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*Volume 6, Issue 1, April 2009*

## **So What are Sports' Legal Rights and Wrongs? Report of the AHRC SCRIPT Murrayfield Discussions**

*Abbe E. L. Brown<sup>1</sup>*

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<sup>1</sup> Lecturer in Information Technology Law, University of Edinburgh and Associate AHRC/SCRIPT, University of Edinburgh

## **1. Background**

Sport frequently raises difficult questions of judgement. *Did the ball really cross the line? Where is the hand of God? Was it too dark to play? Are enhancement technologies cheating?* But it is not just purely sporting questions that are thrown up by sport. Some of the more legal questions of sport were explored at the internationally renowned Murrayfield International Stadium in Edinburgh on the 7<sup>th</sup> of November 2008, in ‘Questions of Sport: what are the legal rights and wrongs’. The event was organised by AHRC/SCRIPT: the law and technology centre in the School of Law at the University of Edinburgh; sponsored by the Arts and Humanities Research Council; and home to SCRIPT-ed.

This event had two main aims. Firstly, to draw together the range of legal themes associated with sport and to engage with the widening and deepening academic and practitioner focus in sports law. Secondly, to address the growing interest in sport accompanying the forthcoming arrival of the Commonwealth Games in Scotland and the Olympic Games in London by building stronger links between the wider legal, sports and academic communities through the work of AHRC/SCRIPT. In light of these two aims we were delighted to welcome over 100 delegates to Murrayfield whose backgrounds spanned academic sports law, practising sports lawyers and agents, sports administrators, IP, competition, media and commercialisation lawyers, students and sports participants from all levels.

As all those with even a fleeting familiarity with sports law will be aware, there is a complex primary question to address: what, in fact, is sports law? Given the broad aims of the session we cast our net reasonably widely, addressing ‘Sporting Regulation & Performance Enhancement – A Level Playing Field?’ in the morning session, and ‘Sporting Brands & Reputations’ in the afternoon session. One notable omission was the issue of sport and violence, but we were pleased that Dr Mark James, of the University of Salford, introduced this to the meeting in his closing remarks.

## **2. Presentations and Discussions**

Professor Graeme Laurie, the Director of AHRC/SCRIPT, introduced the event and made it clear that this was an exciting time for both lawyers and practitioners in all aspects of sport. He explained how AHRC/SCRIPT sought to bring this together through this initial meeting and, perhaps, at future events if the levels of interest remained high. We were then delighted to welcome Julia Bracewell OBE, who is a member of the AHRC/SCRIPT Steering Committee, former Chair of SportScotland and non-practising solicitor and barrister. Julia highlighted the move away from insurance and contracts in sports law to a focus on the rights (or lack thereof) of athletes and the extent to which IP and emerging technologies are becoming a key focus within the discipline. She too felt that it was important for dialogue to continue to develop amongst all those involved in different aspects of sport.

The morning session was led by Burkhard Schafer, who is a senior lecturer at the University of Edinburgh and a co-director of AHRC/SCRIPT. The key aim of this

session, ‘Sporting Regulation & Performance Enhancement - A Level Playing Field?’, was to consider how sport deals with the opportunities and challenges posed by new technologies in facilitating- but perhaps hindering- those involved in sport. Behind this there are recurrent themes of sport: how does law relate to sport, as opposed to other spheres of work and activity; and has sport begun to move wholly beyond the focus on Corinthian taking part to an exclusive focus on winning – indeed, did this happen some time ago?

Dr David McArdle Senior Lecturer and Deputy Head of the School of Law, University of Stirling explored “Sport, Disability and Human Rights: Is There Anything to Learn from Oscar Pistorius?” This paper provided a significant challenge to the manner in which courts of arbitration have approached “Blade Runner” and the lack of legal rigidity and validity in their analysis. The relationship between doping and free speech, from all elements of the debate, were then considered by Professor John Cooke, John Moores University Liverpool in his paper on “Doping and Free Speech” with particular reference to the World Anti-doping Agency Code. The most challenging element came, however, from Professor Andy Miah, University of West of Scotland in “Why Athletes Need Genetic Enhancement”. In a paper which led to significant comment in later discussion, he argued first that athletes should be able to explore genetic enhancement and also that as this is done in any event, the legal and regulatory framework should be clarified to improve the safety of athletes involved.

Following a stimulating lunch discussion, the afternoon session moved to consider “Sporting Brands & Reputations” in a session led by Abbe Brown, Lecturer in Information Technology Law at the University of Edinburgh and an Associate of AHRC/SCRIPT. This session looked at why, in most cases without the need for enhancement of whatever kind, sports persons aspire to participate in sport in the first place – and the consequences if they succeed. To set the framework, we were delighted to welcome Farisha Constable, Brand Protection Manager, London Organising Committee of the Olympic Games & Paralympic Games. With the help of a most interesting set of examples, she set out clearly the legal frameworks within which LOCOG operates, the principles which they aim to protect and the activities which they will prevent – and also aim not to prevent. The strong message was one of engagement with the wider community while protecting the Olympic message.

Moving to the individual sports persons, some of whom will have build reputations at Olympic Games, Jamie McDonald, Golf Lawyer, IMG considered “Commercialisation : the individual & the image”. With again an excellent set of examples focusing on activities of well-known sporting athletes, Jamie set out the interests and concerns held by sports persons and the steps which will be taken to address these. The challenges in this were then made clear by Gillian Black, Lecturer in Commercial Law at the University of Edinburgh. She noted that there are various legal tools available – passing off, trade mark infringement, copyright – but this does not mean that all activity of concern to athletes and their agents is necessarily unlawful, at least in the UK where there are no formal images rights unlike, say, in California..

Seona Burnett, Partner, McGrigors with expertise in IP, commercialisation and sponsorship, then considered “Commercialisation: the team & the brand”. She addressed the wide range of legal rights which do exist and which can be licensed and shared for numerous purposes, together with those which are often forgotten. David Marshall CEO of Tennis Scotland then considered commercialisation from a practical

slant, noting the protection sought by sports when looking to secure sponsorship and the range of interest and perspectives to be addressed, with a focus on the recent UK wide tennis sponsorship by AEGON.

If rights are sufficiently important to protect, then there is frequently someone else seeking to take advantage of them – often within the limits of the law, others less so. Joanne McNairn, Brand Protection Manager, Celtic Plc introduced the “Creative Use of Brands” with tales of the experiences of Celtic in tracking use of goods bearing “Celtic” without the consent of the trade mark owners. This ranged from the more conventional football with a green shamrock, to use of these symbols on new social networking technologies, such as Facebook. Joanne also stressed the number of trade mark registrations in different countries which large sports businesses may have, which may be beyond (and also might include...) “Celtic.” Another more practical stance was then taken by Gerry Farrell, Creative Director, Leith Agency in “Taking ‘Scotland’ to the last Football World Cup”. In a presentation which was highly entertaining as well as informed, we were treated to a consideration of how, notwithstanding Scotland’s failure to qualify, Jason Scotland of Trinidad & Tobago gave Irn Bru and Scotland a key role in public consideration of that campaign – even though another sports drink was involved as the official sponsor of the world cup.

Even the most famous of all sports celebrities might like to think that they retain an element of their private persona. This was considered by Professor Hector MacQueen, University of Edinburgh and Co-Director of AHRC/SCRIPT. He explored the extent to which there can be a means of preventing the publication of personal details, but that this will depend very much on the facts of each case, notably the activities and nature of those involved. In the UK, there is an emerging action for misuse of private information based on breach of confidence and the *Human Rights Act 1998*. On the other hand, the *Human Rights Act 1998* can also support, in very limited cases, access to private diaries. The fundamental tension is between a right to respect for private life and a right to freedom of expression. The devil always lies in the detail. Again from the more practical side, we were then honoured to welcome Doug Gillon, Athletics Correspondent of The Herald who had attended all sets of Olympic Games since Munich in 1972. He provided a coherent and questioning challenge to the circumstances in which sporting celebrities, and those who court this, may retain private positions; and the circumstances in which professional journalist would consider it appropriate, and not appropriate, to intervene.

The final part of this session could have come first. Individuals are able to build sporting reputations because people care sufficiently about their sport to follow it, buy merchandise, take up subscriptions and go online to follow their team - and as new technologies pose opportunities for some it may pose threats (and well as new challenges) for others. This was considered from three different perspectives - Helen Arnot, Head of Legal Department at STV SMG plc; Dr Rachael Craufurd Smith Senior Lecturer, University of Edinburgh and Co-Director of AHRC/SCRIPT; and Roisin Higgins, Advocate. Helen considered how more conventional forms of television engage with the new forms of dissemination and the legal and regulatory challenges and opportunities this poses; building on previous consideration of social networking sites, Rachael looked at litigation in the United States involving possible liability of YouTube and others when challenged by more traditional copyright owners, notably VIACOM; and Roisin reviewed ongoing litigation involving the televising in pubs of sports which were imported by a satellite outside the UK.

### **3. Elite Discussions**

The event closed with Abbe Brown interviewing three elite athletes and sporting celebrities, all of whom have business and legal expertise: Gregor Townsend MBE (Scotland and British Lions, rugby union); Julia Bracewell in her sporting capacity (Olympic fencer); and Heather Lockhart (Scotland, rugby, tennis, hockey). The strong message from these discussions was that the desire to participate in sport, even without financial and reputational rewards, remains strong. But to succeed in sport at an elite level, there is a recognition that commercial and regulatory support is required to enable athletes to focus on their sport – even if this has not always been so in the past. References were made to comments on Gregor Townsend’s book about possibly selling naming rights to Murrayfield to increase the flow of funds into sport. At the event, it was noted that this was less likely in the present climate; indeed, subsequent economic developments confirm this to be so, with the elite Scottish athlete Andy Murray offering to review his sponsorship with RBS.

### **4. The Way Forward**

The fact remains that sport, enhancement, reward and enjoyment are strongly interlinked, and our exploration of their interface was only the beginning; we hope this initial discussion will provide a basis for further work. In particular, we have launched a new LLM module in “Sport and the Law” at the University of Edinburgh, look forward to exploring elements of sport with school children as part of the World IP Day events, to the Sport & EU law workshop to be held in Stirling in June 2009, the Scottish Competition Law Forum event on Sport and Law to be held in Glasgow in autumn 2009 and our hosting of further events and opportunities for discussion under the auspices of AHRC/SCRIPT. We hope that further reports and academic articles from these events will appear in *SCRIPT-ed* in due course. In the meantime, if anyone is interested in further involvement in sports law projects, please do feel free to contact Abbe Brown at [abbe.brown@ed.ac.uk](mailto:abbe.brown@ed.ac.uk).