

PROFESSIONAL SPORTS

Reprinted from July-August 2019 • Volume 10, Issue 3

and the

LAW

Jenner & Block's David W. Sussman Provides Insights on the Dynamic Change Taking Place at the Intersection of Media and Sports

With more than 25 years of experience in legal and leadership positions at some of the most prominent companies in the sports, media and entertainment industries, sports lawyer David W. Sussman has the kind of experience that the “Big Boys” are drawn to.

So it's not surprising that Sussman, a member of Jenner & Block's nationally recognized Content, Media & Entertainment Practice, represents some of the sports industry's most well-known teams, leagues, and media companies. These clients are attracted to his legal expertise, especially in the area of content licensing and distribution transactions.

However, Sussman also brings a well-rounded perspective to his practice. He is the former general counsel and chief operating officer of the New York Yankees, where he handled player contract negotiations, media deals, stadium lease, and relocation issues. He also currently serves as co-chair on the New York City Bar Association's Sports Law Committee.

For all these reasons, we recently sat down with Sussman for an exclusive interview.



David W. Sussman

Question: *How has the media industry changed over the last 20 years with regard to how it interacts with the sports industry?*

Answer: With the disruption in the economic models and the distribution platforms in the past 20 years, the value of live sports programming in a crowded landscape has increased. Live sports continues to eclipse other programming in engaging viewers and delivers added value since viewers are less likely to time-shift live events. As a

consequence, the relative negotiating power has tilted in favor of the sports industry.

Q: *What legal issues have emerged because of this change with regard to the relationship between the sports rights holders and the media companies?*

A: The most significant change. The increased value of sports programming has caused a dramatic increase in revenues paid to sports rights holders. A consequence of that phenomenon is the “slicing” of rights that are licensed by sports entities to their media partners. The days of licensing all games to one programmer are disappearing. To differing degrees from sport to sport, the rights to exploit games are being carved up based on platform (e.g., broadcast, cable, Over-the-Top), schedule (regular season, post-season), and language. Relatedly, leagues are experimenting by licensing games rights on alternative platforms (e.g. streaming via Twitter) on a non-exclusive basis, supplementing the more traditional distribution on broadcast/cable.

Q: *What should be the number one consideration for sports rights holders when negotiating with a media*

company?

A: The primary concern for a sports league or team will be to ensure that when they authorize a media company to exploit their content, they will retain control over the multiple unanticipated ways this content could be exploited in the future by the media company. Since licensing deals typically have terms of 5-25 years in length, the chances are high that there will be innovations in the way content is used and combined with other content. The risk that content creators need to manage is the unanticipated exploitation of their content over the life of a long deal term.

Q: *What should be the number one consideration for the media company when negotiating with a sports rights holder?*

A: The main concern for the media company is that the sports league/team does not fundamen-

tally change the character of the game without input from the media partner on the potential impact on its revenue. To use an extreme example, one of the barriers preventing soccer from becoming more popular in the United States is the lack of in-game breaks and the resulting limits on advertising opportunities. This poses a challenge to broadcasters who rely upon the ad-supported revenue model. Should another major sport reduce or eliminate in-game breaks to enhance the in-stadium experience, or shorten the length of games, the financial implications would be significant.

Q: *What are the biggest challenges to the ecosystem that the entertainment industry is confronting and, consequently, represent threats to the continued level of rights-fee payments to the sports industry?*

A: The biggest threat to the ecosystem is the proliferation of ways to deliver programming to viewers

without compensation. Two axioms will collide head-on: “content is king,” and “you can’t compete with free.” Reduced payments to distributors and programmers will in turn diminish payments to the sports industry.

Q: *What does this ecosystem look like in 20 years, and why will legal counsel be important?*

A: Most content will be made available to viewers on a direct-to-consumer basis. Viewers’ programming menus will be based on their individual tastes and choices, so that the content offerings will be customized. Commercial opportunities will be tailored to data from each individual’s viewing history. Legal counsel will be critical to ensure that the participants in the ecosystem are not marginalized as the changes ripple through the current revenue streams. ●