements to be taken into account when assessing the broadcasting markets efficiency, whenever it's a commercial broadcaster, a public broadcaster or a pay TV channel.

Broadcasting programs considered as public goods affects the gain of an optimum on the broadcasting markets since there are no additional costs for offering additional programs to new consumers and lead to a sub optimal equilibrium on the broadcasting markets. In theory, markets are considered to be more efficient if consumers can maximise their welfare. In the broadcasting markets, this means that the preferences of the consumers and the value they assign for each TV programs are the norms to adopt when assessing consumer's welfare in broadcasting.

1.1. Failures broadcasting models.

The impact of the different models (tax, advertising, subscription) on broadcasting is one the main objective of the broadcasting policy as it is directly related to the public good characteristics. Public service channels (PSB) like France Television or the BBC are facing an agency problem (Akerlof, 1970 ; Jensen & Meckling, 1976). As consumers can't express their preferences precisely, PSB channels substitute their preferences to

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the consumer's. The principal (the viewers) can't give any information on his preferences to the agent's (the broadcaster). Broadcasters can't weight up the optimal TV program's production and make efficient use of their resources when producing the output. In the case of private commercial channels like TF1 or ITV, programs are made available free to air to viewers and sent to advertisers. The whole process places the advertisers as intermediates between viewers and broadcasters (Spence & Owen, 1977). It determines proportionally to the size of the audience the amount of revenues for commercial TV channels. But in so doing, it overlooks the preferences or the willingness to pay of the different groups of viewers. Consequently, this type of financing model neglect programs choices related to a high interest for a limited group of viewers and favour programs which attract large audiences, even if the viewer's preference for this type of programming is lower than a second choice of programming. Pay TV channels are facing the same challenge in theory. Owen & Wildman (1992) emphasise that pay TV channels have two major consequences in terms of welfare:

- when putting its price above the marginal costs of production, audiovisual firms take the risk of excluding a certain amount of viewers. This lead to a diminution of the global welfare as long as the value of the programs for the excluded viewers is higher than the additional costs for society to have them as viewers;
- on the other hand, these firms have more incentives from the markets to produce programs according to the demand.

As it is impossible for pay TV channels to practice a perfect discrimination by prices (i.e. by identifying the exact value for each group of viewers for example), there is no reason to think that the program's selection will reflect their exact value for viewers.

1.2. Rents from Sports bodies and broadcasters.

Steiner (1952) and Beebe (1977) say that when the number of broadcasters is limited (i.e. waves capacity, distribution system), rents will be taken by the privileged position acquired on the market (a monopoly for example). Securing these rents for the public welfare instead of a private production is a strong argument for PSB. In the case of sporting events, those rents won't disappear as the number of sports events has stayed the same whereas in the 1990s the number of broadcasters has increased tremendously. Moreover, sports events are not substitutable, as we will consider later. This argument is strong, as the increase in sports rights contracts over the past decade has strengthened these rents for sports bodies and exclusive broadcasters of a "premium sport content" like football.

1.3. Diversity, equity and national culture in broadcasting.

Whenever there is barriers to entrance or not, broadcasters won't satisfy the diversity of the demand (Owen & Wildman, 1992). This situation has efficiency and equity concerns. The loss of efficiency is directly related to the characteristic of public good that pull to a sub production of programs that satisfy minority tastes. Broadcasters duplicate programs' categories and affects programs' diversity (Steiner, 1952; 1961), whenever the number of channels is important (Boardman & Vining, 1984). When assessing sports broadcasting, it is difficult to assess the efficiency of the market, as a sport broadcast always comprises the same series of events from a one channel to another (ceremony, start, arrival, score, etc…). It is also complicate to say if the coverage of the BBC or France Television is better than Canal Plus or Sky's sports broadcasts. The matter of equity seems to be of a greater concern. If we consider Canal Plus is a pay TV, France Television produces a free to air signal that 99 % of the TV set owners can get. The concern of equity in broadcasting is a also an issue for governments. Although Canal Plus (Vivendi) is a pay channel, France Televisions produce a free to air service that every TV set owner can get. The characteristic of public good make it difficult to establish the optimal production of signal even with pay TV, as each can put a price above marginal costs and deprive some consumers that would have been interested in consuming the programs at a lower costs. This situation can lead to some equity concerns for some sports content that are perceived essential to consumers' interests and welfare[3].

2. Theoretical approach.

2.1. Sports information's peculiarities.

The basic unit transacted is "sport information good", whenever the program is a sporting event or a championship. Information goods in general have been studied in economics literature by numbers of researchers (Shapiro & Varian, 1998; Phetig, 1988; Koboldt, 1995; Hutter, 2003). They integrate anything that can be digitised (a book, a movie, a record, a telephone conversation). Information goods have three main properties that would seem to cause difficulties for market transactions. First, they are considered to be experience goods. You must experience information good before you know it's worth consuming or buying it. Secondly, they cause high returns to scale. Information typically has a high fixed cost of

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production but a low marginal cost of reproduction. Finally, they are considered as public goods. Information goods are typically non-rival and sometimes non excludable. Exclusion is not an inherent property of goods, public or private, but is rather a social choice. In many cases it is cheaper to make a good such as streetlights universally available rather than make them excludable, either via technology or by law. Information goods are inherently non-rival, due to the tiny cost of reproduction. However, whether they are excludable or not depends on governments' choices, especially regulation of the market that produce information goods. Most countries recognize intellectual property laws that allow information goods to be excludable. In the case of sports broadcasting, one major issue in Europe has been the paradox situation. While in the 90's, the Commission aimed at establishing new technological platforms of broadcasting through sports content, they came to regulate the market of sports broadcasting for reasons dealing with the access scheme for consumers. Although sports broadcasting and films are the two main premiums contents in terms of audience and subscriptions to pay TV, sports broadcasting stand for a peculiar content compared to other programs:

- The process of production is the result of horizontal agreements that produce the best product. Sports League and federations are natural monopolies in the interest of the consumers on the downstream markets of television;
- Contrary to other audiovisual content, sports' broadcasting is a perishable service that has a short utility for the consumers and allow only short exploitation for audiovisual firms;
- The demand for the different sports products is inelastic. A consumer that wants to see the Liga Calcio won't be satisfied with a Formula One Grand Prix.
- The economic transaction of sports broadcasting is a source of asymmetrical information on both sides of the market. Neither the League nor the broadcasters have information on the quality of product.

2.2. Governments' regulation of sports broadcasting.

The development of pay TV channels has dramatically enhanced competition on the different broadcasting markets in Europe. The migration of TV sports rights to pay TV raised many new and complex issues for the application of competition law to sports broadcasting. Special attention is given to sports rights scheme and their impact on consumers' welfare on the downstream markets. We will not take step into a legal debate on rights cessions scheme, we'll focus on consumption consideration explaining the will of governments to guarantee free to air access to sports fans. Although the Commission distinguish two separate markets for sporting events: a market for events like the Olympics Games, the Football World Cup or European Championships and sports league's product (Premier League, Ligue 1, Bundesliga)[4]. Although they are considered as separate markets, we'd like to assess the fact that the Commission has always been aiming at granting a generalist free to air access to certain events which ever markets they are produced on (FA Cup Finals or Tour de France). Special focus has also been made concerning threats from anti-competitive behaviors threatening the social and cultural functions of sport, especially football in Europe.

2.3. Models for rational addiction.

Phenomenon related to habits and addictive behaviour has been studied with diverse approach (psychology, economics, sociology…). Two main approaches are generally applied in social sciences: rational addiction and myopic habits (Dewenter, 2003). The first kind of approaches considers addiction as rational. The consumer is aware of the effects of addiction on future utility to consume (Stigler & Becker, 1977; Becker & Murphy, 1988). The second ones that are not developed here consider habits as a process of backward looking. The actual utility of consumption depends on past consumption. The myopia aspects of habits stand for the absence of information of those consuming on future utility for consuming a product (Gorman, 1967; Pollak, 1970, 1976; Spinnewyn, 1981). Those models are not applied as we postulate that viewers that consume sports broadcasting are aware of the future utility of consuming as we may illustrate with our hypothesis. Stigler and Becker (1977) have associated with addiction a strong hypothesis of rationality that represents the basis of rational addiction models – the stability of preferences and their determination par exogenous factors than prices or revenues. The consumer plan consists in maximising the utility function. A good is considered to be addictive if its present consumption is determined by past consumption through a stock of consumption. This stock, prompted by past consumption corresponds to a discovery on welfare potential that can be derived from the consumption of the good in question. In terms of utility, this implies that this marginal consumption is positive compared to the previous one. One example often cited by the authors is that listening to music corresponds to a « beneficial » addiction. The time spent listening to music adds to the pleasure it procures while the time spent allows appreciating it and increases the productivity of the time spent. This implies a constant connection between

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the marginal utility of the good « listening to music » and the previous listening stock .The analysis is two faceted: first it is interesting to note an addiction through reasoning in terms of quantity or consumption; second, the study of rationality will be carried out in terms of utility for the individual. Becker and Murphy (1988) deal with all consumptions for which present choices are influenced by previous decisions. It illustrates an individual deciding to initiate a consumption generating dependence and relates the consequences of his dependence to his future satisfaction. The authors show that the balance of consumption of an addictive good is instable when the degree of addiction is high and the likelihood of becoming dependent is all the more important as the preference of this good is. However, the authors do not give details about the arbitration between the immediate satisfaction in its consumption and the subsequent consequences. These authors postulate that consumers have already made their choice between the satisfaction they have from a given product in its consumption and its advantages or drawbacks. Thus the product becomes an investment: the satisfaction they have in a product depends on their ability to appreciate it. This satisfaction is related to a stock of past consumption. The main consequence of the model is that individuals choose from experience including their future dependence: and if they continue consuming, it means that it all suits them. The theory of rational addiction accounts for this dependence with the optimisation of a utility function. When implementing those tools to sports broadcasting we assume there is a dependence effect, according to Becker and Murphy (1988) on sports information from particular products (football scores, a set in a tennis tournament and the results of a F1 race). Our point is to examine the conclusions from the theory of rational addiction in the case of a sport event TV coverage while identifying the factors of dependence.

2.4. Social capital (Bourdieu, 1981; Putnam, 1993) and the theory of consumer behaviour (Becker, 1996).

Bourdieu (1981) and Putman (1993) developed the concept of social capital. It can be defined as the attribute of an individual standing in a social context. A social capital can be acquired through intentional actions and turn this capital into economic valuables. This, however, depends on the nature of social obligations, relations and on the networks one can access to. According to Putman (1993), « *Social capital depends on the features of social organization such as trust norms and networks capable of improving the efficiency of society while improving the coordination of action* ». From an economic point of view, social capital is a direct source of utility and therefore an aspect of the individual's function of utility.

The starting point of the "new theory of the consumer" is that the purchase of an item or a service is not a final economic act in itself .The approach sustained by Becker (1996) integrates the experience and the social forces in the preferences, using two stocks of basic capital. Personal capital includes significant previous consumptions and other personal experiences with an influence on current and future utilities. Personal capital incorporates the influence of previous actions of peers and other people within the individual's social network. These two types of capital are part of the human capital. Becker thinks that they must be put together with the goods, in the arguments of individual's functions of utility. As Becker (1996) explains it, we do not buy a car for the car itself but rather for the services or the satisfaction we can derive from it: we do not buy a car, we buy instead a means of transportation in order to easily go from one place to another or else an « image » we want to show to the neighbours or friends. The act of consumption is but an intermediary economic act used by the consumer to « produce » satisfaction. This satisfaction varies from one individual to another. Some want a means of transportation above all, others to show off. In this respect the consumer is not only some one who consumes; he is an economic agent who « produces ». What is he producing? His satisfaction. The consumer is therefore a « producer » who, in order to produce the satisfaction he pursues, uses « inputs » in other words, the things he buys on the market place. The models of rational addiction and the importance of social capital in the relationships of individuals raise two questions: what is the process of investment in the social capital when watching a sport broadcast? What is it based on in the case of sport? Is it connected to any benefits for viewers? Some conclusions can be drawn later from these questions in terms of regulation for EC.

3. Sports broadcasting: a positive addictive good.

In this part, we'll consider different factors that are specific to sports broadcasting and which can potentially create addictive behaviour for the consumers:

- Professional sports offer a great production of statistics and results;
- The sport spectacle shows stars with whom fans can identify themselves when watching sports broadcasting;
- Sports uncertainty captivate the attention of consumers and motivates the consumption of a sport product;
- The uncertainty of championships allow sports league to build interests of the viewers all along the season.

The addiction is based on the past formation of a consumption stock. In the case of sports, it is composed

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of the specific knowledge about a sport (statistics, history of the teams and players, welfare derived from past consumption on the uncertainty of a sport product. These features increase the utility of future consumption for viewers and especially subscribers.

3.1. Valorisation of information and statistics by broadcasters create rational addiction to sports broadcasting for consumers.

From a TV channel point of view, the production of statistics and records is a precondition to its diffusion. As a sport product is uncertain, the viewer is placed for the duration of the broadcast in front of a dramatic situation of which a winner and a loser will be produced. The satisfaction issued from this consumption relies on the score evolution and the dramatisation effect generated. Premium sports contents are those permitting a high variation of scores in the shorter period of time possible. Some sports like basketball, tennis or Formula One allow a great fluctuation of the records and statistics[5] that are the only factors having an impact on the overturn of an event. The rules of sports guide its capacity to produce scores and statistics determine its potential to generate audience. It establishes the quantity of information that can be produced during the broadcast. Cable and satellite operators make lots of efforts to produce and integrate scores and statistics. Operators not only broadcast sports content. A key issue for a pay TV channels is to captivate viewers' interest for the issue of the broadcast[6]. The explosion of the sports broadcasting markets has led to many operators' offers willing to motivate subscribers for investing time watching live sports on television. The increase of interests for subscribers of cable and satellite channels relies on the richness of the offer from a central product (very often football in Europe). In France for example TPS broadcasts its football match of Ligue 1 in *Jour de Match* Saturdays on TPS Foot. From 8.00 am, the magazine *Coup d'envoi* makes the tour of the last news and present the issue of the prime live broadcast. *Coup d'envoi* is broadcasted all along the day in order to create a tension around the live broadcast and motivate viewers to consume the prime product. This tendency can be illustrated by the explosion of interactive services aimed at attracting subscribers in a relation that is by nature ephemeral. Canal Plus is the creator of Zapfoot system – a signal allowing the consumers to watch new goals while watching a live broadcast. TPS has also created MultiBut that allow viewers to switch from a live broadcast to another one when a goal is scored. In England, skysports.comTV (BskyB) give its subscribers the possibility to design its records and statistics on screens for cricket and also viewing angle for Formula One Grand Prix. Interactive services play on the thirst of records from subscribers that allow them to go deeper in the consumption of sports information. Additional services are also available (slow, angles, number of cameras or commentary).

Digital set top boxes allow consumers to bet on sports events while accessing additional sports information on the producers' web sites like skysports.com. This is the issue of operators' strategy consisting in creating a consumption stock of sports records and statistics. The operator can identify the resort of the demand by analysing the decoder' command. The audience of sports broadcasting that shows a massive consumption of sports products, whether on pay TV channels or generalist channels, illustrate demand for a set of features like quality of the sport product or its social impact. Nobody would doubt that a limited number of sports products are premium contents ready willing to pay high prices to consume. When considering if rational addiction models can approach sports products, one should distinguish two main categories of viewers (Broland, 1987). Core audience represent regular viewers and theatregoers correspond to audience consuming when the program embodies an issue. The combination of the features of adversary teams like football players and reputation concerning the quality of teams crystallize the interests of viewers on the output. In consequence, it has direct effect on consumption for core audience. It embodies viewers consuming matches or championships season after season independently from the form of the team and insensitive to factors like access costs for broadcasting and revenues[7]. The persistence of this demand illustrate an addictive effect to sports broadcasting, particularly in core audience that had already have the opportunity to build a consumption stock (Becker and Murphy, 1988) of professional sports records and statistics. In that context, we assume that an addictive effect is created by sports broadcasting on core audience. The reason is also that consumption of sports products is more important than the quantity potentially available. Sport content is broadcasted in News programs, talk shows and games all the week through. Although there isn't any physical addiction, we think there is a rational addiction in the case of core audience that reflect specific sport product consumption like the Liga, the Calcio or the Premier League in football. Addiction comes from the regular consumption of a product but also from the peculiarities of sports information as regards the uncertainty of outcome and instant utility. Viewers of such programs get used and addicted to a specific format for sport content.

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3.2. Instant utility of sports information: a basis for rational addiction.

As far as we know, no research has been carried out in sport broadcasting itself. Concerning the sport show some authors have studied the characteristics of the demand for professional team sports. However the number of researches carried out over habit and the effect of dependence is still very limited not to say absent from literature. From the spectators' point of view, studies have been made in a single professional football season in England (Peel and Thomas (1996), Dobson and Goddard (1995) and Simmons (1996) while Burkittand and Cameron (1992) have orientated their studies in the English rugby league. The uncertainty on the final product and the significance from a season to another season were identified as key elements in terms of presence in the football matches (Byers, Peel, and Thomas, 2001). Practising professional sport is opposed to amateur sport in this "*competition is here drama, collective drama and the athletes are actors acting in front of a public and for a public"* (Yonnet, 1998). The spectators are therefore fully aware that the show they are watching is something very serious. The essence of dramatic sport is that, unlike a film or a play, the outcome cannot be known in advance. The uncertainty lasts as long as the show lasts and to the end. These speculations and calculations can be found in the televised sport show. In the course of the French League 1 Championship in the 2002-2003 season, a few days before the end of the season, several clubs were still in the run for the title. Canal Plus (Vivendi) has the rights for the coverage and they maintain suspense and use a chart to see which club will win the title using different criteria (number of points already acquired, problems linked with the scheduled matches, efficiency at home and outside, the physical condition of the players, the efficiency of the defence and attack). One of the characteristics of a competition is that it is not everlasting. As the championship is consumed, subscribers are getting a better idea of the outcome of the championship: the winner.

3.3. The identification of subscribers to sports broadcasting's actors.

The characteristics of the competing teams, the stars, the reputation of the team play a key role in what the spectators expect in the output and there in the rest of the service offered by TV operators. In the case of football, a subscription to a channel such as canal Plus or Sky Sports can depend on how loyal some fans are to some clubs but also on cultural backgrounds (Formula One in Italy and in Germany and football in England). The existing relationships between some clubs or different products (Liga Calcio and Premier League) seems to coincide with some habit, a form of demand in which previous consumption is influenced by current consumption while increasing the present and future marginal utility of consumption. This phenomenon takes place when an effect of apprenticeship appears though regular consumption of sports events. It influences, in a positive way, the envy to consume more matches. In theory this phenomenon might be connected with some utility derived from « traditional » consumption of a match at home (peers' influence), among friends or in pubs. In the particular case of football in Europe, Dobson and Goddard (1995) have shown that the aggregate of the demand for the Premier League matches led to them to assume that history and traditions are important to determine the configuration of demand. In this respect, the first clubs have a permanent advantage by making money generated by the fans' passion transmitted from generation to generation. We think this demand is relayed by the fans' subscriptions, especially by new clubs' channels, but also to leagues' broadcasters.

3.4. Viewers are investing in a social capital (Bourdieu, 1981).

The investment of viewers in the consumption of sport broadcasting reinforces the rational addiction effect by enabling individuals to connect socially in various topics. The motivation for the spectator lies in the possibility to talk, in addition to the emotional experience of the event, about his experience. Thus the more the spectators, the more it is possible for the *afficionados* to have exchanges on the sport transmission .The investment in the social capital is therefore all the more interesting. This phenomenon increases the utility of the broadcast. Thus in addition to the pleasure of watching a match, there is also the pleasure of talking about the key moments with peers. Thus the spectators are not only consumers but also the producers of their own satisfaction as said before. One can also imagine the reverse. A large number of viewers watching a particular sport program (NASCAR races, a Premier League football match, NBA basketball match) together with a particular social environment could generate a particular interest when watching a specific program. This idea is found in Dewenter's analysis of the press (2003). Dewenter (2003) assume that spectators belonging to a social group are influenced by members of other groups or by their own group as a whole. This is a common phenomenon in psychological studies, marketing and in economics; it is the effect of social interaction and of groups of thought. Case and Katz (1991) have studied the influence of the family and the neighbourhood on the criminal activity, drug taking and the consumption of alcohol among teenagers. Glaeser

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and Scheinkmanand (1996) studied the effects of social interaction in crime. In this respect, it seems that a phenomenon of substitution exists because of the influence of social interactions. Thus it seems more relevant to watch a particular match in so far as we know we can discuss about it in the evening, the next day or the following week with a group who has seen the program.

The point evoked further back about the influence of social interactions on the incitement to consume sport broadcasting could turn out to be interesting to study for various reasons. But how could other groups influence viewers who are not fully aware of their tastes? The answer lies in the effect of apprenticeship or experience in the sports programs. The existence of such effect in the consumption is relevant because of the fact that the program is in the category of information goods. With these the producer cannot give information on the information he sells. The consumer has therefore to consume if he wishes to know the value or the satisfaction he can derive from it. In this respect such sport vents as the Olympic games or the football World Cup are appreciated in so far as they give the spectator the possibility to consume sport information that is rich in statistics and generating a tremendous amount of uncertainty and therefore the starting point for various emotions. There is also the fact that those events give an opportunity to detain a topic of conversation. This depends on the occasions given both by the press and the sport events to enjoy a second time and talk about other people's consumption. Anyone who will have watched a specific match, a competition or a tournament will have a certain satisfaction to share his point of view. Thus the consumption of sport broadcasting is an opportunity to discuss about it between club supporters or TV viewers following weeks or months or even years. Thus the hand by Vata, which allowed Benfica of Lisbon to qualify in European Cup final in the detriment of Olympic of Marseille in 1990 or again the hand by Diego Armando Maradona versus England In the World Cup in 1996 are still topics of discussions among football fans. The kind of investment made by the spectator in the consumption process does reflect of addictive good (Becker & Murphy, 1988) developed beforehand. The point of consuming increases subsequently given the present consumption. Viewers consume the current good, knowing that they will have the possibility to have other benefits in the future.

In conclusion, also various aspects of sport information enable viewers to have a stock of consumption (Becker & Murphy 1998), we assume that only the core audience, i.e. the most regular consumer of sport programs, are addicted to sports broadcasting. In sports, consumption capital consists in a large number of statistics. However, in the case of an immaterial good, it's still difficult to say whether an effect of capitalisation of consumption operates, as the number of subscribers cannot be measured precisely and so much for the audience and not the quantity of information that is consumed. Thus, the measurements done could be biased. The investment in the social capital depends on the place occupied by sport in societies. Whether you watch it or you practice it, sport is a topic of conversation that permits an individual to socialize. The anticipation of this incites him to watch the key sporting events that are scheduled in order to maximise their social capital (Bourdieu, 1981). Therefore the consumer of televised sport shows consumes and produces his own satisfaction (topics of discussion with friends). Eventually, the consequences, in terms of regulation are in keeping with the European Commission, hence the " Televisions Without Frontiers" directive of 1997. Unlike a public channel, a pay channel affects the efficiency of the dependence effects and investment. In this perspective, the instauration of a regulation in Europe aiming at providing the widest access to major sports broadcasting can be accounted for with the characteristics of consumption and their social utility for the viewers.

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[1] The directive "Television without Frontiers" of 1997 gives State members the capacity listing sporting events of national significance.

[2] See Blumler (1992) Brown (1996) Brown & Cave (1992) Graham & Davids (1992) Hoskin, McFadyen & Finn (1977); Peacok (1986); Trosby (1994).

[3] This consideration lies also on the fact that a pay TV channel will reach less audience than a free to air channel. That means the benefits of viewing is less important in that case.

[4] European Commission, Eurovision (2000), case IV/32.150, *Eurovision*, *Official Journal of European Communities*, n° L 151, 24th June, p. 18.

[5] Points, sets, speed per tour, decisive passes, for example.

[6] ABDOURAZAKOU, Y. (2003), 'Les stratégies génériques des télévisions : le cas des chaînes sportives face à un environnement hyperconcurrentiel', *Revue européenne de management du sport*, n° 10, décembre.

[7] BSKYB CANAL PLUS

Nonresident Team Doctor Cannot Be Sued In Texas Courts

Doug Brocail, a veteran major league pitcher, suffered an injury to his elbow while pitching for the Detroit Tigers. The Tigers' team doctor diagnosed Brocail's injury and performed surgery, in Michigan, on the pitcher's elbow. Since the season was over, Brocail unilaterally decided to move back to Houston and requested that the Tigers' team doctor prescribe physical therapy through a Texas provider. The team doctor faxed a prescription for physical therapy to a Houston physical therapy provider. Brocail then underwent the prescribed physical therapy. The physical therapist and team doctor stayed in regular contact, via fax, regarding Brocail's improvement and recommended procedures. The doctor then ordered additional physical therapy and prescribed a dynamic splint for Brocail's elbow. Approximately one month later, the team doctor faxed a proposed treatment plan for Brocail that included initiating "light tossing" of a baseball. After not fully recovering, Brocail filed suit in Texas against the Tigers' team doctor alleging medical negligence, gross negligence, and fraud. The Tigers' team doctor challenged the court's jurisdiction claiming that he lacked "minimal contacts" with Texas. The issue was whether the Texas courts could exercise jurisdiction over the nonresident team doctor.

Under Texas law, Texas courts may exercise jurisdiction over nonresidents if (1) the Texas long-arm statute authorizes the exercise of personal jurisdiction, and (2) the exercise of jurisdiction is consistent with federal and state constitutional guarantees of due process. The hallmark of such analysis is whether the defendant has established sufficient minimum contacts with the forum state so that the exercise of jurisdiction will comport with traditional notions of fair play and substantial justice. If the nonresident has a "substantial connection" with Texas arising from the nonresident's purposeful conduct toward Texas, then the nonresident should foresee being haled into Texas courts.

Here, the court found that the nonresident team doctor did not have sufficient contacts with Texas to be brought under its jurisdiction. Brocail v. Anderson, 132 S.W.3d 552 (Tex. App. – Houston [14th Dist.] 2004, pet. filed). The court noted that the team doctor only worked in Michigan, he did not travel with the team to Texas, and he diagnosed Brocail in Michigan. Also, the team doctor did not direct Brocail to go to Texas to receive post-operative treatment, nor did the doctor refer Brocail to the Texas physical therapy center. In fact, the doctor preferred that the physical therapy take place in Michigan and the doctor did not bill Brocail for any of his physical therapy services. According to the court, the nonresident team doctor "did not directly provide continuing primary care to Brocail once Brocail returned to Texas; he merely authorized and affirmed the course of rehabilitative treatment he prescribed." Although the court acknowledged that this was a "close case" because the nonresident doctor had prescribed an elbow splint and the initiation of light tossing, the court classified this conduct as mere follow-up care. Since the doctor merely authorized and affirmed the course of rehabilitative treatment, as opposed to providing continuing primary care, the court found that such follow-up care did not constitute sufficient minimum contacts with Texas to establish jurisdiction.

by Ondrea Taylor

USEFUL LINKS FOR THE PRACTICE OF ENTERTAINMENT, ART AND INTELLECTUAL PROPERTY LAW

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Texas Commission on the Arts
http://www.arts.state.tx.us

Texas Film Commission
http://www.governor.state.tx.us/film/index.htm

Texas Music Office
http://www.governor.state.tx.us/music

United States Copyright Office
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United States Patent and Trademark Office
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FindLaw
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Franklin Pierce Intellectual Property Mall
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Intellectual Property Law Server
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IP Law Practice Center
http://www.law.com/jsp/pc/iplaw.jsp

IP News from Questel Orbit
www.questel.orbit.com/EN/Resource/index.htm

Kohn on Music Licensing
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International Trademark Association
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Links to music publishers and record labels
http://www.writerswrite.com/songwriting/markets.htm

Motion Picture Association of America
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National Music Publisher's Association/Harry Fox
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Student Writing Contest

The editors of the TEXAS ENTERTAINMENT AND SPORTS LAW JOURNAL ("Journal") are soliciting articles for the best article on a sports or entertainment law topic for the fifth annual writing contest for students currently enrolled in Texas law schools.

The winning student's article will be published in the Journal. In addition, the student may attend either the annual Texas entertainment law or sports law seminar without paying the registration fee.

This contest is designed to stimulate student interest in the rapidly developing field of sports and entertainment law and to enable law students to contribute to the published legal literature in these areas. All student articles will be considered for publication in the Journal. Although only one student article will be selected as the contest winner, we may choose to publish more than one student article to fulfill our mission of providing current practical and scholarly literature to Texas lawyers practicing sports or entertainment law.

All student articles should be submitted to the editor and conform to the following general guidelines. Student articles submitted for the writing contest must be received no later than September 1, 2004.

Length: no more than twenty-five typewritten, double-spaced pages, including any endnotes. Space limitations usually prevent us from publishing articles longer in length.

Endnotes: must be concise, placed at the end of the article, and in Harvard "Blue Book" or Texas Law Review "Green Book" form.

Form: typewritten, double-spaced on 8½" x 11" paper and submitted in triplicate with a diskette indicating its format.

We look forward to receiving articles from students. If you have any questions concerning the contest or any other matter concerning the Journal, please call Andrew T. Solomon, Professor of Law and Articles Editor, Texas Entertainment & Sports Law Journal, at 713-646-2905.

ENTERTAINMENT & SPORTS LAW SECTION
of the STATE BAR of TEXAS
MEMBERSHIP APPLICATION

The Entertainment & Sports Law Section of the State Bar of Texas was formed in 1989 and currently has over 500 members. The Section is directed at lawyers who devote a portion of their practice to entertainment and/or sports law and seeks to educate its members on recent developments in entertainment and sports law. Membership in the Section is also available to non-lawyers who have an interest in entertainment and sports law.

The Entertainment & Sports Law Journal, published three times a year by the Section, contains articles and information of professional and academic interest relating to entertainment, sports, intellectual property, art and other related areas. The Section also conducts seminars of general interest to its members. Membership in the Section is from June 1 to May 31.

To join the Entertainment & Sports Law Section, complete the information below and forward it with a check in the amount of $30.00 (made payable to ENTERTAINMENT & SPORTS LAW SECTION) to Tamara Bennett, Treasurer, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

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