

The definition of film also includes television programmes and may be wide enough to include video games. A detailed review of the requirements to be satisfied for a film to 'qualify' under the Act as a British film is beyond the scope of this article. However, to summarise briefly, a film must fulfil three main conditions:

- the maker of the film must be an individual residing in, or a company incorporated in and centrally managed in, a member state of the European Union;
- the majority of the labour costs must be paid to citizens or residents of the European Union or the Commonwealth; and
- only a limited percentage (currently 7.5 per cent) of the film's playing time may be shot in a 'studio' outside the UK (but even then must still be shot in a 'studio' within the Commonwealth or the Republic of Ireland).

The Department for Culture, Media and Sport (DCMS) issues a certificate confirming a film's qualification at the time that a film is completed, at which time compliance with the relevant requirements can be properly assessed by the DCMS. This explains the timing of most sale and leaseback transactions, which must await the DCMS certificate before the deal can be concluded to release the financial benefits discussed above to the bank and the seller company (through the lessee).

Variation of the benefit

The range of the financial benefit flowing to the seller (through the lessee) out of a sale and leaseback deal depends on a number of factors.

The one-year write-off available for films with a budget under £15m is likely to generate a greater return for the seller.

Other key factors relate to the allocation of risk between the parties and the subject of commercial negotiations between the leasing entity of the bank, on the one hand, and the seller and the lessee, on the other. These risks include the risk that the corporation tax rate might increase, or that the tax deductions might not be granted or that various tax or accounting assumptions in the lease change, thus affecting the profitability of the transaction.

Security

The leasing entity will naturally want to ensure the lessee's payment of the rental payments under the lease. The security arrangements required by the bank may include a third party bank guarantee and, depending on the strength of the seller, a corporate guarantee of the lessee's ability to meet increased rental payments.

SPORTS

CO-OWNERSHIP OF TELEVISION SPORTS RIGHTS

Decision of the Regional Court Frankfurt a M of 18 March 1998

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Introduction

The collective sale of television rights by sports federations has been the subject of several actions by courts and competition authorities throughout Europe. In Germany, for example, as reported in the January 1998 issue of *International Media Law*, the Federal Supreme Court prohibited the collective sale of television rights to the home matches of German football clubs participating in UEFA competitions by the German Football Federation. In the UK,

the Office of Fair Trading referred B SkyB's exclusive deal for live coverage of the Premier League's football games to the Restrictive Trade Practices Court. In Holland, the ministry of economics disapproved the collective sale of television rights for highlights by the Dutch Football Federation. In Spain, the courts have also been involved in disputes over rights ownership, and in Italy, professional football clubs will start to market television rights to their games separately by the end of the next season. A recent case decided by the Regional Court, Frankfurt a M may have a pro-

found impact on the way in which collective sales of broadcasting rights are assessed in the future.

Background

The case concerned the collective sale of television rights for the European Truck Racing Cup which had been arranged by the Federation Internationale de l'Automobile (FIA), the governing body of international motor sport. The court found in favour of FIA, concluding that the collective sale by FIA was not anti-competitive. Perhaps surprisingly, the court decided that FIA may sell the rights collectively because of its position as 'co-owner' of the television rights.

This conclusion establishes a precedent in intellectual property law that affirms original (co-)ownership of an event by a governing body through its general organisational activities and could have a major impact on the way in which national courts and European Regulatory Authorities approach cases dealing with the collective sale of television rights to sporting events.

Previously, AETV, a German television production and marketing company owned by Wolfgang Eisele, televised races of the European Truck Racing Cup and sold rights to various TV stations. Contracting with the organisers of each individual event of the series, AETV was given the right to broadcast an event in consideration for disposal of a free copy of the broadcast to the event organisers.

This contrasted with the policy adopted by FIA in relation to certain other events. For example, Formula One, Formula 3000, and the World Rally Championship were marketed centrally by FIA. In 1995 and 1996, FIA amended art 26 of its International Sporting Code. Under the amended code, television rights to all international motor racing series, including the European Truck Racing Cup, were to be owned by FIA from the beginning of January 1997 and it was made a condition of holding such series that the television rights would be marketed centrally by FIA.

Subsequently, FIA entered into an exclusive marketing contract for all its motor racing series with International Sportsworld Communications Ltd (ISC). As a consequence of these developments, AETV lost its right for television coverage of truck racing events.

AETV issued proceedings in Germany and on 4 June 1997 the Regional Court Frankfurt a M granted AETV an interim injunction, based on a violation of Article 85 of the EU Treaty, preventing FIA from marketing centrally the television rights to the European Truck Racing Cup. It held that the television rights belonged to the organisers of each individual event since the organisers created the main economic achievements for the individual events and also bear the financial risk.

However, the interim injunction was repealed by the court's decision in the principal proceedings, ruling in favour of FIA.

Definition of ownership

A legal definition of the nature or ownership of television rights does not exist in German law. Ownership of a television right,

the right to allow someone else to broadcast and market an event, is derived from two so-called defensive rights.

First, ownership of the property on which an event takes place gives the property owner the right to control access, and to prevent television companies from filming there without express permission.

Second, and more important, the organiser of a commercial undertaking may claim unfair competition if a third party broadcasts an event without his permission. The crucial question for a court to decide, therefore, is who is the organiser and, thus, the original right owner.

As confirmed in the German Federal Supreme Court's decision on football television rights, referred to above, an event organiser creates the main economic achievements and takes the general and economic responsibility for an event. The court hinted that such economic responsibility could include the obligation to make a stadium available for a home game, and local organisational tasks such as ticket sales, marketing, food service within a stadium, and co-ordinating safety precautions with the local police. Adopting this reasoning, the Regional Court Frankfurt a M held that the local organisers of each individual event in the international motor racing series were event organisers and, thus, original owners of the television rights to their event.

However, the court did not finish its analysis at this point. Rather, the court stated that the finding of ownership on the part of local organisers does not give the final response as to ownership in television rights and that it was necessary to consider the concept of 'co-ownership' when deciding organisation of events and therefore ownership of television rights.

Co-ownership of FIA

Having considered the role of FIA as the organising and governing body of the European Truck Racing Cup and other international motor sports series, the court concluded that FIA was in reality a co-organiser of these events, and thus co-owner of the television rights.

The idea of co-ownership of federations in television rights was first introduced in the German Federal Supreme Court's decision on football television rights. In that case, the court did not decide whether the clubs own the rights exclusively or in conjunction with the organising federation, UEFA. On the facts of that case the court did not need to resolve this issue and could leave the role of UEFA undecided. The court, however, indicated that it might be possible to derive ownership from the organisational function of a federation, implying that it might have ruled differently if UEFA, as the organising federation, had been a party to the proceedings.

The Regional Court Frankfurt a M picked up this indication, and derived original co-ownership from the organisational function of FIA as governing federation of international motor sports. Co-ownership may be derived due to the essential contribution of the organisational measures to the existence and public popularity of the product 'racing event'.

Such organisational measures include, for example, regulating

individual races and the whole competition, regulating qualification and admission of race drivers, supervising observance with its regulations, and documenting these measures by granting licences for the use of the name for motor races.

A racing event only becomes a marketable, commercial product through these organisational measures. The interest of viewers, television stations, television producers, or sponsors in racing events would decline dramatically without these essential contributions. A withdrawal of FIA from the organisation of a racing event would result, and has resulted in the past, in the termination of that racing event.

Joint venture

Thus the court came to the conclusion that television rights to the European Truck Racing Cup are owned by both FIA, as the governing federation, and the individual race organisers.

Accordingly, in accordance with the German Civil Code, FIA and local organisers establish as co-owners a joint venture. Parties of a joint venture are generally allowed to set up their own regulations and to organise independently their internal affairs.

The court considered the agreement between FIA and local organisers to market centrally the television rights by FIA merely as an internal element of the joint venture. The decision to entrust FIA with the marketing of the joint television rights fell within the affairs of the joint venture and could be decided by the parties at their own discretion.

The internal affairs of an association or a joint venture may, generally, not be challenged by third parties, such as AETV, on competition law grounds. Since the court held that FIA's authority to market the television rights was a mere internal allocation

of tasks, it concluded that FIA, as one of the joint owners, could sell the television rights without acting in an anti-competitive manner.

The court did not consider whether the collective sale by FIA as one of the co-owners established anti-competitive behaviour because of negative effects to the market. It merely based its decision on whether the television rights to an event were sold by a non-owner or a (co-)owner of the rights.

Conclusion

The central issue in the majority of cases that deal with collective sale of television sports rights is whether the inherently anti-competitive collective sale is justified by an underlying public interest in the collective sale. In the decision of the Regional Court Frankfurt a M, however, public interest or the impact of collective sale to the market were not considered.

The court held that the collective sale of television rights was not anti-competitive because of the co-ownership of FIA. It concluded that both the local organisers of each individual event and FIA, as the organising and governing body of motor sports, were original owners of the television rights.

The decision establishes a precedent in intellectual property law that affirms original co-ownership of an event by a governing body through its general organisational activities.

It will be interesting to observe whether other national courts and European regulatory authorities will pick up the idea of the co-ownership of governing bodies. Possibly FIA reached a decisive points-victory on behalf of sporting bodies in the Europe-wide legal battle for television rights between sports bodies and other event owners.

PUBLISHING

STRICT LIABILITY FOR THE BOSS

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You are managing director of a newspaper publishing company. You provide financial backing and management, but have very little to do with the day-to-day running of the company. You flick through some of the newspapers from time to time, but in general you leave editorial content to the experts, trusting that they will refer anything dangerous to the company's lawyers.

This was the position of Gordon Brown, MD of Sunday Business, who was convicted in March (*Brown v DPP* (1998) *The Times*, 26 March) of the criminal offence of publishing details which would allow the identification of the alleged victim of a rape offence. The newspaper had carried a story about the millionaire rapist Owen Oyston, in which it named the victim. The article had somehow slipped through the system without being reviewed by the lawyers. Brown had been acting as 'caretaker'