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COPYRIGHT PROTECTION OVER SPORTS BROADCASTS : A GLOBAL PERSPECTIVE

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What is Copyright?

- Copyright is a form of intellectual property that protects original works of authorship.
- It is an exclusive legal right and vests in original and creative literary, artistic and dramatic works such as books, films, music, paintings, computer software, maps, charts, dance and drama etc.
- Governed by each country's statutory law.
- **International treaties on Copyright** : Berne Convention for the Protection of Literary and Artistic Works, the WIPO Copyright Treaty

Broadcasting : Core Copyright Industry

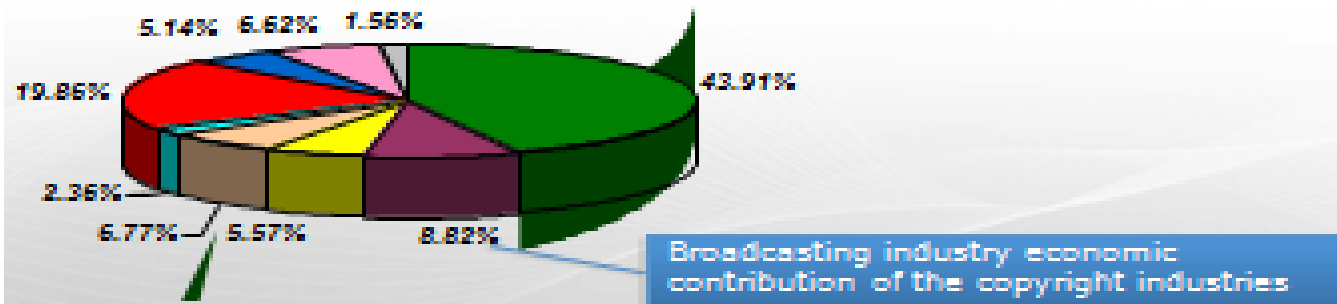
- WIPO divides copyright industry into four groups :
 - (i) Core copyright industries
 - (ii) Interdependent copyright industries
 - (iii) Partial copyright industries
 - (iv) Non - dedicated support industries

- Core copyright industries are those that are completely engaged in the creation, production, manufacturing, performance, broadcasting, dissemination, exhibition, sale and distribution of works and other protected subject matter.

- Radio, television and film industry are the core copyright industries.

Broadcasting : Core Copyright Industry (contd..)

Copyright – The core value of broadcasting industry



- Copyright industry is a part of the intellectual economy, where knowledge and creativity must be returned.
- Rampant piracy severely hinder the development of the industry in the long run.
- Be careful, new media users want extensive and free content, but do not care what platform they are on, and who pays the bill.

Copyright Protection Over Sports

- **Is there copyright protection over sports?**

Answer : Depends on the type of sporting event.

- **Type of Sports :**
- **Purposive sports :** Those sports in which aesthetic considerations are incidental. Eg : Football, Hockey and all field based events.
- **Aesthetic sports :** Those sports in which aesthetics as opposed to direct competition is the intrinsic component of the sport. Eg : Figure skating, synchronized swimming and gymnastics.

Types of Sports

Purposive Sports



Aesthetic Sports



Copyrightability of Purposive Sports : US Perspective

- **Baltimore Orioles, Inc v. Major League Baseball Players Association, 805 F. 2d 663 (7th Cir. 1986)**

Baseball game was not copyrightable subject matter as it lacked sufficient artistic merit.

- **National Basketball Association v Motorola Inc, 105 F.3d 841 (2d Cir. 1997)**

Basketball games was not copyrightable subject matter under Section 102 (a) of the Copyright Act.

Copyrightability of Purposive Sports : Canadian Perspective

**FWS Joint Sports Claimants v. Canada (Copyright Bd.),
[1992] 1 F.C. 487, 501 (C.A).**

No copyright protection over sports as it was not a choreographic work but mostly a random series of events.

Copyrightability of Purposive Sports : EU & UK Perspective

EU :

- **Premier League v. QC Leisure and Murphy v. Media Protection Services Ltd, [2012] 1 CMRL 29**

Football match was not copyrightable subject matter as it was not an intellectual creation.

United Kingdom :

- Copyrightability of purposive sports has never been litigated before the Courts.
- However, in light of **Norowzian v. Arks Ltd. (No. 2)** commentators have noted that purposive sports cannot be protected as dramatic works.

Copyrightability of Purposive Sports : Some Insights from Asia & Pacific

- **India**

Institute for Inner Studies v. Charlotte Anderson 2014 (57) PTC 228 (Del) : Sports events were not copyrightable as they fell short of the requirement of fixation and predictability.

- **China**

PRC's copyright law is silent on whether sports events were copyrightable works. There is wide consensus that sports events are not copyrightable subject matter. Recently, a proposal was made to include sports events as works.

- **Australia**

Australian Olympic Committee v Big Fights Inc. (1999) 46 IPR 53

A film of a sporting event as was not itself a dramatic work and more was required than recording real life events.

Copyrightability of Aesthetic Sports

- Aesthetic sports can be protected as dramatic works and choreographical works depending upon the jurisdiction.
- **US** : Both as dramatic and choreographic works if performed in a non - competitive setting. Legal scholarship favors protecting them as choreographic works.
- **UK** : Can be protected as dramatic works as defined under Section 1 (i) of the Copyright, Designs and Patents Act 1988 (CDPA).
- **India** : Can be protected as dramatic works as defined under Section 13 (1) Indian Copyright Act, 1957.

“Requiring grace, poise and coordination, gymnastics is more akin to dancing than to other rougher, contact sports”



Ace Figure Skater Michelle Kwan at 1996 World Championship Figure Skating Competition

Copyright Protection for Sports Broadcasts

- Why should sports broadcasts be given copyright protection?
 - (i) For safeguarding their investments in televising sporting events.
 - (ii) Recognizing and rewarding the entrepreneurial efforts of broadcasting organizations.
 - (iii) Recognizing and rewarding their contribution to diffusion of information and culture.

Copyright Protection for Sports Broadcasts : Policy Rationale

- “Producing a live broadcast of a sports event demands special creative talents: Establishing camera angles and sites, lighting effects, sound requirements, directing the efforts of a large team of technicians and announcers, instant video tape ‘replays’ and so forth.”
- **Sports Broadcasts needs to be protected as any other creative work that contributes to the society!**

Copyright Protection for Sports Broadcasts : What Does the Law Say?

US :

- Until 1976, there was no copyright protection for live sports broadcasts.
- Live sports telecasts can now be protected as audiovisual works Section 102 (a)(6) of the US Copyright Law provided they are fixed.
- **Baltimore Orioles v. Major League** : Live telecast of baseball game was copyrightable.

Copyright Protection for Sports Broadcasts : What Does the Law Say? (contd..)

EU :

- **Football Association Premier League Ltd and Others v QC Leisure and Others (C-403/08) and Karen Murphy v Media Protection Services Ltd :**

Court of Justice of the European Union (CJEU) ruled that while sports events were not copyrightable; the broadcast and the surrounding media such as opening video sequence, the Premier League anthem, pre-recorded films and various graphics were protected by copyright.

Copyright Protection for Sports Broadcasts : Insights from Asia

China :

- Conflict amongst scholars on the copyrightability of sports telecasts.

- **Sina v. iFeng (2014)**

The Chaoyang basic level court in Beijing decided that live broadcasting of a sports competition was sufficiently creative to be protected under the Chinese copyright law.

Sports Broadcasting v. Live Streaming



Live video streaming apps - Meerkat and Persicope have made live streaming of sports easier

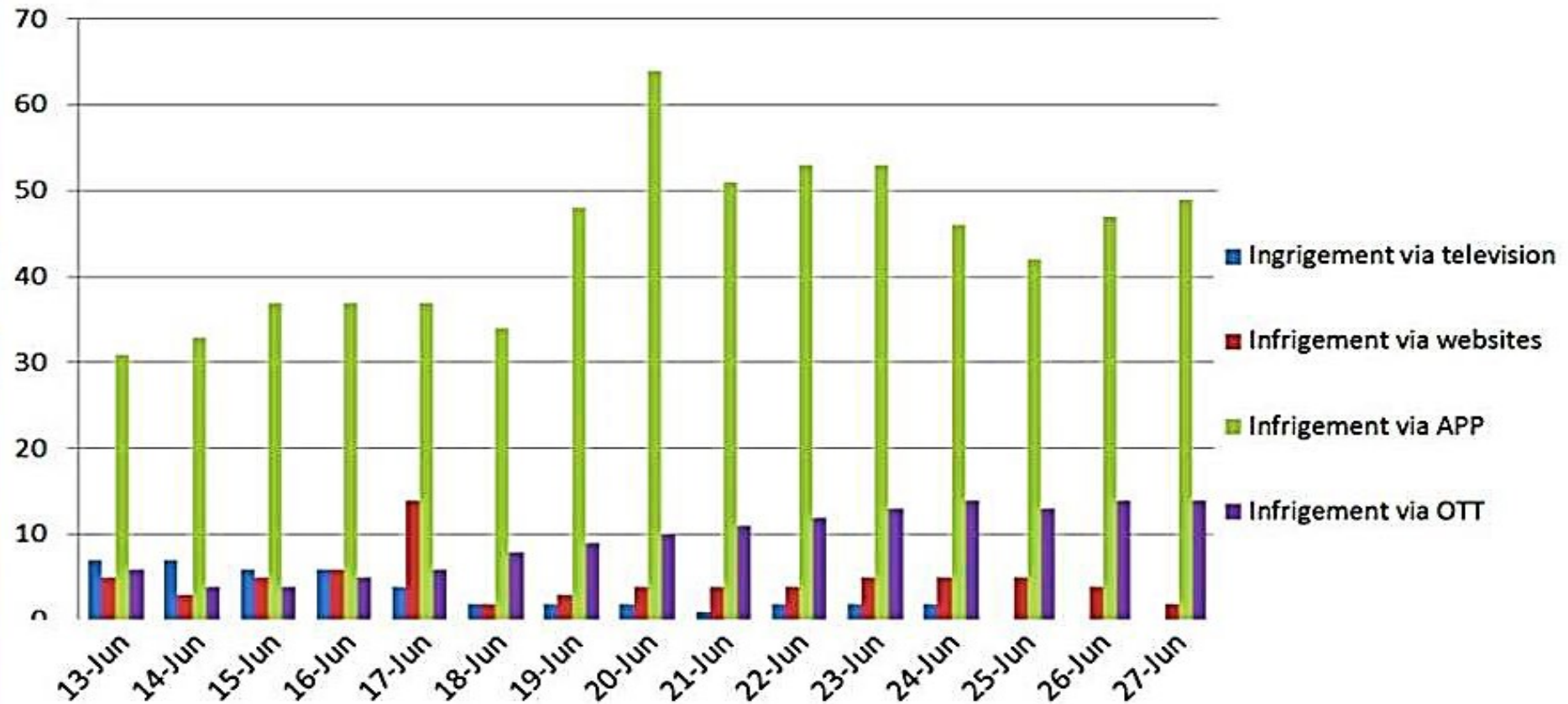
Sports Broadcasting v. Live Streaming : Copyright Issues

- Live streaming apps like Meerkat and Periscope have changed the dynamics of traditional broadcasting.
- Legal question : What are the copyright implications of these services?
- Are Meerkat and Periscope in breach of copyright?
- **Answer** : No, not at least in the US or UK but this may just be a matter of time!

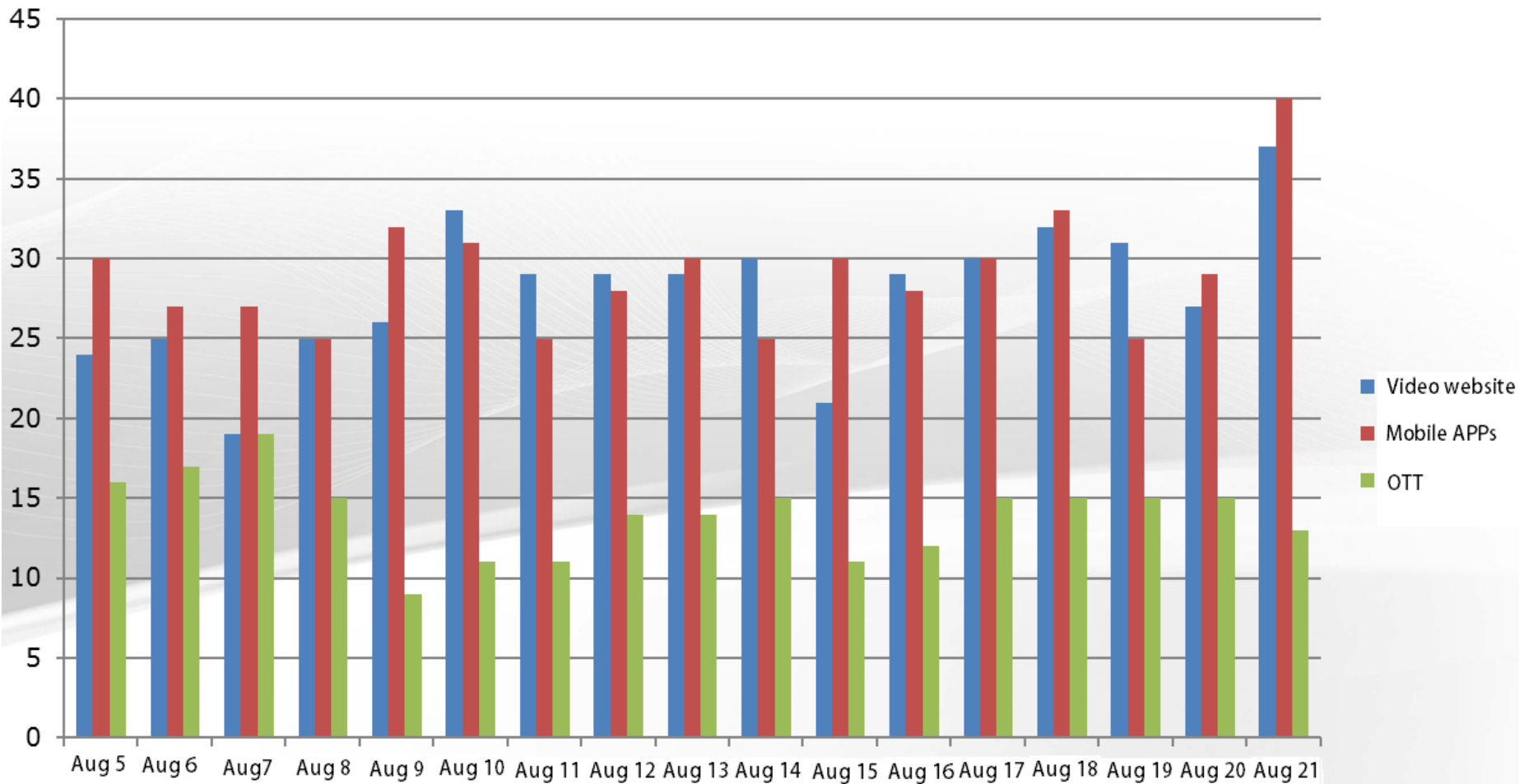
SPORTS BROADCAST PIRACY : SOME STATISTICS FROM CHINA

Courtesy : Dr. Yan Bo, Deputy Director of Legal &
Copyright Affairs Office, CCTV China

Piracy Statistics of CCTV Sports CH during 2014 FIFA World Cup



Piracy Statistics of CCTV Sports CH during Rio 2016 Olympic Games



THANK YOU

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