

August 26, 2011

7th Circuit Finds That A High School Athletic Association Can Enter Into Exclusive Contracts For Live Streaming

In an August 24, 2011 decision (*Wisconsin Interscholastic Athletic Association v. Gannett Co., Inc.*, Case No. 10-2627), the Seventh Circuit Court of Appeals held that the Wisconsin association overseeing high school sports (“WIAA”) can limit who streams its games live on the Internet. The court held that the WIAA has the right to enter into exclusive contracts for live streaming of its events, and that the First Amendment does not entitle other media to claim the same broadcasting rights without paying for them. The decision could have First Amendment implications for media outlets nationwide.

The Seventh Circuit rejected arguments that WIAA’s policies threaten “the fundamental right of the press to comment on and cover school sporting events.” It also rejected arguments that an exclusive transmission contract for an event is a “gag order” or “prior restraint” on speech about government activities. Rather, the court held that:

The media are free under the policy to talk and write about the events to their hearts’ content. What they cannot do is to appropriate the entertainment product that WIAA has created without paying for it. WIAA has the right to package and distribute its performance; nothing in the First Amendment confers on the media an affirmative right to broadcast entire performances.

The Seventh Circuit relied on the Supreme Court decision in *Zacchini v Scripps Howard Broadcasting*, 433 U.S. 562 (1977) as establishing two pertinent propositions: (1) distinguishing between the media’s First Amendment right to “report on” and “cover” an event and its lack of a right to broadcast an “entire act”; and (2) that the producer of entertainment is entitled to charge a fee in exchange for consent to broadcast – concluding that the First Amendment does not give the media the right to appropriate, without consent or remuneration, the products of others.

In finding that “WIAA’s exclusive broadcasting agreements for internet streaming are consistent with the First Amendment,” the Seventh Circuit noted that WIAA was not:

prohibiting the media from reporting on its events, nor is it imposing outrageous fees for media members to have access to games. It does not require the media to submit stories or blog posts to its editors before they are published. Any of those actions would make this a significantly different case.

If you have questions regarding this Client Alert or any other media issues, please contact your Butzel Long attorney or a member of the Butzel Media Team.

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