



# Copyright Protection of Live Sports Programs

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**Abstract.** The sports industry has developed rapidly, the live broadcast of sports events has created huge economic benefits, followed by frequent infringement. The key to protect the copyright of the live broadcast of sports events lies in whether its creative height meets the requirements of originality. The live broadcast of sports events mainly consists of three parts: the original images, the commentary of the guests and the post-editing. According to the “Small copper coin theory” to its use of low originality requirements, will be recognized as audiovisual works, access to copyright protection.

**Keywords:** Copyright protection; Originality; Live Sports Events

## 1 Introduction

In recent years, watching live sports events online has become part of the daily life of many people. In contrast to the booming development of the industry, infringement disputes arising from the broadcasting of live sports events have occurred frequently. The case of Sina v. Tianying Jiuzhou, known as "the first case of domestic live broadcast of sports events". The first trial, the second trial and the retrial judgment, two reversals, reflecting the different courts for the qualitative opinions of live sports events. The reason for this is that the existing copyright law in China does not specify the boundary between "audiovisual works" and "video products", and the determination of originality between works and products is unclear. Therefore, it is necessary to characterize the live broadcast of sports events and determine how to protect them, so as to balance the interests of the subjects related to the live broadcast of sports events and promote the unity of the judgment standard of judicial decisions.

## 2 The legal nature of live sports event programs

A sporting event is a competition organized and conducted by a sports organizer with certain rules requiring the participation of referees, athletes and other people. <sup>[1]</sup> This article refers to the sports event live program refers to the Internet, the sports event activities on-site picture shooting, editing, selection and other operations, accompanied

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by guests, commentators and other personnel on the sports event on the spot commentary, comprehensive transmission to the Internet end-users to form a continuous accompanied or unaccompanied picture.<sup>[2]</sup> This kind of live broadcast has the characteristics of "shooting and broadcasting", "real-time transmission" and "on-the-spot speech". This kind of continuous picture has significant commercial value, can give the sports event organizers, event broadcasters and so on to bring a huge amount of income. However, due to the special characteristics of Internet live broadcasting and the hidden nature of infringement, there are many kinds of pirated broadcasting phenomena using various technical means.

According to the traditional theory of copyright law, as far as the sports event itself is concerned, it cannot be included in the scope of copyright protection. When comparing sports events with works such as plays, operas and dances, the main differences can be summarized in two points. The first is the uncertainty of sporting events. The types of works, such as drama, theater and dance, have all been designed in detail before the performance. The various processes involved in the performance are also fixed. When the performers actually perform, it only interprets the actions and language that have been designed before through the performer, and its form of expression and the result of the performance are all certain, even if other uncertain factors are involved in the process of performing, it also does not produce a large error. Sports events often have a strong confrontation, the athletes involved in the event will do their best to compete for the championship. The second is the non-reproducibility of sports events. For theater, opera, dance and other types of works, the results of the rehearsed works can be stably reproduced, which makes the results of the performances repeatable, whereas for sports events, the results are accidental, and the process is difficult to be reproduced again. Drama, dance and other types of works, before the performance is already a determined work, the actor just through the performance of the work interpretation, the process and results are determined. However, the process of sports events depends entirely on the athletes' competitive status and on-the-spot performance. Therefore, sports events cannot be regarded as works or other intellectual creations, and thus be included in the scope of the object of copyright or neighboring rights.<sup>[3]</sup>

However, the fact that sports events cannot be included in the scope of protection of copyright law does not mean that live programs of sports events are not protected by copyright law. Sports events are a natural expression of human social activities, and people can produce works or products protected by copyright law based on such activities, whether in writing or by means of video recording.<sup>[4]</sup> As to whether a live sports event program is a work or a video production, the following two views exist in the academic community:

The first point of view is that sports event programs have the attributes of works. Lu Haijun believes that the sports event itself belongs to the category of ideas and is not protected by copyright law, but the sports event program is different from the original sports event, just as the photographic work is different from the photographic object, and it is not possible to judge whether the sports event program is copyrightable or not based on whether the sports event itself belongs to the intellectual creative labor. Compared with movie works, sports event programs have less creative space, but this is not the reason why they are not protected by copyright.<sup>[5]</sup>

The second viewpoint is that sports event programs belong to video products. According to Wang Qian, due to the characteristics of the live broadcasting screen of the sports event itself, the space for its personalized expression is limited. Although in common law countries can be treated as a work, but our country should apply the civil law countries of originality standards, reflecting the process of the live broadcast of the sports competition itself is recognized as "video" is more reasonable.<sup>[6]</sup> However, he also recognized that in some cases, such as when the game is suspended, this time will leave the guide more room for creativity.

Through the above point of view can be seen, the academic community on the legal nature of live sports events screen dispute, mainly in the sports event program whether to meet the requirements of the originality of the work, as well as sports event program creation whether there is a space for personality selection, in order to clarify the dispute, this paper is ready to analyze the elements of live sports events screen combined with the judicial practice.

### **3 Components of a live sports event program**

Live sports event program, refers to the live shooting of the sports game screen for recording and editing, accompanied by guest commentary, through the wired or wireless way to the user to broadcast the formation of the continuous screen, mainly consists of three elements.

Raw event footage refers to the footage taken directly by the camera, reflecting the actuality of the sporting event. This kind of continuous picture taking is mainly done by the camera set up at the event site beforehand, and there are also some pictures that are not well captured by the machine, which are taken by the on-site photographer. This kind of picture is only a record of the real situation of the sports event, is a copy of the sports event, according to the traditional view of copyright theory, this kind of picture can only constitute a video product, not a work.

In the live sports event program, in order to help viewers better appreciate the game, to bring them a better viewing experience, event organizers in the live program will arrange the industry's well-known commentators, or special guests to watch the game with the audience, in the view of the game at the same time will also express their own views on the game, the game situation to describe or analyze the game situation. This kind of commentary is a kind of improvisation speech, can help the audience better understand the game situation, get the relevant knowledge of the game, excellent commentary can also play an important role in leading the atmosphere of the game, ignite the audience's emotions. Guest commentators are an integral part of the program, and their impromptu commentary enhances the overall originality of the program.

The original recorded game images do not constitute a work, and the unselected and unprocessed images can't bring the audience a better viewing experience, so what is finally presented in front of the audience is the post-processed game images. The post-processing of editing includes a series of program production behaviors such as selecting the original race images, adding subtitles, adding animation, charts and so on. Taking a specific game program as an example, the final effect of the live game program is

to present the game to the audience, but according to the personal choice of different staff, the final picture presented to the audience is different. Depending on the course of the game, unexpected emergencies inside and outside the game site provide diverse possibilities for the final live picture. The guide can switch between the images captured by different cameras according to his choice, and can also pull the camera closer or farther.

#### **4 Approaches to Copyright Protection for live sports programs**

In judicial practice, the court mainly protects the copyright of live sports events from the following perspectives. Recognizing live broadcasts of sporting events as video recordings, the court protected live broadcasts of sporting events through the relevant provisions of neighboring rights. The Guangzhou Intermediate People's Court held that the TV program of the German-Brazilian Women's Football Match claimed by CCTV International had not yet reached the heights required for movie works and works created by methods similar to film-making. The Guangzhou Intermediate People's Court held that the TV program "German-Brazilian Women's Football Match" claimed by CCTV International had not yet reached the high level of originality required for a movie work or a work created by a method similar to that of a movie, and considered that the producer of the movie had limited choices and expressions in controlling the process of the match, choosing the content of the shooting, and the content of the narration and that the producer of the audio-visual recordings had not been in the dominant position, and finally protected the program based on the right of the audio-visual record producer to disseminate information network. Scholar Wang Qian, who holds the same view, believes that China's Copyright Law distinguishes between works and video products, then the higher standard of originality of the civil law system should be applied, and the live broadcast of sports events is recognized as "video" is more appropriate.

There are two main ways to identify live broadcasts of sports events as video products and protect them from the perspective of neighboring rights, one is the information network dissemination right of audio-video producers, and the other is the broadcasting organization right of broadcasting organizers, but both of these remedies are faced with a number of dilemmas. Article 44 of China's Copyright Law grants the producer of video recordings the right to reproduce, distribute, rent, and disseminate to the public through the information network and receive remuneration. Since the revision of China's Copyright Law in 2020, the broadcasting organization right has been expanded to the field of information network, which to a certain extent alleviates the situation of real-time broadcasting on the network without legal regulation, but the subject of the broadcasting organization right has not been expanded accordingly, and the subject of the broadcasting organization right stipulated in China's copyright law must be the broadcasting station or television station, but the right holders of sports event programs often do not belong to this kind of subject. The protection of broadcasting organization right can indeed protect the interests of broadcasting organization to a certain extent,

but in addition to this kind of subject, there are other stakeholders, broadcasting organization right alone can't realize the comprehensive protection of live sports events. Although the broadcasting organization right can defend against infringement to a certain extent, it is not the best choice, and cannot meet the needs of the sports industry for the reasonable development of the copyright assets of the sports event program.<sup>[7]</sup>

Recognizing the live broadcast of sports events as a work, the court protected the live broadcast of sports events through the relevant provisions of copyright. In the case of Beijing Sina Internet Information Service Co., Ltd. v. Beijing Tianying Jiuzhou Network Technology Co., Ltd. the Beijing Municipal Higher People's Court, which was in charge of the re-trial, held that the production of the event program in question fully utilized a variety of creative techniques and technical means, and that the filming angle, lens switching, selection of scenes and objects, and selection of images, The editing, arrangement and narration all reflected the individual choices and arrangements of the creators such as the cameramen, choreographers and directors, which were original and in line with the requirement of originality for movie-type works, thus recognizing the Chinese Super League program in question as an work.

Whether a live sports event program constitutes a work involves the judgment of the originality of the live sports event, for which Yuan Feng provides a judgment standard called "choice space method". The core of this judgment standard lies in the fact that the originality of a work can be judged objectively according to the expression space of a specific category of works, and the determination of the originality of a work is based on the selective space of the work's expression.<sup>[8]</sup> For example, in the case of obtaining the permission of the copyright holder, the translation of foreign written works can obtain the copyright of the translated works, because the translation of foreign written works into Chinese characters is not a one-to-one correspondence, for the same sentence, for the same words, in line with the original context of the situation, you can get different translation results, which makes different translators of the same work of art, can form a very different translations. Even though the translation has to conform to the meaning, context and connotation of the original text, it still leaves room for creation to make independent choices and give free play. Of course, there are also cases in which the choice of creation is extremely limited. For example, when translating a Chinese text work into Braille, although it is necessary to have corresponding knowledge of Braille and to put in corresponding physical and mental labor in the process, there is a one-to-one correspondence between the Chinese language and Braille, and anyone who operates correctly will get the same result. In this case, there is no room for creative choice, then the results of its creation is not possible to generate copyright. In the case of live sports programs, the results of different teams must vary, and the room for creative choice is not extremely limited.

## 5 Conclusion

There is always room for choice in the creation of any type of work, but the room for choice varies from one type of work to another. For writings, art works and other types of works, there are almost unlimited ways of expression. However, for graphic works,

model works and other types of works, such works are created based on physical shape, structure and other characteristics, limited by the characteristics of real objects, there is a relatively limited space for creation choice. There are also scholars who believe that model works do not need to be treated as an independent type of work.<sup>[9]</sup> Professor Wu Handong believes that for graphic works, the creator can choose and arrange the color and pattern of the model small so as to meet the requirement of originality of the work.<sup>[10]</sup> In Germany, according to the "small coin theory", according to the different objects of copyright, different requirements of originality are applied, such as computer software, trade descriptions, forms, catalogs and other objects, which do not require a special "high level of creativity", but only require a moderate level of creativity level. Therefore, for the live broadcast program of sports events, we can refer to the above point of view, and determine that it has the space for creative options, and adopt a lower originality requirement in accordance with the "small coin theory", so as to incorporate into the scope of the concept of audio-visual works, and then obtain the protection of China's copyright law.

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