NYSBA SPRING 2001 | VOLUME 12 | NO. 1

Entertainment, Arts and Sports Law Journal

A publication of the Entertainment, Arts and Sports Law Section
of the New York State Bar Association

Remarks from the Chair

We start the year with a record-breaking Section membership of 1,609!

I credit this growth to the enhanced value we are offering our membership. For starters, our ***Entertainment, Arts and Sports Law Journal*** is now a thriving concern, published three times a year and packed with a variety of articles of topical interest to our Section members' areas of practice. Thanks goes to our Editor, **Elissa D. Hecker**—keep up the great work!

Additionally, EASL will be launching its own Web site—hopefully by this summer. Our Web site will include, among other content services, summaries of recent cases of particular interest to our Section members and notices of upcoming committee and Section meetings and programs. The realization of the EASL Web site is being made possible through the tireless efforts and resourcefulness of our New Technologies Committee Co-Chairs, **David G. Sternbach** and **Kenneth N. Swezey**. We look forward to seeing the results of your labors!

We are also offering our membership some outstanding CLE programs—the most recent of which was our Annual Meeting—by all standards, a spectacular success. Entitled ***Challenges Facing Professional Sports***, this Program was the brainchild of **Jeffrey A. Rosenthal**, Section Vice Chair and Annual Meeting Program Chair, who, along with **Jeffrey B. Gewirtz**, Professional Sports Committee Co-Chair, began the planning and work on the Annual Meeting Program ten months in advance in order to secure their distinguished panelists: **Valerie B. Ackerman**, President, Women's National Basketball Association; **David Zimmerman**, Senior Vice President and General Counsel, National Hockey League, **Ty Votaw**, Commissioner, Ladies Professional Golf Association, **Joel M. Litvin**, Executive Vice President, Legal and Business Affairs, National Basketball Association and **Mark Abbott**, Chief Operating Officer, Major League Soccer. The panelists each presented a thorough summary of the particular issues and challenges facing his or her respective associations and sports, which were followed by a lively Q & A, with questions fielded by both the moderator and a packed audience. The questions spanned areas of law as diverse as antitrust, intellectual property and discrimination. The entire program was expertly paced by the Moderator, **Len Elmore**, President of Pivot Productions, Attorney, Sports Broadcaster and a former NBA player.

The Annual Meeting's Meet and Mingle buffet lunch was equally successful. Breaking with EASL tradition, we held our lunch off-site in the Skybox Room at the ESPN Zone. There was no lunch speaker, but plenty of good eats and spirits, interesting lunch guests and conversation, many happy members—and free games. It doesn't get much better!

Judith Bresler

Inside

Editor's Note

For each issue of the *EASL Journal*, I endeavor to bring to this readership a wide array of articles that span the practices of the Section's membership. In this vein, I am pleased to share this issue of the *Journal* with you, which has a Sports Law emphasis that was missing from previous issues.

Featured in this issue (thanks to Jeff Rosenthal, Section Vice Chair, who was kind enough to obtain the services of a court reporter, Kelley Cruz, who transcribed the panelists' remarks) is the complete transcript of the Annual Meeting. Every member of the Section may want to peruse the panelists' comments to appreciate a comprehensive glimpse at some of the issues facing the sports industries. The panelists covered a wide range of topics, from historical analyses to how the advances in technology have effected the practice of sports law.

Continuing in the Sports Law subject, I am pleased to share a thought-provoking and persuasive article written about the need for uniformity in the regulation of sports agents.

We are also fortunate to have an article regarding the private copying regime in Canada. It is always interesting to understand the developments in the copyright laws of other countries. The Canadian Copyright Board has set a substantial increase in the levy on recordable compact discs, and the article details subjects as to what the levies reflect upon, such as the changes in private copying behavior and the increased usage of digital media for copying purposes.

This issue also includes an article that raises the provocative question as to whether folklore should be protected by copyright law, and whether the trend internationally is moving towards the democratization of intellectual property.

Finally, this issue of the *Journal* highlights a day in the hectic life of an HBO producer. It focuses on the do's and don'ts of the celebrity interview, and how non-glamorous the job really is.

As always, I encourage Letters to the Editor and articles of interest to this readership. As Judith stated in her Remarks, the Section has over 1,600 members, each of whom receives a copy of this *Journal*.

Please feel free to contact me with any ideas you may have. The next deadline for the *EASL Journal* is Friday, May 25, 2001.

Elissa D. Hecker

Elissa D. Hecker is Associate Counsel to The Harry Fox Agency, Inc., licensing subsidiary of The National Music Publishers' Association, Inc., where she is involved with legal, educational and policy matters concerning the world's largest music rights organization and the U.S. music publishing industry trade group. In addition to membership in the NYSBA, Ms. Hecker is also a member of The Copyright Society of the U.S.A., Co-Chair of the FACE Initiative children's Web site, Associate Member of the Graphic Artists' Guild, and a member of other Bar Associations.

REQUEST FOR ARTICLES

If you have written an article, or have an idea for one, please contact

Entertainment, Arts and Sports Law Journal Editor
Elissa D. Hecker, Esq.
The Harry Fox Agency, Inc.
711 3rd Avenue
New York, NY 10017
ehecker@harryfox.com

Articles should be submitted on a 3-1/2" floppy disk, preferably in Microsoft Word or WordPerfect, along with a printed original and biographical information.

Canadian Copyright Board Sets Private Copying Levies for 2001-2002

By Vicky Eatrides

The significance of round two of the private copying hearings in Canada would, at first glance, appear to be the substantial increase in the levy on recordable compact discs. A more subtle, yet equally significant, result is the Copyright Board's consideration of possible future levies on hardware and new audio recording media.

Legislative Framework

The copying of a sound recording for almost any purpose arguably infringed copyright prior to the 1998 amendments to the Copyright Act[1] (the "Act"). Enforcement was effectively impossible, however, and the making of unauthorized copies of sound recordings was widespread.[2] Canada's Parliament concluded that authors, performers and producers could not protect their rights or collect royalties for the use of their copyrighted works.

On March 19, 1998, however, Part VIII of the Act came into force and established the private copying regime in Canada.[3] The regime legalizes the copying of sound recordings by individuals for private use, but in return establishes a levy to compensate copyright holders. The private copying levy is applicable to blank audio recording media that are "ordinarily used by individual consumers" for reproducing sound recordings.[4] The levy is paid by manufacturers and importers of blank audio recording media sold or otherwise disposed of in Canada.[5] The proceeds from the levy are then distributed to eligible composers, lyricists, performers and producers of sound recordings through their professional associations or collectives.

Canada is not alone in implementing a private copying regime. Approximately 40 countries, including most G-7 and European Union members, have introduced comparable legislative measures to address the issue of private copying of sound recordings.[6]

Determination of the Levy

The Copyright Board (the "Board") determines the amount of the levy pursuant to § 83 of the Act.[7] The Board is a federal regulatory body that is empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of works protected by copyright, when the administration of these rights is entrusted to a collective society. Collective societies ("collectives") must file proposed tariffs for the benefit of their members or lose their right to remuneration. Upon receiving a proposed tariff, the Board publishes it in the *Canada Gazette* and gives notice that any person may file written objections to the tariff with the Board. After hearing from collectives and objectors, the Board's mandate is to set a "fair and equitable" levy. The Board has thus far held two private copying hearings, setting the tariffs for the years 1999-2000 and 2001-2002.

Private Copying Levy, 1999-2000

The first private copying proceedings were held over a period of 17 hearing days in August and September 1999.[8] Numerous participants were involved, including the Canadian Private Copying Collective (CPCC), acting on behalf of all collectives that had filed proposed tariffs,[9] the Canadian Storage Media Alliance (CSMA), representing major manufacturers and importers of blank audio recording media, and several hundred private parties who objected to the tariff. The Board was called upon to, among other things, determine preliminary legal issues, engage in statutory interpretation, analyze economic evidence, set the amount of the levy and designate the collecting body.

Levies are imposed only on recording media that are ordinarily used to reproduce sound recordings. Thus, an important question for the Board's determination was the meaning of the term "ordinarily used." The Board, in its decision, considered case law and dictionary meanings and found that the ordinary character of an occurrence is not necessarily a function of quantity, but rather a matter of consistency. The Board held that ordinary use ought to be interpreted as including all "non-negligible" uses. Based on this principle, the Board concluded that all audio cassettes with a playing time of 40 minutes or more, CD-recordable (CD-R), CD-rewritable (CD-RW), MiniDisc, CD-R Audio and CD-RW Audio qualified.[10] The Board also left open the possibility of levying new blank audio recording media. "As markets evolve, new types may be identified if the Board is satisfied that consumers have found other ways to make private copies of their favorite music."[11]

In setting the levy, the Board relied on evidence regarding the average remuneration that typically flows to authors, performers and makers in the case of prerecorded CDs. This level of remuneration was then adjusted to take into account various factors, including the size of the eligible musical repertoire, the nature of the private copying market, market and usage characteristics for each audio recording medium, and the relative valuations of analog versus digital recordings.[12] Based on these considerations, the Board set the 1999-2000 levy substantially below the CPCC's proposed tar-

iffs, at 23.3¢ on audio cassette tapes of 40 minutes or longer, 5.2¢ on CD-R and CD-RW and 60.8¢ on Mini-Disc, CD-R Audio and CD-RW Audio.[13] The Board projected that these tariffs would raise approximately $9 million in the year 2000, to be distributed to the eligible authors, performers and makers of recorded musical works copied for personal use in Canada.[14]

Private Copying Levy, 2001-2002

The public review of the 1999-2000 private copying levies was held over a period of seven hearing days during October and November 2000. The CPCC filed evidence and proposed levies on behalf of eligible rights holders, while major manufacturers and importers of blank audio recording media were again represented by the CSMA. The evidence and testimony served as an update to the evidence from the previous year's hearings.

Expert witnesses offered testimony on a broad range of topics, including economic theory, market trends and the marketing of blank audio recording media and equipment in Canada. The role of technology in determining the levy was also a major focus of the 2001-2002 hearings. The CPCC presented evidence with respect to rapid technological developments[15] and the resulting ease of copying music,[16] while other witnesses testified as to the increasing popularity of MP3 players and similar devices,[17] recent Napster developments, such as its alliance with Bertelsmann AG,[18] and the increased availability of authorized downloads by artists and the major record labels over the Internet.[19]

The Copyright Board announced the levies for 2001-2002 on December 15, 2000. Effective January 1, 2001, private copying levies increased to 29¢ on audio cassette tapes of 40 minutes or longer, 21¢ on CD-Rs and CD-RWs and 77¢ on CD-R Audio, CD-RW Audio and MiniDiscs. The most notable and significant change is the 300 percent increase in the CD-R levy, from 5.2¢ to 21¢, over a period of one year. According to Claude Majeau, Secretary General to the Board, "The increases in the levies reflect, among other things, the significant changes in private copying behaviour since last year, especially the increased usage of digital media, such as CD-Rs, for copying pre-recorded music."[20]

Of particular interest are the Board's reasons for increasing the levies. In its decision, the Board considers the significant growth in sales of CD burners and digital media. The Board predicts that sales of CD-Rs and CD-RWs in Canada will increase from 49 million units in 1999 to 78.5 million in 2000, 113 million in 2001 and 138 million in 2002. In addition, the Board estimates that approximately 25 percent of CD-Rs are used for private copying, a substantial increase from the eight percent figure that was used by the Board in last year's decision. The increased levies reflect, among other things, the changes in private copying behavior since last year, especially in the increased usage of digital media for copying pre-recorded music.[21]

Based on evidence presented at the hearings, the Board predicts that the levies will raise approximately $27 million in 2001 and $32 million in 2002, a substantial increase from the projected $9 million in 2000.

Exemptions and the Zero-Rating Scheme

The Act exempts the payment of the levy when recording media are sold to a society, an association or a corporation that represents persons with perceptual disabilities.[22] No other exceptions are provided for. In order to help mitigate the effect of the levy on certain groups, however, the CPCC has implemented a voluntary "zero-rating scheme" which permits manufacturers and importers to sell blank audio recording media to certain categories of users without having to pay the levy. These include religious organizations, broadcasters, law enforcement agencies, courts, tribunals, court reporters, provincial ministers of education, members of the Association of Universities and Colleges of Canada and music and advertising agencies. The exemption applies to all blank audio recording media except CD-R and CD-RW.[23]

The Future

Rapidly evolving technology will no doubt affect future tariffs to be collected on the sale of blank audio recording media. Following the 2001-2002 hearings, the Board left open the possibility of imposing a levy on new blank audio recording media:

> Some media, such as MP3 player memory cards, are not subject to the levy because the Canadian Private Collective Society (CPCC) did not ask for one. As markets evolve, new types of blank audio recording media used for private copying may be identified and be made subject to a levy.[24]

In fact, during the most recent private copying hearings, one member of the Board queried whether tariffs should be imposed on computer hard drives, considering their significant role in the reproduction of music.[25]

Considerations such as these, as well as rapidly evolving technologies and the uncertain fate of Napster and illegal Internet downloads underlie the difficulty in predicting not only the tariffs that will be set on blank audio recording media during the next private copying hearings in 2002, but also which media will be subject to a levy in years to come.

Endnotes

1. R.S.C. 1985, c. C-42.

2. Canadian Heritage, News Release, *Cultural Community to Benefit as Copyright Bill Receives Royal Assent* (25 April 1997).
3. Bill C-32, *An Act to Amend the Copyright Act*, S.C. 1997, ch. 24, §§ 50, 53.
4. Copyright Act, § 79 ("audio recording medium").
5. Blank media that are exported from Canada are not subject to the levy.
6. Canadian Heritage, Information, *Information on the Private Copying Provisions of the Copyright Act* (updated May 1999) <www.pch.gc.ca>.
7. The Board is established by § 66 of the Copyright Act.
8. *Private Copying 1999-2000* (1999), 4 C.P.R. (4th) 15.
9. The member collectives of the CPCC include Canadian Mechanical Reproduction Rights Agency (CMRRA), Neighbouring Rights Collective of Canada (NRCC), *Société de gestion des droits des artistes-musiciens* (SOGEDAM), Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) and Society of Composers, Authors and Music Publishers of Canada (SOCAN).
10. CD-R can be written onto only once, whereas CD-RW can be written onto several times. The Audio line of products was created at least in part to comply with U.S. legal requirements. They are encoded so as to be recognized as audio products when played on digital audio recording equipment and may not be readable by all CD-ROM drives, but are otherwise technologically identical to their non-Audio counterparts.
11. *Private Copying 1999-2000* at page 32.
12. Copyright Board, Fact Sheet, *Copyright Board's Decision - Private Copying 1999-2000*" (17 December 1999).
13. The CPCC proposed levies of $1.50 for each cassette 90 minutes in length and $2.50 for each 75-minute CD-R, CD-RW, CD-R Audio, CD-RW Audio and MiniDisc.
14. Copyright Board, News Release, *Copyright Board Sets Private Copying Levies* (17 December 1999).
15. Transcript of the examination of Mr. David Basskin, Vol. 1 (24 October 2000) at 28, 42-44 and 46-48.
16. Transcript of the examination of Mr. David Basskin, Vol. 1 (24 October 2000) at 36.
17. Transcript of the examination of Mr. David Basskin, Vol. 1 (24 October 2000) at 84 and Transcript of the examination of Mr. Jeff Hemmings, Vol. 5 (7 November 2000) at 1170.
18. Transcript of the examination of Mr. Jeff Hemmings, Vol. 5 (7 November 2000) at 1177.
19. Transcript of the examination of Mr. David Basskin, Vol. 1 (24 October 2000) at 129.
20. Copyright Board, News Release, *Copyright Board Sets Private Copying Levies for 2001-2002* (15 December 2000).
21. More information about the Copyright Board's reasons for its decision in *Private Copying 2001-2000* is available at the Copyright Board's Web site <www.cb-cda.gc.ca/>.
22. Copyright Act, § 86.
23. More information about the zero-rating scheme is available at the CPCC's Web site <www.cpcc.ca>.
24. Copyright Board, Backgrounder, *Copyright Board's Decision—Private Copying 2001-2002* (15 December 2000).
25. Transcript of the examination of Mr. David Basskin, Vol. 1 (24 October 2000) at 59 (questioned by Member Callary).

Vicky Eatrides is a 2000 graduate of the University of Ottawa Law School and is currently articling at the law firm of Stikeman Elliott. The firm has North American offices in Ottawa, Toronto, Montreal, Calgary, Vancouver and New York.

Traditional Knowledge: A New Intellectual Property

By Alan J. Hartnick

Saul Bellow cynically remarked, "Who is the Tolstoy of the Zulus? The Proust of the Papuans? I'd be glad to read him."[1] Notwithstanding, in an era of cultural diversity and in the absence of any cultural hierarchy, a Papuan textile appears to be on the same artistic standing as a work by Picasso. In international organizations as well, the third world, which can outvote the developed nations, desires the protection of their folklore.

Constitutional considerations aside, why should intellectual property, that is, patents and copyrights, have a limited duration? Why differentiate intellectual property from other kinds of property, which can be owned for unlimited duration? Trademarks can be owned forever, as could unpublished works before the reforms of the Copyright Act of 1976. Any proposed folklore law would protect traditional Tipi designs that were handed down from generation to generation and were protected by the customary laws of the Elders of the Blood Tribe.

If the former *colonial* powers believe in limited duration of some intellectual property, why should the former *colonies* adopt such point of view, which could be harmful to its rights to prevent exploitation of their traditional knowledge and their forests, the source of many drugs. The third world desires both an expression of artistic equality and royalties for the use of their resources. To the West—it is public domain. To the undeveloped world—it is property.

If Western societies protect the burial grounds and religious symbols of their indigenous peoples, why not go *all the way* and protect the traditional knowledge of such peoples?

The World Intellectual Property Organization (WIPO) has posted on its Web site, for public comments, a draft of its "Traditional Knowledge" Report.[2] There had been a rumor that the third world would not agree to WIPO data protection unless folklore was protected. The Folklore Report will be discussed with WIPO member states in the course of the 2000/2001 biennium, with the view of guiding future WIPO activities on the protection of traditional knowledge.

What *is* "folklore" or "traditional knowledge"? If not part of the public domain, any use must be compensated. Who owns it?

Definition of Folklore

The WIPO-UNESCO Model Folklore Draft Provisions of the early '80s strangely did not define folklore. The WIPO draft does try to define it, but in a laundry list way:

> . . . tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and, all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. The notion "tradition-based" refers to knowledge systems, creations, innovations and cultural expressions which: have generally been transmitted from generation to generation; are generally regarded as pertaining to a particular people or its territory; have generally been developed in a non-systematic way; and, are constantly evolving in response to a changing environment. Categories of traditional knowledge include: agricultural knowledge; scientific knowledge; technical knowledge; ecological knowledge; medicinal knowledge, including related medicines and remedies; biodiversity-related knowledge; "expressions of folklore" in the form of music, dance, song, handicrafts, designs, stories and artwork; elements of languages, such as names, geographical indications and symbols; and movable cultural properties. Excluded from this description of traditional knowledge would be items not resulting from intellectual activity in the industrial, scientific, literary or artistic fields, such as human remains, languages in general, and "heritage" in the broad sense.

Why Protect It?

The Draft WIPO Report suggests that:

> The protection of traditional knowledge is . . . important for social and cultural

> reasons, particularly perhaps in developing and least developed countries. Traditional knowledge can play a role in the economic and social organization of those countries, and recognizing the value of such knowledge may be a viable means of promoting a sense of national cohesion and identity. Traditional knowledge holders also stress the importance of [Traditional Knowledge] validation and protection for individual and community dignity and respect.

Who Owns It?

The WIPO-UNESCO Model Folklore Provisions offer ingenious solutions:

> When the Model Provisions determine the *entity entitled to authorize the utilization* of expressions of folklore, they alternatively refer to 'competent authority' and 'community concerned,' avoiding the term 'owner.' They do not deal with the question of the ownership of expressions of folklore since this may be regulated in different ways from one country to another.
>
> The tasks of the competent authority (provided such an authority has been designated) are to grant authorizations for certain kinds of utilizations of expressions of folklore, to receive applications for authorization of such utilizations, to decide on such applications and, where authorization is granted, to fix and collect a fee-if-required by law.

The WIPO Draft suggests that much intellectual property is also collective:

> . . . while it is true that many indigenous and local community cultures generate and transmit knowledge from generation to generation collectively, in some cases individuals can distinguish themselves and are recognized as informal creators or inventors separate from the community. Similarly, not all [Intellectual Property is] individualistic. Increasingly, invention and creation take place in firms where groups of persons may be cited as co-inventors or co-authors, concepts recognized by the IP system. Trademark law recognizes 'collective marks' and geographical indications also protect the interests of a collective mark. Additionally, although collective management does not mean collective authorship and ownership, the collective management of [Intellectual Property] is very familiar to the music industry, where copyright in musical works has been successfully collectively managed for many years.

Prospects

In a world in which the developing nations have a majority, some sort of *sui generis* system of community or collective right to protect traditional knowledge may be politically correct and inevitable. The former Register of Copyrights, Ralph Oman,[3] suggests that:

> . . . it is not unreasonable to suggest that, in a society with an oral tradition, the copyright clock does not start running until their stories, songs, and dances are fixed and legally published. These works could enjoy a full term of copyright protection that will benefit living authors and encourage creativity in society.

Professor Michael Blakeney, of the University of London, has suggested that time has come to protect traditional knowledge.[4] He writes that:

> The growing self-realisation of indigenous peoples that the international recognition of their intellectual property rights in their cultural expressions would depend upon their own efforts, has resulted in the development of international solidarity through international conferences of indigenous peoples. These conferences have promulgated intellectual property declarations, formulating norms for the protection of traditional knowledge. . . .

Would the limited time constitutional requirement concerning copyright really affect American protection of traditional knowledge? In my view, there are good arguments to the contrary. There is some scant authority that a treaty protecting folklore for unlimited times supersedes the constitutional limitation on copyrights.[5] More important, if Congress can grant copyright-like protection for *unlimited* times to live musical performances under Chapter 11 of the Copyright Act but under the commerce clause,[6] it can also grant copyright-like protection for *unlimited times* to traditional knowledge.

Indigenous peoples are seeking heightened protection of "cultural patrimony." The future may bring a blurring of "cultural patrimony" and intellectual property. To quote the Bellagio Declaration of March 1993:

> . . . traditional knowledge, folklore, genetic material, and native medical knowledge flow **out** of their countries of origin unprotected by intellectual property while works from developed countries flow **in**, well protected by intellectual property agreements, backed by trade sanctions.

Intellectual property lawyers beware! Like it or not, we are moving towards the democratization of intellectual property, which may differ from Eurocentric precepts and may include traditional knowledge. It will be a bumpy road!

Endnotes

1. Book review of *Saul Bellow, a Biography*, by James Atlas, reviewed by James Shapiro, The New York Times, Monday, October 16, 2000, p. E7.
2. *www.wipo.int*.
3. Speech entitled *Folkloric Treasures: The Next Copyright Frontier,* at John Marshall Law School, on January 4, 2000.
4. Article entitled *Protection for Indigenous or Traditional Works (e.g. Folklore): Has the Time Come*, Fordham University School of Law, Eighth Annual Conference on International Property Law and Policy, April 27 and 28, 2000.
5. *Bridgeman v. Corel*, 36 F. Supp. 2d 191 (1999).
6. *U.S. v. Moghadam*, 50 USPQ 2d 1801 (11th Cir. 1999).

Alan J. Hartnick is a partner at Abelman, Frayne & Schwab. He is also an adjunct professor at the NYU School of Law, and Chair of the Copyright and Trademark Committee of the NYSBA.

Challenges Facing Professional Sports: Transcript from the EASL Section Annual Meeting

New York Marriott Marquis
Friday, January 26, 2001

MS. BRESLER: I'm Chair of the Entertainment Art and Sports Law Section of the New York State Bar.

I welcome each and every one of you to our Annual Meeting.

This has been a super year for our Section.

First of all, we have revitalized the *Entertainment Art and Sports Law Journal* to make it a thriving concern, coming out at least three times a year with wonderful articles on all aspects of Entertainment Law, Art Law and Sports Law, and that's thanks in large measure to Elissa Hecker, our Editor and to all of you and all of our other contributors.

We are also looking forward to launching sometime this year, prospectively sometime this summer, our Entertainment Arts and Sports Law Web site, which should be an additional value to our Section, which will be much more than a bulletin board of upcoming meetings. It should have cases of interest to all of us, synopsis of these cases and a lot more that you will be hearing about in the next few months.

These items have been adding a tremendous amount of value to our Section. I'm also pleased to report that for the first time the membership in our Section has exceeded 1,600 as of December 2000. As of December 31st, we have 1,609 members, which is actually a record, and we're thrilled with the growth.

We also continue to add value to the Section with some of our wonderful Section programs.

For example, last spring we had a Section program on Ethics, which talked about ethical issues that attorneys face in all areas of Sports, Art and all areas of Entertainment Law.

This past November, there was a wonderful Sports program put on in conjunction with New York Law School.

Also in November was a day-long program on the Law and Business of Art that was put on in association with the Appraisers Association of America.

And today, of course, we have another wonderful program put on with respect to challenges in the sports arena, and here I would like to thank Jeff Rosenthal, our Vice Chair, for his efforts in putting this together.

Now, my specialty happens to be Art Law, and what I know about the sports business and Sports Law in particular would literally get lost on the head of a pin.

I do know that there is some kind of game going on on Sunday. Short of just knowing that it's between the Giants and the Ravens, I don't really know much else, so I'm definitely looking forward to being educated today, as well as entertained, as I know that the rest of you are.

In closing, I would like to extend an invitation. I hope all of you are coming to our lunch, which with breaking another tradition, is not going to be here at the Marriott Marquis, but rather is going to be in the Sky Box Room at the ESPN Zone, which is on Broadway and 42nd. It should be a buffet, the food will be different and, also, ESPN Zone decided to throw in free access to their virtual reality room.

So it quite literally will be fun and games, so I hope to see you there.

Without further ado, I would like to introduce our Program Chair and Section Vice Chair, Jeff Rosenthal.

MR. ROSENTHAL: Thank you, Judith. I'm going to keep my remarks also very brief.

I would like to say that several months ago we decided to embark on what we thought would be a very ambitious kind of Annual Meeting panel presentation, contacting a number of high level executives at major sports leagues and associations. I would like to introduce them all and thank them for coming today.

I want to thank briefly my Co-Chair. In addition to being Vice Chair of the Section, I'm Co-Chair of the Committee on Professional Sports, and my other Co-Chair, Jeff Gerwitz, who was stuck in Atlanta, who couldn't make it up here, but I wanted to thank him. He also put a lot of effort into this program.

I would like to first introduce the moderator, Len Elmore, and then I will turn over the introduction of the rest of the panel to him.

Len went to the University of Maryland and was an All American basketball player there, and then played basketball for ten years in the ABA and the National Basketball Association, including here in New York with the New York Knicks, I believe.

Afterwards, Len became, and this is what helps give him a very unique perspective to our panel and our discussion here today, Len became the first ever, and in fact, the only graduate of Harvard Law School to have been a National Basketball Association player.

And since that time, he has served a variety of functions working as a sports agent, working in a large law firm, Patton Boggs, and right now Len is also President of Pivot Productions, which runs Hoop.com, which is a college basketball Web site.

He is also, in addition to practicing law, a broadcaster for college basketball on ESPN.

Without further ado, I would like to introduce Len Elmore.

MR. ELMORE: I very much appreciate the opportunity to participate here today.

When Jeff called and asked whether or not I have any desire to participate and talk about the subject matter, it really struck me how broad and interesting this particular area would be with the challenges facing professional sports.

Obviously, we can take a look at that in any way we'd like, but to me, essentially the globalization and the high technology influences and societal complexities are factors that have changed the world of professional sports as I knew it as a player, certainly until today.

That's the thing that intrigued me most.

There was a time when business practices and the various sports were uniformed to a great extent.

Now, there are changes and improvements in technology, the inclusion of other countries, other cultures, so to speak, in the application of international laws as well as obviously our domestic law and customs, and also the social complexities that have entered into professional sports.

These are things again that our ever-evolving society has presented to professional sports which requires significant differences in operating strategies with regard to professional sports leagues.

Proactive management is now a critical factor for success.

Now, business practices and organizational structure are being developed and refined in light of past strategies, whether successful or failures, are the things that we would like to talk about today, I think.

And I hope to help conduct a discussion of business and legal challenges faced by those who are charged with the smooth operation of major parts of global sports.

Maybe they will lend some insight to what the future holds on these fronts.

So without any further comments from me, let me begin to introduce our panelists, starting at the far right, Mark Abbott, who is the Chief Operations Officer for Major League Soccer. He has a responsibility for the business operation of the League.

Mark has been with the League since 1993 and wrote the League's business plan.

He is also a point person on the League litigation concerning the single entity structure.

Mark Abbott.

Next to Mark's left is David Zimmerman. David is Senior Vice President and General Counsel of the National Hockey League.

David joined the NHL in August of '92 after seven years with Proskauer Rose. David is involved in a wide range of matters at the NHL, including collective bargaining with employers and officials, salary and grievance arbitration, expansion, franchise, ownership transactions, league-wide, broadcasting, insurance, et cetera, et cetera.

David was born in New York, graduated from the State University of New York at Albany with an accounting and business administration degree, and from Boston University School of Law.

David Zimmerman.

Next is Ty Votaw. Ty began his tenure as Commissioner of the Ladies Professional Golf Association in March of 1999.

He is the sixth Commissioner and the second youngest in its history.

As such, he directs the overall direction and vision for the Association and its various divisions under the guidance of the LPGA's Board of Directors.

He was an LPGA employee since 1991 and held the position of Vice President of Business Affairs prior to being named Commissioner.

In that capacity, he is responsible for handling all business transactions, including tournament sponsorship and television rights negotiations.

He also played a critical role in the LPGA's broadcasting business affairs, involving major network and cable outlets.

He was hired as the LPGA's general counsel in 1991 by the former Commissioner and prior to joining the LPGA, Ty worked for a Cincinnati-based law firm where he practiced general corporate law.

He is a graduate of Ohio University with a degree in journalism and a law degree from the University of North Carolina.

My former employer, so I have to get this right, Joel Litvin, Executive Vice President of Legal and Business Affairs for the National Basketball Association.

Joel joined the NBA in 1988 as a staff attorney and served in several positions in the legal department, including General Counsel before assuming his current position in 1999.

As the NBA's chief legal officer, Joel oversees all the League's operations, ranging from labor matters to enforcement of the League's intellectual property rights, the processing and review of ownership transfers.

Now I'll say this, I wasn't going to, but I will.

He played a key role in resolving the NBA's labor dispute with the Players Association during the 1998/99 season and was instrumental in crafting the collective bargaining agreement between the League and the players, which I think was a tremendous undertaking and a tremendous job. That's coming from a former player.

Joel is a graduate of the NYU School of Law and a 1981 graduate of the Wharton School in the University of Pennsylvania.

Following his graduation from law school, he joined a law firm of Wilkie, Farr & Gallagher and worked on matters involving Major League Baseball.

He also served as secretary of the Sports Law Committee of the New York City Bar Association from 1991 to 1993.

Finally, to my immediate right is Val Ackerman. Val is President of the Women's National Basketball Association.

Val joined the NBA in 1988 as a staff attorney and worked as a special assistant to Commissioner David Stern in 1990 and 1992.

She was named Director of Business Affairs in 1992 and Vice President of Business Affairs in 1994.

Val graduated from the University of Virginia in 1981, where she was a four-year starter for the women's basketball team and a two-time academic All American.

She played one season of professional basketball in France before attending UCLA law school, where she received a degree in 1985.

Following graduation, she was an associate at Thatcher, and now she's President of the WNBA.

Those are our very distinguished panelists, and what I'd like to do right now is just kind of lay the foundation—what we'd like to be able to do is have opening remarks from each of our panelists, giving their overview of the subject matter and the challenges facing professional sports.

Thereafter, I may throw out some topics. Hopefully, the ball will be carried by our panelists, which I'm sure it will, in discussing a number of topics.

Finally, after each topic, each area of subject matter, I would like to be able to entertain some questions from you, the audience, and I want to do it afterwards, after each individual subject, because again, questions are fresher when people are interested in that particular area.

The questions are always relevant, as opposed to waiting until the end.

We will try to kind of reserve time as much as we can, and hopefully we can get into this as quickly as possible.

Without further ado, why don't we start with you, Val?

MS. ACKERMAN: Thanks, Len, very much.

Let me just, first of all, offer my thanks to Jeff Rosenthal and the New York State Bar for arranging for me to be here today.

I want everyone here to know what a great privilege it is for me to be here today, with such an accomplished and well-regarded group.

What I think is pretty interesting, for lack of a better adjective about this group, there really is a wonderful cross section of leagues that are represented here.

We have men's leagues and women's leagues, we have old leagues and young leagues.

We have leagues representing both team and individual sports.

As I'm guessing, you will hear from all of us those sorts of differences internally—I guess what I'll describe is our current areas of focus or concern and ultimately the areas of opportunity, although despite all of those differences, there is quite a bit of commonality in terms of those issues.

Obviously, the WNBA is somewhat distinct. We are using the features, such as we just ticked off, we're a young league, we're a women's league and we're a league that's representative of a team sport.

I will tell you that each of those features for us engenders specific opportunities, specific challenges, and as we go into what's going to be our fifth year, I think we have a pretty good idea, at least what we have to do in order to address those and whether we carry out the plan and get done what we need to get done.

I'm very optimistic about that.

Jeff had asked me to speak and all of us to speak about our challenges, and since I only have a few minutes, I narrowed mine to five.

Here's what they are.

I believe that the number one challenge for us is to grow our fan base and ultimately to attract more fans to our sport.

That really happens in two ways, in terms of our television viewership as well as in terms of our game attendance.

We have some unique opportunities here because as a women's sport, we have proven to have a very different sort of audience than men's sports and men's team sports.

What typically attracts our fan base in the WNBA is primarily female, 75 percent of the fans that come to our games are women or girls, roughly half of our television audience is female and that's a very high percentage.

It gives us the highest level of female viewership, including women's college basketball, where the TV viewership for women is about 40 percent.

We also attract a fair number of kids and those particulars for us really create some interesting opportunities.

That also requires that we go into our ticket sales and our marketing efforts with a very different approach than the ones that have worked for men's sports.

We have some very good numbers today in terms of our ratings and our attendance, and as I said, our goal is not only to keep those fans coming, but to develop some staying power and ultimately to grow that.

That's number one.

Number two for us and probably for everybody here is to continue to grow the revenues for our sport.

I would tell you very candidly that we have very modest revenues in the WNBA than you would see in the major men's teams sports.

For one thing, we don't get a rights fee yet for television programming, although we are seen on three national networks, we are not receiving a fee to do that.

Our primary source of revenue is the legal revenues from our national marketing relationships. We have partnerships with 15 or 16 companies who pay us fees, and those fees include the ability to advertise in product categories on telecasts.

Our players' salaries are internal, with the league paying the players directly and players' salaries are effectively funded out of our national marketing revenue.

Our key revenue is generated primarily out of ticket sales, and the average ticket price right now in the WNBA is only about $15.

Our teams only play 16 home games, and the average attendance is somewhere around 9 or 10,000, so if you do the math, the revenues at this time in our development are not significant.

And as I said, an important part of our evolution is the extent to which we evolve all of those revenue sources, and that in turn will impact other things, and in particular, our player compensation.

A third challenge that I see is maintaining our ability to stay fan-friendly.

I really am a firm believer that when you strip everything away, sports leagues really come down to players and fans and what goes on between them, and the emotional connection that you see between players and fans.

I think we have done a very good job in this area. We sort of pride ourselves in the WNBA of how our players and fans get along.

We have been successful structurally in creating or facilitating the opportunity for the players and fans to come together.

We have been very aggressive about mandating autograph sessions, open practices and community outreach.

We have special fan programs that go on nationally and locally.

In addition, we've been fortunate with the level of cooperation and accessibility by our players, which has really brought all this fan-friendliness stuff to life.

We are trying to keep all that alive as much as possible.

I think human nature sometimes gets in the way over time and makes some of those things hard to preserve, but I believe that at the near and immediate term, we're going to be fine in those areas. I think that's going to be critical for us.

The fourth challenge that I see for us, and I think it's relevant, especially in view of the history of sports, is evolving relationships with the players, is sustaining what I describe as a critical relationship that we have right now with our players.

We have, on a personal level, always tried to keep a good relationship with the players. I have people on my staff whose full-time job is to deal with the players.

They do everything from sending birthday cards, calling them on the phone to say how are you doing and trying to keep things personal.

Beyond that, we have a formal relationship as well.

Our players unionized after our second season. I think in the NBA it happened in 30 or 40 seasons.

In ours, it happened in only two.

That turned to a collective bargaining negotiation in 1999, and that in turn produced a four-year collective bargaining agreement, the WNBA, Women's National Basketball Players Association that expires in 2002.

I'm proud of that agreement. We've got a whole bunch of good things in there for the players, and a whole variety of benefits that really didn't exist previously.

They have escalating women's salaries, year-round health and dental. There's insurance. There's 401(k).

There are escalating appearance fees. They have a maternity policy, which the NBA doesn't have to worry about.

We have a League-run career involvement program, and I think that's a pretty good start.

I think the history of sports leagues have shown that the discussion and the subject of salary often if not always leads to some strain, even in the best of relationships between players and the league.

I will tell you that we haven't been completely immune from that in terms of our salary, and ultimately how we address that subject going forward, how we manage the expectation of our players, how we come to compromises on that subject will be important to us, not only in terms of our economics and economic liability, but also in terms of the public perception of our league.

Finally, I would say as a women's league, we have both opportunities and challenges as we both intentionally and by deed sort of advance women's sports.

Call it a movement. Whether it's us or the LPGA or the Women's Tennis Association or the Women's Pro Soccer League that's going to be launching this spring, whether we like it or not or whether we want to or not, I think it's a fact that a league like ours ends up representing things other than simply athletic performance and exciting competition.

We tend to be lightning rods for other issues, and in particular, what we call women-specific issues.

While I think concepts have clearly changed and much progress has been made in the subject of women's sports and where they sit in our country, the reality is that there still are inequities in terms of the sponsor dollars we get, the rights fees, the players' salaries, what the media coverage is, and the reality is we have to work—and the mainstream acceptance and respect of women's sports, so we have to work hard and try to make progress on a continuing basis in these areas.

The virtue is persistence to some degree and the process sometimes ends up being two steps forward, one step back.

I believe that women's sports are played at the highest level, like ours and soccer and golf and tennis.

They now command a very high level of interest, they're just exciting to watch. You can see a great women's basketball game.

It just sort of captures you, and that in turn leads to other things, including the business liability that all of us are looking to sustain.

I think that is the critical issue, how you are captivating things and how you're keeping interest.

I think that's how all the major leagues fall.

MR. LITVIN: I would like to start off by just noting that Val was the first lawyer that I hired in 1989.

As I've watched her career skyrocket past mine, I am proud and humbled to be sitting next to her on this panel.

All joking aside, that was the reason why the WNBA is the most successful new league that we've ever seen.

I've been sucking up to her ever since she was in the position.

As far as the challenges facing the NBA, the list seems endless, whether it's Marcus Camby throwing a punch and clocking his coach or Mark Cuban going to the Mavericks.

In addition to saying nice things about our officials or getting an arena built in Charlotte or filling empty seats, I will try to identify just a couple of the big issues we are facing right now.

I guess first and foremost we have our labor agreement with the National Basketball Players Association. Labor agreements that leagues enter into with their players are by far the most important agreements we have.

They determine how much money the players will make during their years, the circumstances under which they can change jobs.

They determine how competitive our teams will be on the playing field or the playing court.

And because players' salaries are by far our biggest cost of doing business, they determine how profitable or unprofitable, as the case may be, our teams are.

As Len mentioned, our current agreement with the players came at a very high price.

As most of you recall, we locked the players out in 1998, costing ourselves half the season, hundreds of millions of dollars on both sides and lot of goodwill with our fans.

I think we're still feeling the effects of that.

That said, two years into the new agreement, I think it's fair to say the lockout was worth all the trouble, for the league and the players.

In our perspective, we were able to achieve several significant improvements to our prior agreement.

As you probably know, we have been operating under a salary cap system for many years.

Each team has a fixed amount of money it can pay to its players, subject to certain exceptions, the biggest of which is the right to pay your own free agent any amount above the salary cap.

That exception is called the Larry Bird exception. It was threatening to eat up the whole cap system when we began to see contracts that exceeded $100 million, the highest being Kevin Barnet's contract, 1996, which was $425 million over seven years.

One of the key concessions we got from the union in the bargaining was a limit on what any individual player can make.

This individual cap removed the spector of the Alex Rodriguez type contract that we saw in baseball recently, are still allowing a player like Grant Hill, who signed as a free agent this summer, to sign a contract worth $92 million over seven years.

It's not currently a restrictive limit, but at least our teams now know what the upper bounds are as far as what we pay the players.

The so-called tax and escrow system that kicks in next season, it will take me hours to explain the system to you and I'll spare you.

Basically, it allows our teams to hold back up to 10 percent of their players' salaries to bring a total payout league-wide to our players back to an agreed-upon percent of league revenues.

Because of the Larry Bird exception, we have been paying the players far more in recent years than we agreed to pay them in terms of league revenues.

From a union perspective, they too have to be pretty pleased. Costs were up 19 percent and in 1999/2000, will be up about 16 percent.

This season I hope to increase it by any measure, especially when you consider that the League's revenues aren't growing at a similar pace.

We agreed to several new cap exceptions and much higher player salaries for the so-called middle class players, which the constituency of the union was most determined to help in bargaining.

At this point, the players with ten years of service in the NBA must be paid at least $1 million per season.

By next year, the average player salary will be $4.5 million, by far the highest in professional sports, so I think the players are doing quite well under this deal as well.

Given all the pain we suffered to achieve this agreement, we had no choice but to deal. Take the situation with the Timberwolves recently, who tried to circumvent the cap through a secret agreement with a player named Joe Smith.

We came across a copy of this secret agreement as a result of litigation between two of Smith's former player agents.

Basically, this was an agreement promised to make payment to Smith. It could not legally be made under the salary cap rules.

That sort of agreement cuts to the very heart of one of the principal purposes of a cap system, which is to enhance competitive balance by making sure that all teams are playing on an equal playing field, when they are out competing for free agents.

A team like Minnesota, which was over the salary cap at the time they signed Smith, shouldn't be able to offer a top free agent like Smith the same amount of money that a team at a lower financial position could offer him.

As a result, we disapproved Smith's contract, we took four first round picks from the team.

We suspended the team owner and General Manager for a year and fined the team $3.5 million.

These were by far the harshest penalties we ever assessed on a team for anything.

It wasn't done without considerable thought. We realized that in penalizing a franchise in this way, especially taking away four first round draft picks, would in some ways make the fans of the Timberwolves pay for the misdeeds of their owner and their GM.

But balanced against the need to protect the system, protect the integrity of the cap and send a message to

our teams that they will pay a heavy price for these kinds of deals, which really can destroy the entire system.

Moving on, another area that is keeping us busy and challenging us these days is the so-called digital revolution, which is rapidly changing the way all sports and entertaining companies are doing business.

A year ago this time, discussions in this area all seemed to involve capital markets. We and the other sports leagues were constantly being approached by investment bankers who wanted to take our dot com divisions public.

And with the numbers that were being thrown around at the time, it was pretty heavy stuff. We all had visions of retiring around the age of 40.

Now that the market has cooled off, teams are focusing their resources instead on building up their Web sites internally and using their sites to reconnect with their fans.

In our League, there is a growing sense that we are losing touch with our audience, that we priced the average fan out of our arenas, we're losing television viewership to the Internet, to the many alternatives that people have on cable and satellite television.

And so the Internet is an opportunity to reconnect with our fans, to market to our fans and speak to our fans in a more direct and personal way.

There is a tremendous appetite for sports content out there and the Internet satisfies that content through chat rooms, through real times, statistical updates, videos, fantasy games, Yahoo, auctions—it's all just beginning.

Down the road, when there's true conversions of Internet and television, when everything is all bundled up into one appliance, watching a game and calling up stats during a game, taking your own camera angle with which to watch a game, clicking on Kobe Bryant's jersey as he's running down the court, being able to order a Kobe Bryant jersey from the store, these are the kinds of things we need to keep doing to stay competitive with the other entertainment options that are out there.

Finally, there is our game itself.

There's a widespread perception out there that the game isn't as much fun to watch as it used to be, that the players are all standing around on offense, there's no fast breaks anymore, the game is too physical, that the players can't shoot.

I think that perception is somewhat exaggerated and certainly it isn't the case with teams like Sacramento and Dallas and Milwaukee, who fast break all night long.

Perception is reality in this business, to coin a cliche.

In fact, if you look at tapes from games from the '70s and '80s, back in Len's days, it really is like watching a different game.

You see fast breaks, you see pick and rolls, you see give and gos, all the things that those of us who played ball in grade school learn and think of as the way basketball is meant to be played.

Compounding this problem is the infusion of younger players into the league.

Increasingly, our teams are drafting players straight out of high school, drafting players after their freshman and sophomore year of college, and the impression is that these kids haven't learned how to play the game yet and we have a lot of very athletic but very raw talent playing in our league now and playing at a level that's well over their heads.

We have talked to the Players Association about the possibility of adopting an age limit to play in the NBA, like football has.

At this point they haven't agreed to that, and frankly, this is a tough issue. There's no doubt that players like Kobe Bryant and Tracy McGrady certainly had the ability to come right into the NBA and perform well.

But it's also the case that there are many players who weren't ready emotionally or physically to play in the NBA, and there are some very sad stories out there of players who clearly would have benefited from going to college for a few years.

We are well past the point of saying that everybody needs four years of college, whether they are athletes or not.

Purely as a business matter, and this is something that I think the public misperceives, we prefer to draft nothing but seniors in college. Players like Tim Duncan and Grant Hill who come to us as mature adults, and most importantly stars because they've just spent four years appearing on television playing in the NCAA and NCAA tournaments.

But these days it's the rare player who actually plays a full college career and given how competitive our teams are, if the rules allow them to draft players out of high school and after their freshman year of college, which the rules currently do, you can't really blame them for doing so.

So at the All Star weekend in a couple of weeks in February, we are going to get our basketball geniuses in

a room to figure out how to improve our game, allow some defense, get rid of the three point shot line.

I think everything's on the table, and we're also planning to have a meeting with our Players Association to discuss the issue of young players and whether there's anything we can do or should do to address that issue.

This is a subject I would love to hear about from Len on later on.

MR. VOTAW: Thank you.

I would like to begin my remarks by telling the panel here and the audience that as good as their jobs are, and I'm sure that they have wonderful qualities about their day-to-day jobs, they never have the same day twice, they get to work in a fairly glamorous and publicly disseminated business as sports, I firmly believe that I have the best job in all sports for any number of different reasons.

This panel today is to talk about the challenges facing sports today.

I would like to start by stating some of the things I don't have to face, being Commissioner of the LPGA.

I don't have to deal with players' behavioral problems for the most part, either on or off the court.

I don't have to worry about collective bargaining agreements or work stoppages.

All of our members are independent contractors. We are a professional association, a legal entity of 501(c)6, tax exempt, but they're all independent contractors.

They're all CEOs of their personas, if you will.

I suppose one challenge would be that I work for 300 women CEOs, which can be similar to the challenge that I'll get to in a second.

I don't for the most part have to deal with some of the perceptual societal issues of tattoos.

I do have players who wear earrings, which is not a challenge, but having said that, there are a number of challenges, more so in the marketing area than there is in the legal area, although this is a legal day here for all of us so I will get to touch upon some of the legal issues.

But in terms of some of the things I don't have to deal with relative to behavioral or collective bargaining and tattoos, I get to do most of my work and face most of my challenges relative to marketing challenges.

That's very invigorating and very challenging in its own right.

Val touched on some of the challenges relative to being a women's sport.

I'll try to echo some of her remarks. The WNBA is a young league. The LPGA is very fortunate to be a very old league.

We celebrated our 50th anniversary last year, and if you think back to what you either experienced or read about in the year 1950, as for women athletes, society wasn't sent very many signals in 1950 that women should or could be professional athletes, which makes what the 13 founders of the LPGA in forming the LPGA at that time so remarkable.

We have faced as the oldest women's sports association several challenges over those 50 years.

Many of them societal, cultural or chauvinistic.

One of those challenges remains today and that is can a women's sport in a predominately male-dominated culture relative to sports followers relative to media coverage, et cetera, and we are a women's sport, golf, that at the present time is being run parallel with the men's counterpart, PGA tour, which is experiencing the greatest popularity in its 62-year history, primarily because of the gentleman by the name of Tiger Woods.

In terms of our audience, we were always trying to build our audience as valid as any women's sport.

Unlike the WNBA, which has 75 percent of its attendees as women, we have very much a dual audience, both on site and on our television. We are 50/50, 50 percent men, 50 percent women audience.

That may surprise many of you in the room, except for the fact that golfers will watch just about anyone playing golf, which is evidenced by the ratings that Michael Jordan's Celebrity Golf Challenge seen last week, which beat the PGA tour event, which tells you if anyone wants to sit for two and a half hours and watch Charles Barkley swing a golf club, men will watch anyone playing golf.

Television is certainly very important to the LPGA and we're very proud of the fact that of the over 40 events on our schedule, we have had for the past several years at least 35 of our telecasts pretty heatedly among broadcast networks, ESPN, ESPN 2 and the golf channel.

We have over 250 hours of television coverage, which is more than any other women's professional sport and that we're very pleased about.

But like the WNBA and other women's sports, for the most part, our television arrangements are time buys. They are not rights to these situations.

We need our sponsors and/or the LPGA has to buy the time on all of our network telecasts.

We have a joint venture with ESPN and ESPN 2. The risks are shared between us and the network, and the golf channel does pay us a rights fee for events that we televise there.

The 35 events that are televised by the LPGA events on a yearly basis fall down one-third on the golf channel and one-third on ESPN or ESPN 2 and another third on a broadcast network.

The real growth we see in our television audience and television revenues is on the international program.

While the majority of our events appear in the states, the arrangements we have with our television partners are, as I said, time buys or modified time buys.

What we have seen in the past five years is an explosion of international interest in the LPGA is evidenced by a couple of specific countries, and it's in large part because of the stars that are emanating from the LPGA tours who come from those countries.

Corey Webb, Rachel Heddington from Australia, the Swedish invasion, and Sophie Gustafson. These are the countries where there is demand for a product. These are the countries where television is willing to pay rights fees for the right to broadcast LPGA events.

An interesting development, as far as we are concerned, 25 percent of television revenues came from international television today, and today are 50 percent as opposed to just five years ago when it was just 25 percent, and we are having some success with our rights fees and LPGA rights and other LPGA paraphernalia coming from Korea, and our foreign language rights in LPGA.COM will come from Korea. We are trying to determine what our next Korea will be, whether that is Thailand or Australia or Canada. This is something we are trying to focus on and trying to forecast in the best way possible.

If somebody would have asked me five years ago, the word Korea wouldn't have been in there.

It's only been five years, so we are trying to find out where our next Korea is coming from.

I mentioned women's sports in a male world as being a challenge.

I will tell you a brief anecdotal story that will analyze this.

I get asked questions the Commissioner, Tim Finchem never gets asked.

I was doing a radio interview a couple of years ago in Canada. We have had the DeMorian (phonetic) Classic Championship. They asked a few benign questions.

Then, at the end they asked a question, I'll probably get in trouble for it, but I didn't know what came next.

He said, "What are you going to do about the weight problem on the LPGA?" I said, "What are you referring to?"

He said, "Well, you have some big ones out there."

Now, Tim Finchem doesn't get asked that about Duffy or Craig Sadler, but I got asked that question.

After thinking about it, I said, "Our players come in all shapes and sizes and all complexities. When you asked about the weight issue, I thought you were referring to the fact we have some players that weigh about 100 pounds and hit the ball 2.4 yards per pound."

And I said, "For you to hit the ball 2.4 yards per pound, you have to hit it over 500 yards. Can you do that?"

The interview ended shortly after that.

Val mentioned one other challenge is the increasingly competitive landscape. We had the landscape the first 25 years, then the advent of women's tennis in the early '70s and now the WNBA success and hopefully the success of the WSA when women's professional soccer comes off the ground, and I am saying this because I hope you will see an interest level in the LPGA specifically as evidence of that five or six years ago when the University of Connecticut basketball team went undefeated and scored the highest in men's or women's history.

It showed programmers that there was value in women's sports, that there was a rating that could be delivered in women's sports and advertisers would be willing to advertise. Since that time, the walls of molasses to get LPGA product on ESPN has not been great, and we increased that threefold.

I believe the University of Connecticut was a benchmark or touch mark to that going forward.

Those are some of the marketing challenges that we face.

Since this is a legal seminar, I'm happy to report that the LPGA has not really faced very many legal issues of any stature, such as owners criticizing officials or players clocking their coachees, but there are a number of well, frankly, in golf that are most prominent, are being faced by Tim Finchem in the PGA tour, which I am pleased to report and those probably can be tailored to the Casey Martin lawsuit that has been now before the Supreme Court, and the decision will be faced in June.

I have been told that that's dominated the media since Casey Martin came out on the PGA tour and in recent years you have read about the reported dispute of Tiger Woods and the PGA of marketing rights and media rights that Tiger would like to get back from the

tour as the preeminent personality of the tour, and because he is that personality he has the right to exploit those personal rights that traditionally had been held, and property rights, et cetera.

As I said, we are an independent contractor membership association so we do not have collective bargaining per se.

What governs our players' behavior is a set of documents, that is, the institution and bylaws and a term of regulations that become basically documents that control the players' behaviors when they become members of the associations.

Within those we will be facing, I think over the next three, four years an age limitation challenge with respect to a number of girls who are the age of 14 from Thailand, Arie (phonetic) and Tyree (phonetic) they are child prodigies, if you will, they played in the Nabisco Championship and Arie finished in the top ten and was tied for the lead.

After three rounds, she ended up finishing 10th. I think her parents are probably going to want to seek entry on the LPGA before her 18th birthday.

I have a discretion of waiving that rule once a person hits 15, between the ages of 15 and 18, if there are compelling reasons to do so, we are going to be facing that over the next few years.

We do have players' issues relative to conduct and other things. The most recent occurred this past weekend, when we discovered in our first event that a couple of players were using cell phones during a pro-am round with their amateurs, and the amateurs had to ask the players in question to please stop talking while they were lining up their putts.

You would think that's not something that's covered in our terms and institution, but I had to write a memo saying to players that any future use of cell phones on a playing ground will be conduct unbecoming a professional and there will be a fine of about $200.

That's about as close as we get to player discipline.

We do have an intellectual property issue called the LPGA which has the PGA marks in its name and the PGA of America monitors how we use our mark and how we register marks, as the LPGA marks by extension have the PGA marks in them, and those tend not necessarily to be not trademark but more negotiation issues with golf associations that try to prohibit those types of registrations.

Joel mentioned the digitization issues. Around the world we certainly have those, and we are increasingly finding that because we are a global sport, the foreign language of LPGA.COM will be able to address sponsor issues.

We have immigration issues that come up from time to time because some of our players in this country are playing in the United States who are foreign and I think this doesn't necessarily affect us, but as the leading golf organization, it does come up, and we are looked to comment on this issue.

Another issue concerns the restrictive tee times that women sometimes face in private golf courses around the country with the sole basis of those being based on gender and you have seen over the course of the past several years, a number of states, State Attorneys General, state legislatures enacted laws or brought lawsuits against private clubs.

We are commonly asked to support those types of lawsuits and it is something that from a legal perspective our legal staff does participate in quite a bit.

I will be happy to talk about those as well.

In closing, I will say as I mentioned to Val, the person who hired me, was Charlie Meechan, who was a former CEO of Tap Broadcasting is a wonderful man and he tends to look at things to the extreme and make a point and he still does and he said his job is Commissioner and now my job is to make our players as arrogant and insufferable as other sports players.

If we do that, we'll seek the level, the other level seems to be and he always said it tongue-in-cheek, and I do hope I never get there, I work with professional, smart and funny and good-looking athletes in the world and that's a job that really helps me get up out of bed every morning to go to work.

I appreciate the opportunity to share some of my challenges and provide you a glimpse of the LPGA.

MR. ZIMMERMAN: Good morning.

Sitting here on the panel, I think one of the single biggest challenges that faces our employees as well as every other is the challenge to capture the entertainment eyeballs and dollars that are out there.

Clearly, it is becoming cliché-ish, but today we as consumers face the most important choice that we've ever had: how to spend our leisure time, and I think for most people as well, we have less leisure time than we ever had, because we have work obligations or family obligations and the like.

I think the challenge for each of us up here for each of our sports is to maximize our exposure, grow our fan base and like Joel said, try to stay relevant, both against each other, as well as against movies, as well as against sports that aren't represented here, sports that haven't started to play yet, like the XFL, like the WUSA, et cetera.

As Val said, you compete against older leagues, younger leagues, leagues that haven't been here yet, et cetera, and as you go home to your cable or satellite dish and start flicking through the channels, there are probably no less than five sporting events on the first seven channels that you click through.

That is without regard for those of us who have children, what our children want to do that day, or what our respective spouses want to do that day, and the like.

I think that's the single-based challenge.

Everything relates to everything else, and I have sort of a long list of issues that face our sports, and probably face the other sports up here, but really I think they all flowed from the challenges we discussed, and second, from the challenge of having an economic system among the players that works for all concerned.

That concludes the legal challenge. We also have a collective bargaining agreement for our officials. I think Len and others will cover it in the questions and responses today relating to condition and discipline, and in the case of officials, discipline. And in the case of players, also discipline, in the case of owners.

There are some owners who don't always agree with what the league directive or policy is. There are some owners who believe that there is a cheaper way to promote your team than by buying air time.

Whether he is right or wrong, time will tell.

Relating to that is also putting on our most entertaining product that we can and run that, as well.

You have in most sports, some that are older like ourselves, how do you keep the sport as entertaining as possible without changing?

Do you remove the three-point line in basketball? Do you remove the red line in hockey? Do you do something like go into four-on-four in overtime in hockey? Makes it more exciting and hopefully get an outcome that are not ties.

You always have the constituencies at the ownership level and general manager and you want to keep the game, traditional, as it is.

Then there are those that say we need to grow the sport, need to stay relevant—and then you have some players that say there are some changes we can make and there are some changes that you can't make because it affects our employment, and if you want to make those changes, you need our consent.

Jumping around with it, you have the need for an economic system that makes, regardless of whether it's unionized or not, the need for an economic system.

Makes sense for all the participants, whether they be owners, players, management, whether they be golfers who would like a smaller or bigger purse, aggregate prize money, whether they be golfers who say with or without me, maybe I should be treated differently, and for lack of a better word, you have owners, they come into the league saying I like sports, I want to be a sports owner, I'm building this $300 million arena, I'm spending a lot of money on my team and would like a return on my investment.

Conversely, you have players saying we want a free market. We want to be able to bid our services, maximize our value, my career is going to be a lot shorter than you as owners or management.

Also, as I think Joel mentioned in sort of his opening, we are responsible for reviewing these applications. Owners who come into the League have to pass a background investigation, and we want to make sure coming into the League, an owner is structured at least financially so that he can remain competitive.

Obviously, sports leagues are different from a chain like McDonald's or Burger King in the sense that if a sports team in the middle of a season decides it can't go on because of financial difficulties, that impacts scheduling and obviously it impacts, if it's dire enough to the fact that you may have 20 or 30 players who suddenly become unrestricted free agents because their contracts aren't satisfied, you have X number of other clubs in the league who account for revenues of home games, that may not be there if a team cannot continue playing.

So every sports league needs to make sure that its teams remain viable and competitive, and in our case, on the ice through the seasons and the foreseeable future.

Obviously, that's also key and critical to attracting new owners, and that again, everything leads to everything else.

You have what has been defined as a new breed of owners. I'm not sure whether the new breed of owners is much different than the old breed of owners, but we have a number of owners that are coming in—in ours, we have, for example, Ted Leon (phonetic), who is in AOL—

MR. LITVIN: Mark Cuban is much different than the old breed of owners.

MR. ZIMMERMAN: Fair point.

But it goes to a whole host of issues that a sports league needs to operate independently, but obviously also for a common cause in terms of league broadcasting, Internet strategy, et cetera.

You do have a new breed of owners coming in. Jerry Jones was a new breed of owner in football, com-

ing in and saying, you know what, I don't think your motto works anymore for me and for so many owners because I'm better, I'm smarter and I can do a better job than you guys in the central office and I can make more money for me than you can.

Some owners may be right, but obviously that's not the concept of the league. The concept of the League, and again, it goes for every League and every sport, the concept of the League is that the owners collectively generate some revenues operating the franchise in some cases independently and in some cases not, depending on the structure of the league.

Really the key factor is you can't necessarily have ebbs and flows.

There are some years, for example, when the Dallas Cowboys were the hottest property around, and there are some years that they are not.

The essence of the League is it evens out, the ebbs and flows. There are some years you are profitable and there are some years you are not doing so well.

And again, there are a host of legal issues in terms of making sure our owners abide by the League constitution and League bylaws.

With digitization and satellite, et cetera and other brands of broadcasting, it has become clearly a global environment.

I don't think there's any doubt about it. If there is, I will steal the issues from a lawsuit Major League Soccer was involved with.

On the issue of special budgets that went to the jury, there are two questions, and if you answer yes or no depends on them and the first question is whether or not the plaintiffs established that the relevant geographic market of this action is the market in the U.S., and the jury said no, it's a global market.

The second question was whether or not they established that women's soccer is a relevant market and doesn't include other professionals, like division two, division three.

Again, the jury said no. It's a worldwide sport, got a lot of different divisions and it's a much broader market than the plaintiffs were making out.

And then if your answer to number one and number two was no, then proceed no further. The case is over.

The point is, everything relates to everything else. Technology, whether it's coming or whether it's going to be more, and I think we all agree it's going to be, but one thing is clear, that if we do have convergence in the aspects of the legal business challenges, as well as the benefits that are facing all of our sports.

Thank you.

MR. ABBOTT: As a start-up league, I would agree with everything that's been said in terms of the challenges that we face.

Clearly, at Major League Soccer, our number one challenge is growing our fan base, but within terms of live attendance and television ratings, and I don't think I have a lot to add to what the previous panelists informed us about in that area.

So I thought I would address some of the unique issues that have confronted Major League Soccer and we have developed over the last eight years.

I'll tell you a little bit about the lawsuit that we have been involved with and then tell you what I think of certain key challenges that face us in the future are.

We started working on the League in 1993 in advance of the 1994 Men's World Cup which was held in the United States.

The Men's World Cup, which was held here in 1994 for the express purpose of promoting an interest in professional soccer and ultimately launching a new men's professional soccer league, much as the 1999 Women's World Cup has served as a springboard for a new women's soccer league.

The first thing that we did when we started to plan Major League Soccer, which is what you would do if you were to start any new business, is you would take a look at the history of the business you are trying to become part of to see if there is anything you can learn from it.

So we studied both the history of sports and the history of soccer in particular to determine what would be the best structure for us to give the sport a chance to succeed.

I think it's very important to highlight the fact that the initial inquiry, what is the best business structure, because I think particularly with the lawsuit that we face challenging our legal structure, there was a lot of commentary and discussion that the legal structure was driving the business here, and nothing could be further from the truth.

Really what we were seeking to do was to determine from a business perspective what would be the best way for us to proceed and then how could we craft a legal structure that would give us the best chance to execute on that business plan.

I think I'm going to make a number of fairly obvious statements, but why don't I make them anyway to give you some insights into our thinking.

The first is the business of professional sports teams and athletes, from the time when the other four major sports have been formed.

If you take a look at football, baseball, hockey and basketball, they were all formed at the time when sports was essentially a local business that most revenues came from ticket sales and local sponsorships.

There are really no natural revenues to speak of, and the league structure reflected that. The leagues were non-profit or pass-through associations who really had two or three functions.

The function of obviously creating schedules. Other local businesses providing officiating and dispute resolutions between these local businesses.

Times clearly have changed and when we were starting, the WNBA was started, the role of the national level in sports leagues had come to a fork and if you take a look at the revenues generated at the national level versus the local level, it's dramatic and so it would only make sense that you would look at a business structure that reflected that reality, and that is that the revenues generated collectively are greater than the local revenues that each of these teams could generate.

That was sort of the first lesson I think you learned from looking at the history of sports.

The second is, this follows a little bit in our thinking in terms of the legal structure, is that over the last 30 or 40 years, there have been things that other sports leagues have wanted to do but have been frustrated in their efforts to achieve their business goals through legal challenges and probably people in sports law that are familiar with these efforts to stop teams from doing that, to markets in the best interest of the league, or efforts to limit the number of local television broadcasts.

These are things that leagues have wanted to stop from a business perspective but have been frustrated as a result of legal challenges, and so we wanted to take a look at a legal structure that would allow us to achieve those business goals, and that is again to reflect the fact that the business is a single national business where the various local operations are interdependent on one another and therefore trying to effectuate business strategies that are for the good of everybody, the legal structure that would best allow us to do that.

Then we study the history of soccer, professional soccer, in the United States and that's been a challenging history, if any of you follow professional soccer.

The most famous example of professional soccer prior to us beginning was the North American Soccer League, and the North American Soccer League was started in 1967 following the 1966 World Cup which was that year played in England, broadcast on American television for the first time.

A number of sports entrepreneurs looked at it and said this is the sport of the future and they jumped into it and they started a league.

When the League started out there were actually two leagues beginning the battle with one another. They sort of merged into one league and quickly dropped from 22 teams down to five teams by 1969.

The League sort of meandered along for some period of time, until the League and your team, New York Cosmos, made an important decision. Fred Kelly, who although was at the end of his career was still the most famous player in the world, regarded as the best player ever to have played the game and that really sparked a great interest in professional soccer in the United States and really led to the boom in youth soccer participation.

People who are now in their mid 30s started playing soccer when they were nine or ten. Of course, by now, this is an important demographic in terms of soccer, if you have people who actually grew up with the game, which is a dramatic change from the '70s when it was either people who came from countries where soccer is the primary sport or there was some interest on parents who might bring their kids, but the parents themselves didn't have a familiarity with the sport and that was the real challenge.

The other big challenge for the North American Soccer League was that it didn't have a very prudent financial business strategy.

Really what you had was a series of individual teams executing radically different business plans.

In New York, you had a team that was attempting to be a world class team, having Pele and some of the really great players of the world and a player payroll that reflected that.

It was in the $8 to $10 million range.

In other markets you had guys and women who had gotten into the business because they thought it was a little bit less expensive than the other divisional sports. They thought they were on the ground floor of something and they wouldn't have to spend a lot of money.

What happened was in their efforts to keep up with the teams that were executing a world class business strategy, they spent themselves into oblivion, and even if you're a New York team with a world class player roster and great fan base, if you run out of people to play against, you too will go out of business.

That's a bit of an oversimplification, but essentially what happened to the North American Soccer League,

is that a number of weaker teams were unstable, they didn't have the same sort of economic stability or clout that some of the bigger market teams did.

As they went out of business, they dragged the entire League down, so you try to learn from that.

What you learn from a business perspective is that it is one business and that we need the Kansas City Wizards to do well if we want the New York Metro Stars to do well.

So we created an extensive, what you would call revenue sharing structure, although within our structure, all the revenue resides at the League level and then the incentivized teams, what we call management fee based on their performance.

So when we took a look again at the lessons of the history of sports and soccer, we came up with this integrated business structure and the legal structure and potentially soccer organizes a limited liability company agreement in which people buy a limited liability company unit, which is equivalent to a share of stock in a corporation.

Along with that comes a contract to operate a team in a bigger market, so you really have two sets of financial incentives and two sets of financial obligations as an operator/investor, one at the League level and one at the team level.

At the league level, as a shareholder, you get a pro rata share of how the entire League does and so things that are shared, revenue and other source leagues are also shared typically in Major League Soccer.

The difference is that there's more extensive ticket sharing going on in Major League Soccer and therefore as an owner of New York, your pro rata ownership of the entire League, you own some of the ticket revenues from every team.

It's a lot like what's being discussed in football, with the pooling of all of the away game revenues on a weekly basis.

At the local level, you have certain obligations to operate a team which involved local marketing and the selection of the GM and hiring a coach.

You are paid more the better your team does in terms of its financial performance, so there's local incentives to do better.

Again, that reflected what our business objective was, which was for the League as a whole to do well and each of the teams to do well.

After our first season, this structure, and it's been adopted by other leagues in various forms, in the past few years, was challenged by a class action lawsuit from our players.

Interestingly, the lawsuit was backed by the NFL Players Association and they were the ones who funded that lawsuit, and I think that had a lot to do with their concerns about the structure and the proliferation.

Really, there were two claims made in case—there were seven, but two main claims.

The first one was that the single entity structure that the League had was a violation of Section One of the Sherman Act, essentially it was saying that it was a conspiracy among all the owners to suppress players' salaries.

Within the League structure, all players are paid directly by the League as opposed by the individual teams. Players come to negotiate with the people in the head office as to what their compensation is going to be.

This was alleged to be a violation of Section One.

The other claim was that MLS had illegally obtained monopoly power in the United States.

When the League was first started in 1993, there was an organization in the United States called the United States Soccer Federation, and soccer is very organized internationally.

There is an organization called FIFA, the international governing body of soccer and FIFA is part of the Olympic movement. It is the body that represents soccer in the Olympic movement and it is the group that owns the World Cup and puts on the World Cup every four years.

FIFA has a representative in each country, called the United States Soccer Federation. It has authority for governing soccer in the country.

In 1993, the United States Soccer Federation made a decision that only one league should be designated, what's known as a Division I League and that is the highest level of professional soccer.

It's like the NCAA, where there's one division, one through four. In most of soccer, throughout the world, there's divisions one through four in the various countries.

The decision here was, as in the rest of the world, there's really only enough support for one Division I League, and so for a two-year period, the soccer federation changed Major League Soccer, division I League.

The players in the lawsuit claimed that was an exclusionary act in violation of Section Two of the Sherman Act, in that that was really impermissible for the soccer federation to say that there should be one division whereas there should be many Division I leagues.

We filed in 1998 a motion for summary judgment because we felt as a matter of law, we are a single company, we have single payroll and under the Sherman Act, you have to have two people—and here there are two people, single company, making decisions.

Just as a GM makes a decision or an IBM makes a decision, Major League Soccer was making decisions with respect to what its player payroll would be.

And then nothing happened, and for two years we were engaged in discovery but we didn't hear anything from the judge.

We had a pretrial conference with the judge in March where we set the trial date for September.

The League asked what was going on with the summary judgment.

He said well, you all assumed all cases were still in trial, so we all went home.

About two weeks later, the clerk called up and said the judge had issued a summary judgment after two years and he had agreed with us and found that Major League Soccer was indeed a single company and therefore was incapable of conspiracy.

I think that's what we had expected to happen all along, and again, one of the things I think that came out in discussion about it is the real focus on players and that I think really misses the point.

The idea behind the structure is to reflect the fact again that the business is a national one and each component is dependent on every other component or everything relates to everything else.

That's what the structure involved, not focus on the players, it's aimed at in the press I think because of the lawsuit.

That remained in the Section Two claim about the certification as the single Division I League.

That trial started in Washington federal court in September. It went for about twelve weeks, and as David said, one of our major contentions was the market for soccer players is international.

In many ways, I think that distinguishes us from the other sports that are represented here, although not entirely, they certainly have international markets in some respects.

But what happened here was that we were able to demonstrate that if a player was not satisfied with the offer that we had made, he could go abroad and negotiate with any one of the Leagues that were abroad, and that put a lot of pressure on us to raise our offer.

And the jury agreed with that, found that the market was international in scope and therefore definitionally we were not monopolized and therefore the result was not a violation of Section 2, the Sherman Act, that brought it to a the close, in a very expensive and distracting litigation.

But we were happy obviously that it was resolved in such a matter.

Our number one legal challenge was our structure in business, our very existence being threatened.

Now we are happy to have that behind us.

I will touch briefly on two other things that I think are important to us.

One is that facilities for soccer are a tremendous challenge in the United States.

There are not enough appropriately sized facilities for soccer. We play with a field that is slightly larger than an American football field and we can't play on artificial turf because the field itself is so intricately—it's played on natural grass.

So we are under a program of attempting to build soccer-specific stadiums. We have one in Columbus, Ohio. We have one going up in Los Angeles and hopefully one here in the New York region. That's a major priority for us in the coming years.

Then I think the next challenge is, that unlike the other sports, the premier soccer Leagues are abroad. So to have legitimacy and authenticity for our fan base, we have to be competitive internationally.

This last week, our club won the North and the Central American championship, so we have the best club in the entire region including Mexico. The World Club Championship, where the top 16 clubs throughout the world will compete to see who is the best club in the entire world.

This is a major step for us in terms of legitimacy and I think it will show the improvements for professional level in the U.S.

Thank you.

MR. ELMORE: I think it's probably appropriate to stay on the subject of single entity structuring.

Let me remind everyone what we would like to do is promote discussion of panelists and after some of that, we certainly want to entertain questions from you.

Let me begin, notwithstanding the court decision, the fact that single entity—it seems to me it's a cost control strategy, but it's also a strategy to exclude unionization, so to speak.

My curiosity in taking a look at some of the facts that make up single entity, but the idea is in MLS, you have teams that are owned—actually multiple owners,

owners own local teams, and to me, again, what's the incentive for operating more than one team?

Aren't there conflicts that exist that make the interest of an individual team important to that individual owner maybe above that of the entity itself which, in my way of thinking, based upon the factors that make up a single entity, take it outside of that.

Then I would like to talk to Val about the structure of the WNBA and how they compare.

MR. ABBOTT: I think clearly everybody who is involved in sports wants to win, so clearly on the field, there are incentives and it's just human nature that people involved in those teams want to win.

We have teams which have similar ownership groups.

The people who work for them probably aren't as competitive among themselves than teams who have separate owners, because they all to demonstrate to their boss that they are doing the best they can to win.

I don't think that from a business perspective that takes us outside of the single entity structure.

At the end of the day, the people who are invested in the League know that the return will come to them from the overall appreciation of the League.

MR. ELMORE: What about voting, control on the board?

For instance, Bill Anchutz (phonetic) is there, not the people who work for him.

For instance, if you have an opportunity to have your two best performing teams on television and you're going to draw interest there, what does that say to the other teams? Isn't that anti-interest?

MR. ABBOTT: No, I think it's quite the opposite. The idea by having a lot of revenue sharing is to say that if you make a decision that the two best teams from a television perspective are going to be on television, everybody benefits from that, not just those teams. I think the interest is to do what's in the best interest of the entire League.

Maybe I misunderstood the question.

MR. ELMORE: I hear what you're saying. That's one way to look at it. The other way to look at it is that the management fees are paid based upon performance, and the more you're on television, there are ancillary benefits of being on TV.

So those two teams are going to get more money as far as the management fee is concerned. So-called management fee. We know what that really means.

MR. ABBOTT: Clearly, I think you put your finger on it, you have to incentivize both.

The feeling is is that the economic returns often are going to come from the growth of the sport overall.

I think that's true in other professional sports, frankly. If the sport overall grows, everybody is going to benefit.

One way to do that is incentivize people to do a better job, and the second way is to give them a residual interest—you've got to balance both.

So far we've found that in practice people look at it as a true partnership. What are we going to do to boost this sport in the country.

MR. ELMORE: You guys don't have a union.

MR. ABBOTT: That's an interesting question.

The Major League Soccer Players Association purports not to be a union. We contend that they are a union —

MR. ELMORE: WNBA, you guys consider yourself a single entity as well?

MS. ACKERMAN: Right.

MR. ELMORE: Your structure, does it parallel that of the MLS or is it different—you guys have a union. How did that come about?

MS. ACKERMAN: We are a single entity. Our League is collectively owned by the 29 teams that constitute the NBA, and our individual teams are not individually owned by the NBA owners of the teams in which they operate.

We are in NBA cities. We are using the NBA apparatus to front our operations, and we have technically operating agreements between the League and say the New York Knicks ownership or the Houston Rocket ownership in order to run the WNBA teams.

It wasn't intended to immunize us from unionization. In fact, we did unionize, our players did anyway after the second year.

From our standpoint, I think the comment that Mark made earlier, we had some important business objectives that this structure accomplished for us, but most importantly—there's two.

What one was in fact was cost control.

We had kind of an intent. We tried to manage, as best a way we could, our overall costs, including player costs.

Mark spoke about the history of sports and what you learn from other Leagues. Unfortunately, women's

pro basketball in this country has been basically a graveyard as a business.

There have been 15 or 16 women's pro basketball Leagues trying to get up and running since 1974 and we were sort of hell-bent on not being one of those.

I think to the extent that overambitiousness early on on the subject of compensation is one of the reasons for some of the failures, if not just women's pro Leagues but other Leagues.

We were intent to try to manage that, and having a single employer and negotiators, has allowed us to manage that to some degree.

Also, single entity allows us to market rights as you look to maximize revenues in the national marketing place.

We have exclusivity as it stands, not only nationally but also locally, which was a major departure from, for example, the NBA, where you might have a national sponsor in a particular product category, but you could have the Knicks or the Rockets or the Lakers selling against that category locally.

In the WNBA, we have partners that were exclusive, not only national but locally as well, and the single entity concept has allowed us to do that and that's helped us get better revenues to date out of the national marketing place.

MR. LITVIN: The NBA was pleased with the MLS decision and pleased for our friends at the Proskauer Rose firm who finally won one of these cases.

But I would be remiss if I didn't point out that it is our view that the same result should have been obtained within the MLS like a traditional sports League, like the NBA which is a joint venture, and that any antitrust challenge not focused on the conspiracy challenge against a professional sports league based on its internal business decisions, like television, expansion, relocation, that those challenges all arise from the same erroneous premise, which is that our teams are independent economic competitors, which they are not.

They compete hard on the playing court, but off the court, they couldn't be more interdependent, and therefore the teams are incapable with conspiring with each other.

Granted, we made this argument in many courts and not all the judges have accepted this argument, although we did finally persuade the Seventh Circuit in the Bulls case, a case involving the sale upon the Bulls of their games into the national television market.

Judge Easterbrook acknowledged that for certain purposes such as television, it may be that a league structure like the NBA or hockey or football may well be a single firm for some purposes, but perhaps not for other purposes, like labor relations.

MR. ELMORE: Any questions?

MR. ROSENTHAL: I was just going to add a comment with regard to a question from Mark in that, from my perspective, someone who is involved in Major League Soccer, being a single entity and the players—actually promotes unionization, there are two avenues in which to proceed.

One is on which the Major League Soccer players proceed, which is to file an anti-trust lawsuit and hopefully get your goals.

The second thing is if that option is not available, to collectively bargain it and take it back to the labor laws, which hopefully—they'll have a choice, they had a legal duty to sit down and negotiate in good faith.

MR. ELMORE: But it is a question of leverage. With regard to whether you unionize or whether you don't. That's up to the players, recognizing where they have a dispute for leverage.

MR. ROSENTHAL: Certainly losing an anti-trust card is losing leverage, but it doesn't discourage unionization.

AUDIENCE MEMBER: This is directed to Ms. Ackerman.

Did you learn anything new from the collapse of the ABA, as opposed to the WFL, WHA?

MS. ACKERMAN: I would say yes, there were some really important lessons learned in terms of what I would call foundational business and I think the significant operating difference that we have with the American Basketball, which was a women's professional basketball league, that, like us, launched in the wake of the Olympics, where the women's U.S. team won a Gold Medal. Fanfare.

The ABL launched in the wake of that and then unfortunately went out of business in December 1988 after a couple of seasons.

As I said, the learning that I took away, among other things, was that the ABL had elected to operate during the winter season, what I would call the traditional basketball season as a sort of scattered October to April league.

When we constructed the WNBA, we elected to operate in the summer.

Our League, unlike any other basketball league in the world, operates from May through early September, and the primary reason for that was because we felt television opportunities were going to be available in the summer in ways in which they are not available or only

available with great difficulty during the traditional fall and wintertime frame because there's a lot of other sports that exist and are established in that time frame.

We felt television was vital to our plan, our games needed to be seen, and individual associations with the networks for credibility ultimately is revenue because of the sponsors—more than anything else.

In the summer we had television that just wasn't available at other times of the year, so the ABL elected to operate on what they felt was the "right" season for basketball and I think ventured into a very difficult business area.

Because the realities of it are that for any of the leagues finding out, television is really tough to get, period. And in the winter, it's even tougher.

And I would just sort of add as an operating matter we have benefited from the infrastructure that's available to us by the association with the NBA.

We didn't really have to start from scratch. It's really hard, even when you have an NBA behind you to start a new league, but to go into markets and set up shop and cut deals and everything else, I think it's double or triple and quadruple more difficult without that kind of association.

So having that infrastructure I think really helped us and again, the summer was really the critical difference.

In fact, women's professional basketball has suffered because they haven't had television and we have been able to provide that.

MS. BRESLER: I would like to say a few words about the lawsuits that have been brought regarding the private clubs—

MR. VOTAW: The issue that gets framed on this topic, if you are a private club, if you're a female member of a private club, the club very often would have tee time restrictions on weekends, as traditionally the prime times in which people like to play golf is when they are not otherwise working, from 9:00 in the morning until noon, which was saved exclusively for their male members and not their female members.

From a societal or from a cultural perspective, those tee time restrictions were primarily present at some of the older clubs, clubs where the membership were made up of retired or semi-retired women, if they were members, or who did not work while their husbands did.

Those clubs that came on line in the '70s, '80s, '90s, in order to compete for membership had to open themselves up to women, business women, women who worked who couldn't otherwise play given their careers until the weekend, typically didn't have these types of restrictive tee times.

Often times, it's come down to a self-governance issue of the club.

The key issue for state legislatures and/or Attorneys General or whoever else initiated lawsuits against clubs is whether or not the clubs hold themselves up to the public.

The clubs will say they are private. The public will say no, you are not, because even if you are private, you have freedom of association and privacy laws that permit these types of restrictions. Then they say no, you're not, you hold yourself out to weddings, you hold yourself out to public lunches, you also give public benefits like liquor licenses, you also give tax abatements, et cetera, and based on those types of issues, you're public and therefore subject to formation laws.

We as an Association have an anti-discrimination law that we well not play at clubs that have discrimination policies in the voting rights of its members, and it's somewhat complicated and somewhat difficult to articulate to a lay person, but it's in essence our view that you will not play at private clubs where women do not have the right to vote or be on the board of directors.

No LPGA women play at a private club where that is the case.

We do play at clubs that perhaps do have restricted tee times, and that may sound inconsistent with the first premise that we're anti-gender based, but in essence it comes down from our perspective to a governance issue.

If the makeup of a club is made up predominantly of women who are very satisfied with the current structure and have the right to vote and do not necessarily want to change, why should the LPGA come in and say you must change?

We are not a governmental entity. We're not somebody, we think, who has the right to come in and tell someone else how to do their business. We just decided we wanted to play at clubs where the voting rights and the board representations are there.

If we took that to the logical conclusion that we said we will not play at clubs that have no gender base, tee time issues, we may be relegated to public facilities, and many of the public golf courses that our players can play are in fact private facilities.

There is somewhat of a stock horse mentality in that he's saying one of the best ways to knock down negative gender-based opinions relative to women's golf ability is to show that our players can come to those golf courses and bring those golf courses to its knees in how well they play.

We think those things are the things that are going to knock down these type of things and how they operate.

Some clubs claim that the tee time restrictions are based not necessarily to show how well they can play, sometimes are based on just male members of the club, they are not based on gender, just on basic play.

Men are faster golfers than women or this is a tee time management issue that most of our members don't—male members work and they can't play during the week like the women who can.

Well, those are fighting words in a lot of clubs because women tend to not have that ability to play other than Saturday as well, so it's interesting how you want to come about—they look to us for leadership and how to resolve it.

I think you are going to see clubs making these changes.

MR. ELMORE: With conversions being necessitated by broadcast rights and property rights internationally, and probably at this point in time, the protection of marks and enforcement of copyrights and marks by more than at any other time—

I mean, what are some of the difficulties that all of you face as leagues and leagues who hope to spread your game globally?

There are differences in law internationally that pose problems, and I know that in some areas, we look at priority in the filing as secondary for priority in news. Other places it's the other way around.

Internet broadcast, once you had an opportunity to kind of control that now, once the information is out there, who owns it?

I know there have been a lot of cases, but has there been a definitive word from the courts in the U.S. in what's going on in international law in that area?

Everybody has a Web site, so recognizing that, what are the privacy issues? What are the terms of use for the person who is going to sort of surf the Net—just a whole range of questions.

If there is something that's most pertinent to your league, to your organization, feel free to bring it out and then we'll open it up to questions.

Anybody want to start?

David can start.

MR. ZIMMERMAN: With respect to intellectual property, clearly the Internet has changed the way everybody does business, but I'll start with a general overview at least with respect to our League and also broadcasting.

With respect to broadcasting, indeed clubs' use of their own marks on license and the like, clubs have a local territory with respect to local broadcasting and sales of goods that they can market.

We use that local broadcast territory, home games and away games and with some exceptions relating to our ABC, ESPN cable deal, clubs have exclusivity, they can blackout our national signal.

They cannot do it on ABC with respect to selected games on ESPN as the League national broadcast takes priority over blackout local broadcast.

In all other circumstances, the local broadcast takes priority and blocks out the national.

That philosophy carries over into our Internet strategy.

On our Internet strategy, the League owns the Internet rights, and it owns the Internet rights because generally there is no gating technology.

The Washington Capitols cannot broadcast their game within the local territory and keep it within the local territory over the Internet.

Until there's an effective gating strategy or gating mechanism, we've had this conversation with owners many times. Until there's an effective gating mechanism where you can or a team can use its Internet rights in its local market and not go nationally or internationally, the League has claimed those rights.

To the extent we are going to broadcast games over the Internet, it would be a League right, and not a club right. Having said that, we're currently not—on being on the Internet because we have to deal with our broadcasters.

I think at some point in time everybody believes we'll be broadcast over the Internet.

When that time comes where we can sit down at the computer terminal via the Internet and watch a game—but until then, that at least with respect to teams in the League, remains how we have to cut up the U.S., Canada and the world.

We have the rights to sell nationally and internationally all club merchandise, licensing, sponsorship, et cetera using all the club's marks, logos, names et cetera.

Within a local territory, clubs can co-exist within a league. They can operate team stores, arenas, et cetera.

We are responsible for enforcing at the league level the protection, along with club's names, marks, logos, et cetera.

I think in the U.S. and Canada it is somewhat easier to do with the development of the law and granting the ability to monitor it.

When you start spreading internationally, when you start dealing with counterfeited goods that are being produced and sold overseas, when you start dealing with a number of Web sites that come on board, either using athletes' names not sponsored by the athletes, clubs' names, clubs' marks and the like, when you start dealing with signals off of satellites, these are all areas which, obviously, legal entities try to enforce their rights.

It is incredibly difficult to catch them all. It is incredibly difficult and expensive to shut them down.

We have some degree, a pretty fair degree of success.

We, like others, tend to focus on marquis events, so, for example, if you are out in a parking lot buying a T-shirt, you may find yourself losing your money on the T-shirt because we are out there also with local and federal law enforcement employees shutting them down.

The leagues have gotten together on these types of enforcement mechanisms.

We generally surf the web to see who is using our marks, the search engines are wonderful. You can track just about instantaneously to find out who's operating, what they're trying to sell.

We all generally read those publications to find out what is generally relevant.

If you see, for example, somebody in hockey news advertising a video that we know has not been authorized by the League, which uses names, marks, et cetera, we will be shutting them down.

It is incredibly difficult, but you have a continuing battle trying to shut down—I think that generally answers your question.

MR. ELMORE: Food for thought.

MR. LITVIN: People and companies are stealing our stuff in cyberspace, taking our trademarks, copyrights, trade names and seeming to think that the laws are different out there when they're not, at least based on earlier indications.

We had an interesting case last year involving a company called I Crave TV.

This was a company set up in Toronto that was bringing down broadcast signals out of Buffalo across the lake and screening those signals on to this guy's site.

It included TV shows, sports events, movies and whatnot. He claimed his activity didn't fall under U.S. copyright law because to get onto his site, you had to type in the Canadian area code.

That doesn't quality as gating technology. Anybody who can type in 416, which was Toronto's area code, could get on this site and watch sports, copyrighted events for free, including the Super Bowl. Shortly before last year's Super Bowl, led by the NFL, a coalition of sports leagues and other owners went to court in Pittsburgh and were able to shut this guy down.

We haven't had uniform success in this area. We recently lost the case in the NBA under the DDRP uniform dispute resolution policy, I think it is.

We are trying to get back the name Knicks.com from a guy who registered that name five years ago, but never used it.

I think if you typed that in, it would say, "Available for sale. Please call the following number."

The NBA properties brought a complaint to have that mark transferred, to have that name transferred back to the NBA under this expedited procedure and a misguided arbitrator found against us on two grounds.

The first was that the complainant in this case was NBA Properties, as is the case with hockey. NBA Properties has the exclusive rights to the marks on that team but isn't indeed the actual owner of those marks.

His finding was based on the fact that the Knicks weren't named in the complaint, but that's a distinction that didn't make any sense to us.

He also failed to find bad faith on the part of the guy who owned Knicks.com even though he obviously had no legitimate interest in registering it.

Shortly before the decision was issued, he actually transferred the name to us. This was actually after the mediator decided, before we knew about his decision, and so we now own Knicks.com, but there is this silly decision on the books.

MR. ELMORE: How did you persuade him, the transfer?

MR. LITVIN: He didn't have any interest in it. He was tired of hearing from our lawyers, and after four years of getting letters from us, it was not worth it. We did not pay for it.

MR. ELMORE: Any questions?

MR. ROSENTHAL: I think there was relevant conflicting things like real time scores and I think Joel, as you know, in the Motorola case involving beepers and real time scores, and at the PGA tour recently, I had a favorable decision upholding its denial of access to real time scoring information on Internet sites.

I wonder what you all consider this to be or where that is going to go.

Obviously, we all know where we all want it to go.

But what do you think ultimately is the probable resolution to that?

MR. ELMORE: The question involves cases with real time information that has gone out and other people have kind of taken it for their own, there have been some conflicting cases, conflicting decisions in those cases, some for the professional entity, some for those who were utilizing that information.

The question was in light of those conflicting decisions, where do you think the law would be going?

MR. LITVIN: The case that Jeff referred to is one that we were involved with, we brought a case against Motorola and a company called Stats, Inc.

Very briefly, Motorola, they still have a pager system called Sports Tracks. They hired a company called Sports, Inc., which in turn hired people to watch our games on satellite TV and to report, I think it was as much as 15 seconds to report what the scores were and relevant information about scoring and whatnot.

We viewed that as a misappropriation of property right and in effect, a broadcast of our games.

We were able to prevail in District Court before Judge Prescott, in relying on the hot news line of cases and basically said this was a misappropriation—there was a case involving the Pittsburgh Pirates, where some radio station that didn't have the rights to carry the Pirates game stationed a guy on the roof across the street and he watched the game from the rooftop and basically broadcast the game over his network, which didn't have the Pirates' rights.

That was considered to be a misappropriation and he was shut down.

The Prescott decision was reversed by the Second Circuit based on the fact that the Court found that our claim was preempted by the Copyright Act and that we didn't have a good copyright claim because these people were not located in the arena, and in any event, Judge Prescott found that the games themselves were not copyrightable.

They were getting their information from copyrighted broadcasts of our games over television, but she found with respect to our copyright claim, that simply reporting scores from watching a telecast of the game didn't involve copyright infringement, so that's where that stands.

We ended up making a deal with Motorola. We've got credential language with respect to media that enters our buildings to cover our games, including dot com media.

It makes clear that they can't transmit out of our buildings. We think that is a binding contract that they have to adhere to and we really haven't had a problem with this issue since.

AUDIENCE MEMBER: This question goes back to the early comment that Mr. Litvin said about the domain name and usage and DDRP.

In your opinion, do you think this is an ineffective way to handle these disputes, but for others that have trademark issues, that's the best way to handle those?

MR. LITVIN: It's a good question.

It's an interesting procedure. You simply file a complaint and there's an answer and on the basis of those two sets of papers, there's a decision rendered.

There is no opportunity for discovery and perhaps in retrospect this is a case where we wouldn't have minded having a full blown hearing, both on the bad faith issue and on the ownership issue.

I think where the case is a slam-dunk, and in many cases they are and there should have been, I think this is a very inexpensive and expeditious way of resolving these getting names back that really belong to the trademark owner.

If there's anything more complicated than black and white, I'm not sure, given how limited the rights holder's ability is to engage in any full-blown proceeding.

AUDIENCE MEMBER: I was wondering if we can change the topic, and talk about the leagues' restrictions on people becoming agents—

MR. LITVIN: Ask him, he was an agent.

MR. ELMORE: Operative word was "was."

First of all, I don't think it's the leagues' restrictions. It's actually the union's restriction.

I don't see any union people up here, but if you guys want to take a whack at it—

MR. ZIMMERMAN: I think what you said is actually accurate.

Our sport has a provision agreement for agents subject to the bargaining process.

After that, it is the Players Association that is responsible for certifying agents, and for setting the requirements that an agent needs to retain his or her certification.

They are responsible for disciplining agents and they are responsible for terminating an agent.

The leagues obviously oversee it to the extent that they assure the respective Players Associations are com-

plying with the agreement and are not doing things inappropriately.

Short of that, it's really an issue for the Association with everybody in compliance.

MR. ELMORE: Let's move on a bit.

One of the other important issues or challenges to look at has to do with player relations.

Particularly in the area of disciplining the players, maybe even disciplining owners, and we look at like the McSorley case, the Sprewell case and others, and some consideration had to be made before decisions were brought down.

For instance, in the McSorley case, it was interesting to understand the court process in handing down a one-year suspension, why wasn't it longer or why wasn't there a lifetime ban, that type of thing.

Obviously in the Sprewell case, there was no court involved in it, but the Commissioner had the authority to levy the sanction and the union disagreement why that occurred, you know, considerations of crisis management.

How do you develop a strategy in that respect, going forward, in handling these types of cases?

In the area of the LPGA, you have players disciplining players and there was a case with regard to that.

I throw that out there. Hopefully we can be as concise, but certainly as informative as we can in the next five to ten minutes.

MR. ZIMMERMAN: You mentioned McSorley. Just for those of you who didn't see it over and over and over again on ESPN, McSorley, in his words, engaged in a fight and struck Mr. Brasheer (phonetic) in the back, he said his shoulder. The tapes show a hit to his head with his stick, sufficient to send Mr. Brasheer to the ice with a concussion and convulsions.

Mr. McSorley under the League rules was immediately suspended by the Commissioner, as his rights and authority goes, subject to a hearing.

Probably not for the first time, but very, very rarely, the Vancouver authorities where the game was played also decided to take action against Mr. McSorley and instituted a criminal proceeding against him.

They continued essentially on parallel tracks, and in answer to one of your questions why was it not lifetime and why was it not longer, you will never get a suspension, I don't believe, that everybody including the actors agrees is the appropriate length of the suspension.

I think probably the McSorley suspension like every other one can be debated ad nauseam as to whether or not it can be longer, it should be a lifetime, et cetera.

The Commissioner looked at all the circumstances, looked at the events and felt the length of suspension was an appropriate length.

Obviously, the players thought it was too long, Vancouver and Mr. Brasheer thought it was too short, and it's one of those things where you make everybody equally unhappy and miserable, you probably struck the right balance.

MR. ELMORE: Well, you say everything is related to everything. My parents said that.

I'm a parent and I have kids playing, and what message does that particular suspension send?

Again, I'm not taking one side or the other.

MR. ZIMMERMAN: I understand, and it's a fair question.

As a fairly new parent, I look at these things also.

Having said that, the message it sends, you have to look at everything. The Vancouver authorities and the judge ultimately issued an opinion and meted out punishment that was significantly less than the Commissioner wanted.

Does that mean the judicial system in Vancouver—I don't know what it says about that, but what the court gave out was significantly less than what the Commissioner gave out.

If the length of the suspicion was long enough to rule out, deter actions like that in the future, I think it is.

Certainly I hope it is enough to deter behavior like that to other players, and that would send a very strong message that conduct like that is inappropriate.

You can't be judged by an act necessarily in and of itself. You have to be judged as much by your reactions to the act than by the act itself.

The League reacted swiftly and firmly. It said to the court that the Commissioner's discipline of athletes is certainly within the purview of the Commissioner.

Our discipline was significantly harsher than anything the court meted out, and if you take it outside of professional sports, I was watching the news yesterday and I happened to see where a 13-year-old boy in Florida was imitating another sport, I don't pick on the sport, but he was imitating professional wrestling and apparently stomped a girl to death.

As tragic as that is, I was shocked by the verdict which was life in prison.

Does that seem appropriate under the circumstances for a 13-year-old boy or girl to get life in prison for doing something that—it was incredibly callous.

MR. VOTAW: You referenced LPG players, and the reason I'm sitting here today as Commissioner, the second youngest Commissioner is because of the—a lawsuit was brought in the mid '70s by Jane Blalock (phonetic), who was accused of cheating, placing her ball ahead of her mark on a putting green by a number of other players.

At the time, there was no Commissioner of the LPGA. There was a governance by a Board of Players.

There's actually an article in this week's *Sports Illustrated*. It's called "Busted." It's the 30-year anniversary of it.

But she issued a statement to the Player Board saying if what you said about me is true, then I apologize.

The Board, at that time, counted that as an admission and suspended her for a year.

She brought a lawsuit saying fellow players cannot suspend other fellow players and the lawsuit went on and the judge actually found for Ms. Blalock, in which case the officer of the Commissioner was created for the LPGA, a gentleman by the name of Greg Matley, who was the youngest named Commissioner and who remained Commissioner, and we have had six since then.

I'm the sixth, so I suppose I should be grateful to Jane Blalock for bringing this lawsuit and giving me this job which I've previously said is the best one of any up here.

MR. ELMORE: Well, if there are no questions, I think our time is done.

AUDIENCE MEMBER: Going back to the idea of a single legal entity, the issue of lawyer ethics and fiduciary duties between members where it's necessarily addressed, is it better or worse than previous when there are multiple owners competing with each other or cooperating with each other without responsibility to each other?

Before the LLC, which the soccer league uses, I don't know what the women's national, and as lawyers who represent the League, when there were disputes in the League, that paralysis is alleviated because there is only one interest to be protected.

MR. ABBOTT: On the ethical question, I don't think I ever thought about that.

I assume when you are representing the League, you were representing the League interest no matter what the structure was.

I don't think the team structure of the League would modify that.

MR. ZIMMERMAN: I think that's right.

MR. LITVIN: I think that's right.

VOICE: The reason I asked is because in the music industry, when the band has a dispute, sometimes you find yourself in an ethical paralysis, so I was wondering if that was mimicked in the sports in a league fashion.

MR. ZIMMERMAN: I don't think you find yourself in an ethical paralysis.

For example, when there are disputes among owners, it's sort of circular in the sense that an owner hires a Commissioner, but then the owners answer to the Commissioner under the powers given to the Commissioner.

He has the power to resolve disputes among owners. They charge him as being powerful and they trust him to have the highest level of—the only thing they can ask is that they render a decision to be fair and accurate.

I guess as a practical matter, if people don't think you are doing that, they will replace you. If they believe you are rendering decisions in disputes in that matter, they will retain you.

MR. ZIMMERMAN: It's really the same, alleging that one club tampered with its players, the Commissioner would ask for or set a judge for papers to be submitted on the dispute for a hearing of witnesses, and like any other hearing or arbitration, the Commissioner would have a hearing and render a decision.

MR. ELMORE: Each club has its own counsel.

MR. ZIMMERMAN: Yes.

MR. ELMORE: But with regard to single entity—

MR. ABBOTT: We haven't had that type of dispute, so we never had anything—separate counsel from the league, but that type of dispute hasn't occurred with us yet.

MR. ELMORE: Unfortunately we are out of time.

The Regulation of Sports Agents and the Uniform Athlete Agents Act

By Ian T. Williamson

With the rising salaries of today's athletes and the current state of the law, the need for uniformity in regulating sports agents is greatly needed. In today's sports market, the agents have several important functions. Not only do they negotiate employment contracts on behalf of their clients, but they also give general legal and financial advice in addition to counseling the athletes as to their rights and obligations.[1] However, the rising salaries of athletes have provided a temptation for sports agents to engage in various improprieties when recruiting and representing athletes. Unfortunately, there are sports agents who are motivated solely by a desire to obtain a "cut" of a student-athlete's future income.[2]

To combat the potential for impropriety, the sports agent is currently regulated by three different main areas: NCAA regulations, state legislation[3] and regulations by players associations.[4] Each of these areas has its own separate regulations, which poses a problem for the athlete and the agent, as neither knows which law ultimately governs. In addition, the current state laws that are in place are vaguely worded and vary considerably from state to state. They also lack reciprocity.[5] This issue may be resolved through the creation of a uniform set of regulations that apply to sports agents and athletes.

NCAA Regulations

The National Collegiate Athletic Association (NCAA), has publicly nurtured the ideal of the "amateur student-athlete" and has maintained stringent and detailed rules and regulations prohibiting college athletes from receiving any benefit of any kind based on athletic talent while they retain amateur eligibility.[6] One purpose behind the NCAA is to retain a clear line of demarcation between inter-collegiate athletics and professional sports.[7] The NCAA regulations were created to fulfill this purpose, and are codified in both the NCAA Constitution and the NCAA operating by-laws.

These particular regulations gained national attention in the 1980s with the prosecution of two sports agents, Norby Walters and Lloyd Bloom.[8] Mr. Walters and Mr. Bloom induced numerous players to sign representation agreements in return for various gifts that included money and promissory notes. The two agents also fraudulently drafted player contracts to circumvent the NCAA regulations. This case marked the beginning of the challenge to improprieties by sports agents, and served as a warning signal against potential wrongful activity. This also amplified the need for a regulatory scheme for sports agents. In the last decade, we have seen numerous collegiate athletes in the news that have received gifts from sports agents during their college careers. The NCAA Constitution explicitly states:

> An individual shall be ineligible if he or she (or his or her relatives or friends) accepts transportation or other benefits from any person who represents any individual in the marketing of his or her athletic ability or;[9] any agent, even if the agent has no interest in representing the student-athlete.[10]

The athlete's receipt of any benefit clearly nullifies his or her amateur status. Therefore, the NCAA regulations attempt to deter improper relationships between student-athletes and sports agents. In addition, if a university uses a player who lost his or her eligibility as a result of the conduct by the sports agent, the educational institution might be subject to sanctions by the NCAA which range from fines to suspensions from post-season play.

The *Walters* case upheld the principle that the NCAA is a private body and its rules are not directly enforceable in court.[11] The prosecutors in *Walters* unsuccessfully attempted to use federal law to prosecute Walters for agent misbehavior.[12] Specifically, the prosecution attempted to prosecute Norby Walters on charges of mail fraud.[13] The prosecution's argument was that Norby Walters knowingly caused the use of the mails when the universities mailed the players annual signed eligibility forms to the NCAA head office.[14] The court held that there was no evidence that demonstrated that Walters actually knew that the colleges would mail the athletes' forms. Therefore, the court rejected the mail fraud argument.

It is quite obvious that the NCAA regulations by themselves are not forceful enough to deter athlete agents from wrongful dealings with student-athletes. A sports agent can circumvent the NCAA by having a student-athlete declare himself eligible for the professional draft. If the player does accomplish this, he would no longer be subject to the NCAA regulations, but would be subject to other regulations, such as those imposed by his state and player associations.

State Regulations

There are currently 28 states that have adopted some type of sports agent statute.[15] State legislatures

realize that there is a need to regulate sports agents. State regulation of sports agents began in the 1980s in California. Most of the early statutes followed the California model and analogized the sports agencies to employment agencies. These statutes typically required registration with a state agency and the disclosure of certain information to the state, usually a standard form representation agreement and fee disclosure, if an individual desired to do business within the jurisdiction.[16] The early California statute was highly ineffective in its application and was subject to scrutiny. Specifically, the statute required the sports agent to periodically renew his or her license to practice in the field.[17] The number of agents who complied with the licensing requirements decreased, and by the mid-1990s, the number of California registrants had dropped to fewer than 20.[18] As a result, in 1996 California enacted the Miller-Ayala Athlete Agents Act.[19] The act was more effective because it increased the substantive requirements and eliminated administrative licensing.[20]

The state regulations have the same general intent as the NCAA regulations, as they protect collegiate athletes from the influence of sports agents. However, they differ in many of their requirements, lack reciprocity and are vague in other areas.

The first major difference between the state statutes exists in their "Definitions" sections. Some states do not properly define what a student-athlete is, and are vague and ambiguous.[21] Others do define what a student-athlete is, but do so quite differently. For example, in Indiana, the state regulation provides a very general definition of a student-athlete. The regulation defines one as: ". . . a person who is (1) enrolled in a course of study at a private college or university and (2) eligible to participate in an intercollegiate sporting event, contest, exhibition, or program for the college or university in which the person is enrolled." [22]

This general definition has the potential to generate unnecessary litigation, as it does not define the term precisely. The Texas sports agent statute is also illustrative of the problem with the definition of a student-athlete. The statute defines a student-athlete as someone who: ". . . is eligible to participate in intercollegiate sports contests as a member of a football or basketball team of an institution of higher education located in this state. . ." [23]

It appears from the plain meaning of the statute that it would only apply to student-athletes participating in football and basketball, and not other sports such as tennis, volleyball or track and field. It is possible that the drafters of this regulation tailored it narrowly in this manner because they did not foresee any problems with agent representation of athletes in other sports. However, if true, this analysis is flawed. This language may theoretically be detrimental, as sports agents in other sports may participate in wrongful activity and thus not be subject to the statute. The definitions as a whole create a vague understanding as to what exactly a "student-athlete" is.

The registration requirements for sports agents reveal a more disparate pattern of regulation.[24] Some states do not require registration by the agent with the state.[25] Other states require registration coupled with a fee.[26] Others require registration without a fee.[27] Most of the states require registration with the Secretary of State,[28] while others require registration with other agencies such as the Department of Consumer Affairs.[29]

Interestingly, some states require the registering agent to deposit a surety bond with the Secretary of State.[30] This provides an additional penalty to the athlete agent if he or she violates the state's regulations. However, the required bond amounts vary greatly and there is no uniformity in the amount.[31]

The state of Florida has the most interesting and perhaps most difficult registration requirement.[32] Florida requires the passage of a state licensure exam covering sports law topics and a background check on the agent prior to the issuance of a registration license. This is a unique approach to a state regulation. The State of Florida has many top echelon college programs that produce many of the drafted collegiate athletes. The state legislature apparently created this stringent requirement to deter sports agents from wrongdoing in the recruitment and representation of college athletes, and to ensure that the agents who are certified are capable.

In addition to the registration requirements, some states impose criminal penalties for violation of the statutes that include prison terms and fines,[33] while others do not. The disparity in regulations from state to state is a major cause of confusion for the sports agent, and is a major reason for the current need for a uniform set of laws.

Another issue that arises from state regulation of sports agents is whether the reach of the state regulation should turn on the agent's home base, the player's home, the college from which the player is coming, the professional team to which he or she is going or all the above.[34] State legislatures are often prone to spread their regulatory net as far as possible.[35] The enacting of the Miller-Ayala Athlete Agents act in 1996 sought to solve this issue. Under the new California statute, if an agent violates the rules governing relations with athletes and/or schools, any "adversely affected" party can file suit in state court for actual and punitive damages with a minimum award of $50,000.[36] The intent of the legislature is to have the sports agent held to the regulations of the state in which they are registered. However, the question remains unsolved as to the reach of the state

regulation. This further amplifies the need for a set of uniform rules to govern the athlete agent.

Regulations by Player Associations

The unions representing Major League Baseball (MLB), the National Football League (NFL), the National Basketball Association (NBA) and the National Hockey League (NHL) players have instituted requirements regarding who may serve as agents for the Associations' respective players. The unions have the power to regulate the registration and conduct of sports agents pursuant to their role in the collective bargaining process.[37] Under the National Labor Relations Act (NLRA), a union such as a players association has the exclusive authority to represent all employees in its unit (members or not) for purposes of collective bargaining about the terms and conditions of employment.[38] As a result, player agents are effectively agents of the union, which has the legal right to withhold from an agent the right to represent its members.

The regulations forbid providing money or any other financial benefit to induce an athlete to sign with an agent.[39] The NFL Players Association (NFLPA) was the first union to impose such regulations.[40] The NFLPA Collective Bargaining Agreement prohibits any club from engaging in individual contract negotiations with any agent "who is not listed by the NFLPA as being duly certified by the NFLPA in accordance with its rule as exclusive bargaining agent for NFL players."

The National Basketball Players Association (NBPA) Regulations Governing Player Agents and the NFLPA Regulations Governing Contract Advisors contain a few distinct provisions that are worth noting. The NBPA regulations provide in part that the agent must attend, at least once annually, an NBPA seminar on current developments, including individual contract negotiations.[41] The NFLPA regulations contain a similar requirement, where the contract advisor must attend an NFLPA seminar on individual contract negotiations each year.[42] These regulations attempt to ensure that the sports agent will "keep up" and adhere to the current regulations that are in effect. The NFLPA regulations also contain a requirement that is similar to Florida's standardized test requirement. Prior to certification, the NFLPA requires each contract advisor to successfully complete a written and proctored contract advisor examination. The contract advisor must achieve at least a scaled score of 70 on the examination.[43] The NFLPA's objective is that every contract advisor should be educated in all facets of the League's and sports law subjects.[44] The NFLPA believes that once these requirements have been met, the agents will then be prepared to properly represent the union members.

The player associations also have the authority to set maximum fees that can be charged by sports agents. For example, under the NBPA Collective Bargaining Agreement, if the agent negotiates an agreement where the player only receives the minimum compensation under the collective bargaining agreement, the agent will receive $2,000 for each season.[45] The agreement also states that if the player receives in excess of the minimum compensation, the sports agent shall receive a fee of up to four percent for each season.[46] The NFLPA Regulations contain a similar provision with regard to maximum fees for an agent. The NFLPA has fixed the maximum fee for an agent at three percent of the player's compensation.[47] These are provisions that were never contemplated by the 28 states that currently have some sort of state regulation of sports agents. The lack of these particular provisions in the regulations provides added confusion for athlete agents.

The Proposed Uniform Athlete Agents Act

The move toward a uniform set of rules for sports agents has recently picked up momentum. In the summer of 2000, the National Committee of Commissioners on Uniform State Laws met in St. Augustine, Florida, to consider the full draft of the Uniform Athlete Agents Act (UAAA), which has been under development for several years. The act was approved by the committee and is now being considered by the American Bar Association, where it is expected that the draft will be approved. Once this is accomplished, it will be presented to every state legislature for consideration.

The principle purposes of the proposed UAAA are to (1) provide for reciprocity of registration; (2) authorize denial, suspension, or revocation of registrations based upon similar actions in another state; (3) regulate the conduct of individuals who contact athletes for the purpose of obtaining agency contracts; (4) require notice to educational institutions when an agency contract is signed by a student athlete; (5) provide a civil remedy for an educational institution damaged by the conduct of an athlete agent or a student athlete and (6) establish civil and criminal penalties for violation of the act.[48] An analysis of the effectiveness of the UAAA requires ascertaining whether each purpose is fulfilled by the current draft.

Providing for Reciprocity of Registration

As stated earlier, a major problem with the current state of the sports agent laws is the different registration requirements of each state. This disparity will be solved by the ultimate adoption of the UAAA, which would accomplish this with two requirements. The first is the requirement of registration by every sports agent with the Secretary of State or another appropriate office in the state assigned by the Secretary of State.[49] However, an individual who has received a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and a valid certificate

of licensure from the other state in lieu of submitting a new application, if certain requirements in the Act are met.[50] Representatives from the sports agent industry thought, and the committee agreed, that it was important to allow a single registration in those states enacting the UAAA.[51] This solves the lack of reciprocity problem, as the ambiguity caused by the 28 statutes with regard to registration would be eradicated.

Authorizing Denial, Suspension or Revocation of Registrations Based Upon Similar Actions by Another State

The committee drafted parts of the UAAA to deal specifically with conduct of sports agents. The committee believed that this was not properly dealt with in the state regulations or the NCAA regulations. The UAAA states in pertinent part that, "[T]he Secretary of State *may* refuse to issue a certificate of registration."[52] The intent of the drafters was not to have certain conduct automatically disqualify an individual from registration, but to allow the licensing agency to make a qualitative determination of the likelihood that the individual, if registered, would engage in conduct detrimental to a student-athlete, an education institution or both.[53] In other words, the licensing agency must examine all factors as a whole to make its qualitative determination. The UAAA states what criteria the Secretary of State may consider in making the determination.[54] For instance, the Secretary of State may consider whether the applicant has had a registration or licensure as an athlete agent suspended, revoked, denied or been refused renewal of registration or licensure in any state.[55] Therefore, by including this provision, the UAAA fulfills the purpose of *authorizing* denial, suspension or revocation of registrations based upon similar actions by another state.

Regulating Conduct of Individuals Who Contact Athletes

This is a key part of the UAAA that has been handled inconsistently by individual states in the past. The UAAA explicitly forbids the sports agent to furnish anything of value to the student-athlete before the contract is signed.[56] This incorporates many of the NCAA and state regulations into one section. Interestingly, the UAAA allows the sports agent to intentionally initiate contact with a student-athlete if he or she is registered under it.[57] A student-athlete may then at least talk to an agent, but he or she may not sign or accept anything of value from the athlete agent. The sports agent must walk a fine line in the contact with the student-athlete. The agent must be sure not to mention representation. If the agent intentionally induces the student-athlete to enter into an agency contract under the prohibited acts, he or she will be subject to severe penalties.[58] In addition, the UAAA addresses the a problem underlying Norby Walter's conduct,[59] by stating explicitly that the athlete agent may not intentionally predate or postdate an agency contract.[60] The provisions of the proposed UAAA adequately regulate the conduct of individuals who contact athletes.

Requiring Notice to Educational Institution

This purpose of the UAAA is clearly satisfied by its language. For example, it is stated that the athlete agent must give written notice to the educational institution that he or she has entered into an agency contract.[61]

The UAAA also states in bold face as a warning to the student-athlete that if he or she signs the contract, then eligibility to compete in the sport will be lost. In addition, both the athlete and the athlete agent are required to tell the athletic director if a contract is signed.[62] This type of language is found in some of the state regulations[63] and is incorporated into the UAAA, giving the educational institutions proper notice after the contract is signed by the student athlete.

Providing a Civil Remedy to Educational Institution

The purpose of providing the civil remedy is to give a cause of action to an educational institution that is sanctioned as a result of wrongful activities of an athlete agent or student-athlete or both.[64] It states that the educational institution may bring a cause of action against the athlete agent, student athlete or both, for damages caused by violating the UAAA.[65] The proposed UAAA adequately provides for a civil recovery by the educational institution for losses of revenue and additional expenses incurred as a result of the athlete agent's activities.[66]

Establishing Criminal Penalties

The UAAA establishes criminal penalties for the athlete agent by stating that, "the knowing commission of any act prohibited by Section 14 by an athlete agent is a [misdemeanor][felony] punishable by [] and revocation of the license of the athlete agent."[67] The brackets indicate that the committee has left the decision as to how to punish a violation of the UAAA up to the individual state.[68] The criminal penalties have been dealt with differently than in the state regulations currently in place.[69] The variations in the criminal penalties that may be imposed by the passage of the UAAA would not detract from its otherwise uniform and reciprocal provisions. Some potential criminal penalties further serve to discourage those individuals who are willing to engage in improper or illegal conduct because of the size of the monetary stakes in the professional sports world.[70] The criminal penalties that are established by the UAAA are adequate to meet this objective.

Agents' Arguments

Dormant Commerce Clause

The athlete agents' primary argument against state regulation is centered on the allegation that the state is in violation of the dormant Commerce Clause of the United States Constitution. The dormant Commerce Clause prohibits economic protectionism—that is, regulatory measures designed to benefit instate economic interests by burdening out-of state competitors.[71] The principal focus of dormant Commerce Clause scrutiny are state statutes that discriminate against interstate commerce.[72]

The Supreme Court has consistently held that in evaluating state regulations under the dormant Commerce Clause, the first step is to determine whether the regulation regulates evenhandedly with only incidental effects on interstate commerce.[73] If a state regulation is discriminatory, the presumption is that the regulation is invalid.[74] By contrast, nondiscriminatory regulations that have only incidental effects on interstate commerce are subject to a balancing test; the regulations are valid unless, "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits."[75]

A state regulation can be discriminatory on its face, in its purpose or in its effect.[76] The 28 current state regulations of athlete agents are not facially discriminatory in nature because they do not expressly draw a distinction between in-staters and out-of-staters. Moreover, the state statutes are not discriminatory in their effects because out-of-staters are not disadvantaged. Furthermore, the state statutes are not discriminatory in their purposes because each state has enacted its respective statute for the same purpose; to control the activities of all athlete agents. Therefore, the current state statutes appear to be nondiscriminatory in nature.

After determining that the state statutes are nondiscriminatory, and thus there is no presumption of invalidity, the next step is to apply a balancing test to determine if the statutes violate the dormant Commerce Clause.[77] If the undue burden on interstate commerce outweighs the local benefits of the state statutes, then the statutes will be invalid under the dormant Commerce Clause.[78] The local benefit of the state statutes is the assurance that the integrity of the college sports industry in each market is protected. The agent's argument is centered on the cumulative burden theory of the multiple state statutes.[79] The primary argument is that the inconsistencies present in the 28 different state regulations rise to the level of a cumulative burden on the individual agents and outweighs the local benefits. This seems to be persuasive, and thus the state statutes may be invalid under the dormant Commerce Clause. However, if the UAAA replaces the different statutory regimes in each state, that argument will be moot. There would be no cumulative undue burden on interstate commerce because there would be no inconsistencies and minimal cumulative requirements, and therefore the act would not violate the dormant Commerce Clause.

Preemption of State Law by Federal Law

The sports agents may also challenge the state regulations as being preempted by federal labor law, which makes National Labor Relation Board (NLRB) certified unions the exclusive bargaining representatives of employees.[80] The players associations have the authority to certify agents who the unions approve, and only those agents can exclusively represent union members.[81] Each players association has a set of regulations that the athlete agent must satisfy before becoming certified by the union.[82] The agents' argument against the state regulations is that any state regulation that precludes any union-certified agent from representing union members may infringe upon that congressionally granted, union-delegated authority.[83]

It is a familiar and well-established principle that the Supremacy Clause[84] invalidates state laws that interfere with, or are contrary to federal law.[85] First, when acting within constitutional limits, Congress is empowered to preempt state law by so stating in express terms.[86] It is clear that, in the federal labor laws, Congress has not expressly preempted the state regulation of athlete agents.

In the absence of express preemptive language, Congress's intent to preempt all state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress left no room for supplementary state regulation.[87] The agents' argument would be that the certification requirements and regulations promulgated by the players associations are sufficiently comprehensive and do not require supplemental state regulation. However, the regulations set forth by the players associations are not sufficiently comprehensive. The state statutes contain provisions that are not present in the regulations promulgated by the players associations.[88] Therefore, the agents' argument would fail under this test.

Preemption of a whole field may also be inferred where the field is one in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.[89] This is clearly not applicable to athlete agents, because federal interest in the field is not so dominant as to preclude enforcement of the state regulations.

Even where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with federal law.[90] Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility."[91]

In the case of the sports agent industry, such a conflict does not arise because it is not a physical impossibility for an agent to follow both a state statute and a regulation set forth by a players association. The sports agent can and often does follow both.

Federal Regulation of Sports Agents

Recent History of Federal Regulation

To date, the federal government has not passed national legislation dealing with the sports agent industry.[92] There are currently two bills outstanding in the U.S. Congress dealing with the sports agent industry. The first bill was introduced on July 16, 1997 and was immediately referred to the House Committee on Education and the Workforce.[93] The bill's objectives are to prohibit athlete agents from soliciting representation of student-athletes, and to establish requirements for contracts between agents and student athletes. This particular bill is still pending.

Most recently, a bill was introduced on April 15, 1999. The purpose of this bill is to amend Title 18 of the U.S. Code to prohibit "influencing" any student-athlete to end his or her collegiate eligibility.[94] The bill was referred to the sub-committee on crime on April 26, 1999 and is still pending.

Federal Regulation—Is it Practical and Preferable?

Federal regulation of the sports agent industry is seen by many scholars as the preferable method of regulation.[95] The main argument is that with federal regulations, the athlete agents would have one registration and one set of regulations with which to comply. However, the passage of the UAAA by all states would have virtually the same effect. The proponents of federal regulation of the sports agent industry also argue that the questions regarding the validity of state statutes in connection with the dormant Commerce Clause would be eliminated.[96] The problems with the validity of the state statutes may also be accomplished by the passage of the UAAA. In addition, the proponents argue that the inconsistencies in current state law could be eliminated by the passage of federal regulations.[97] Again, the passage of the UAAA by all states would also solve the problems with the inconsistencies present in the state statutes. To date, no federal statute appears close to passage.[98]

Conclusion

The combination of current state regulations, NCAA regulations, and players association regulations have a deleterious effect on the athlete agent industry. While the state regulations are unnecessarily vague and lack reciprocity from state to state, they are better than no regulatory scheme at all. The NCAA regulations are not as forceful as the state regulations because they are not enforceable in a court of law. In addition, the current state regulations are problematic under the dormant Commerce Clause. As the sports industry continues to change in size and increase in the number of agents, it is important to have a uniform set of laws in regard to governing athlete agents. The proposed UAAA is highly effective because it solves many of the problems with regard to lack of reciprocity and vagueness that are found in the current athlete agent regulations. The future of the sports agent industry appears to be positive in light of the passage of the UAAA.

Endnotes

1. *See Time for the NCAA to Open Its Doors*, New York Law Journal, May 10, 1996.
2. *See* Uniform Athlete Agents Act, Prefatory Note.
3. There are currently 28 different states with some sort of agent regulation: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas and Washington.
4. The National Football League Players Association (NFLPA), the National Basketball Players Association (NBPA), the Major League Baseball Players Association (MLBPA), and the National Hockey League Players Association (NHLPA) all have regulations providing for the certification and regulation of agents in their sports.
5. *See* Uniform Athlete Agents Act, Policy Statement.
6. *See* Closius, Phillip J., *Hell Hath No Fury Like a Fan Scorned: State Regulation of Sports Agents*, 30 U. Tol. L. Rev. 511 (Summer, 1999).
7. *See* NCAA Constitution, § 1.3 (Fundamental Policy).
8. *See United States v. Norby Walters*, 997 F.2d 1219 (1993).
9. *See* NCAA Bylaws, § 12.3.1.2(a).
10. *Id.* § 12.3.1.2(b).
11. *See* Weiler, Paul C. and Roberts, Gary, *Sports and the Law: Text, Cases, Problems* (2nd Edition), Page 381.
12. *Id.* at 386.
13. *See* Note 8, *supra*:

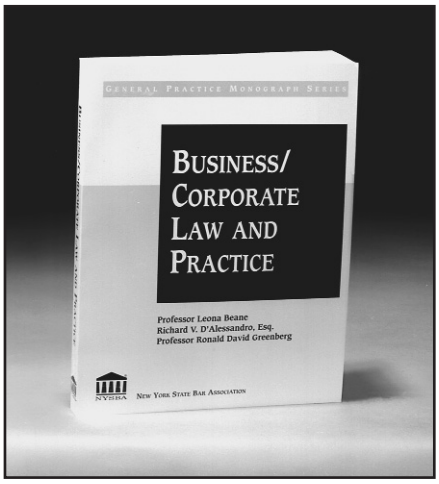
    > Whoever, having devised . . . any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises . . . places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service . . . or knowingly causes such matter of thing to be delivered by mail commits the crime of mail fraud.

14. *See* Note 11, *supra*.
15. *See* Note 3, *supra*.
16. *See* Note 6, *supra*.
17. *See* Note 11, *supra*.
18. *Id.*
19. *Id.*
20. *Id.*
21. *See, e.g.*, Md. Code Ann. Bus Reg. § 401-426: The code does not specifically define what a student athlete is, but rather defines only a "local athlete" as an individual who is or was a member of an institution of higher education that is in the State and is part of a national association for the regulation of intercollegiate athletics or a member of a sports team of a high school in the state.

22. *See* IC 35-46-4-3.
23. *See* Texas Athlete Agent Act, Chapter 12, Art. 8871, § 1(a)(5).
24. *See* Note 6, *supra*.
25. *See, e.g.*, Arizona's Rev. Stat., §§ 15-1761 to 1765.
26. *See* Connecticut's Code, § 20-554.
27. *See* South Carolina Code, § 59-102-20.
28. *See* Texas Code, 8871, § 2(a).
29. *See* South Carolina Code, § 59-102-20(a).
30. *See* Oklahoma Stat. Ann. Title 70, § 821.61-821.71: An athlete agent must deposit with the Secretary of State , before the issuance or renewal of a registration certificate, a surety bond in the sum of $100,000, or provide proof of an equivalent amount of professional liability insurance.
31. *See, e.g.*, Alabama Athlete Agents Regulatory Act, § 8-26: Requires the agent to post a surety bond of $50,000 as a guarantee for liability against athletes because of fraud or any other unlawful negligent acts; *see also* Tennessee Code: Requires the agent to post a $15,000 surety bond with the Secretary of State.
32. *See* Florida Code, §§ 468.451-468.467.
33. *See* Texas Statutes, Art. 8871, § 8-9.
34. *See* Note 11, *supra*. at 362.
35. *Id.*
36. *Id.*
37. *See* Note 6 (quoting *Collins v. NLRB*, 850 F. Supp. 1468, 1475 (D. Colo. 1991)).
38. *See* Note 11 (quoting *J.I. Case Co. v. NLRB*, 321 U.S. 332 (1944)).
39. *Id.*
40. *See Rules, Regulations of Student Athletes' Agents*, New York Law Journal (May 17, 1996).
41. *See* NBPA Regulations Governing Player Agents, § 3(A)(2).
42. *See* NFLPA Regulations Governing Contract Advisors, § 3(A)(4).
43. *Id.*
44. *Id.* § 3(A)(15): The Contract Advisor shall be required to become and remain sufficiently educated with regard to NFL structure and economics, applicable Collective Bargaining Agreements and other governing documents, basic negotiating techniques, and developments in sports law and related subjects. To ascertain whether the Contract Advisor is sufficiently educated with regard to the above-related subjects, the NFLPA may require a Contract Advisor to successfully pass a Contract Advisor examination.
45. *See* NBPA Regulations Governing Player Agents, § 4(B)(1).
46. *Id.* § 4(B)(2).
47. *See* NFLPA Regulations Governing Contract Advisors, § 4(B): The maximum fee which may be charged by a Contract Advisor shall be three percent (3%) of the compensation received by the player in each playing season covered by the contract negotiated by the Contract Advisor.
48. *See* Uniform Athlete Agents Act, Policy Statement.
49. *Id.* § 3, Reporters Notes.
50. *Id.* § 5(b)(1)-(3).
51. *See* Uniform Athlete Agents Act, § 5, Reporter's Notes.
52. *Id.* § 6.
53. *Id.* § 6, Reporters Notes.
54. *Id.* § 6(c)(1)-(7).
55. *Id.* § 6(c)(5).
56. *Id.* § 14(a)(2), (3).
57. *Id.* § 14(b)(1).
58. *Id.* §§ 15, 16.
59. 997 F.2d 1219 (1993).
60. *See* Uniform Athlete Agent Act, § 14(b)(5).
61. *Id.* §§ 11(a), (b).
62. *See* Uniform Athlete Agent Act, § 10(c).
63. *See* Arizona Code, §§ 15-1761-15-1765.
64. *See* Note 62 at § 16, Reporters notes.
65. *Id.* § 16(a).
66. *Id.* § 16(b).
67. *Id.* § 15.
68. *Id.* § 15 (comment).
69. Compare Texas Code, § 8871 with Tennessee Code §§ 49-7-2111 to 49-7-2121: The Tennessee code provides more detail as to what can constitute a criminal cause of action.
70. *See* Uniform Athlete Agents Act, § 15 (comment).
71. *See Fulton Corporation v. Faulkner*, 516 U.S. 325 (1996) (quoting *Associated Industries of Mo. v. Lohman*, 511 U.S. 641 (1994)).
72. *See CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69 (1987) (quoting *Lewis v. BT Investment Managers, Inc.*, 447 U.S. 27, 36-37 (1980)).
73. *See Oregon Waste Systems, Inc. v. Department of Environmental Quality of the State of Oregon*, 511 U.S. 93 (1994).
74. *Id.*
75. *Id.* (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).
76. *See* Note 6, *supra*.
77. *See* Note 73, *supra*.
78. *Id.*
79. *See* Note 72, *supra*.
80. *See* Note 11, *supra* at 362.
81. *Id.* at 363.
82. *See, e.g.*, NFLPA Regulations Governing Contract Advisors, § 2.
83. *See* Note 11, *supra* at 362.
84. *See* U.S. Const., Art. VI, cl. 2.
85. *See Hillsborough County, Florida v. Automated Medical Laboratories, Inc.*, 471 U.S. 707 (1985).
86. *Id.* (quoting *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977)).
87. *See Gade v. Illinois Environmental Protection Agency*, 505 U.S. 88 (1992) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).
88. *See, e.g.*, Kan. Stat. Ann. § 44-1501-44-1515: The statute provides the duties of the educational institution whereas the regulations set forth by the players associations do not contain any such provision.
89. *See* Note 85, *supra*.
90. *Id.*
91. *Id.* (quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963).
92. *See* Note 6, *supra*.
93. *See* H.R. 2171, 105th Cong. (1997).
94. *See* H.R. 1449, 106th Cong. (1999).
95. *See* Note 6 at 527.
96. *Id.*
97. *Id.*
98. *Id.*

Ian Williamson is a full-time third-year student at New York Law School. He is currently employed as a law clerk with the law firm of Ahmuty, Demers & McManus in Albertson, N.Y. Ian is interested in entering the fields of sports and entertainment law.

Business/Corporate Law and Practice*



Authors

Professor Leona Beane
Baruch College (City University)
New York, NY

Richard V. D'Alessandro, Esq.
Attorney at Law
Albany, NY

Professor Ronald David Greenberg
Columbia University
New York, NY

This monograph, organized into three parts, includes coverage of corporate and partnership law, buying and selling a small business and the tax implications of forming a corporation.

The corporate and partnership section offers advice to the general practitioner or new attorney on the basics of forming a business for a client. The more popular types of business entities are discussed, along with the advantages and disadvantages of each. The chapter also examines considerations relative to the different forms of doing business, including domestic and foreign corporations and limited liability companies.

Part two, on buying and selling a small business, guides practitioners through the necessary procedures and corresponding responsibilities as a transaction passes from proposal to completion. It covers the pre-contract, contract, pre-closing, closing and post-closing stages.

Whether the corporate form of business organization is appropriate is a preliminary question you must answer after meeting with your client to determine the particular facts and relevant circumstances. The tax implications of such a decision are the focus of the third part. Alternative business organizational forms are discussed, including the general partnership, limited partnership, sole proprietorship, S corporation and the limited liability company.

This last part addresses important questions that should be considered when advising a client on forming a corporation: What is the *desirable* tax treatment to the client—that gain or loss on the exchange of his or her property for stock of the corporation be taxed in the tax year in which the transfer occurs or that it be deferred? Is deferral of gain or loss on the exchange *feasible*? What are the *consequences* of the client's deferring to a later year the reporting of gain or loss realized by the client on the exchange?

The updated case and statutory references and the numerous forms following each section, along with the practice guides and table of authorities, make this latest edition of *Business/Coporate Law and Practice* a must-have introductory reference.

Contents

2000 • 548 pp., softbound • PN: 40510
List Price: $75 (incls. $5.56 tax)
Mmbr. Price: $60 (incls. $4.44 tax)

To order
Call 1-800-582-2452
Source code: cl1288

New York State Bar Association

* The titles included in the General Practice Monograph Series are also available as segments of the *New York Lawyer's Deskbook* and *Formbook*, a four-volume set that covers 23 areas of practice. The list price for all four volumes of the *Deskbook* and *Formbook* is $350.

My Six Minutes of Fame

By Mark Cerulli

When I tell people I work as an on-air producer for HBO, the inevitable reaction is, *"Wow, do you get to meet movie stars?"* I do. But not in the cocktail party, *"Come over to my beach house in Malibu"* sense. I meet them the way a waiter meets them, sort of. . .

The venue is usually a "junket," the publicity event set up by the studios to hype their latest film. It's one of the few times you are absolutely, positively guaranteed to meet a movie star. You even get your own time slot. The studio books a luxury hotel suite—or an entire floor—and entertainment reporters are shuttled in and out to meet the cast and director. The resulting taped "interviews" wind up on the evening news' showbiz segment. Once inside the room there's an "A" camera to shoot the celebrity and a "B" camera on the opposite side to shoot you. (Networks can intercut the celeb talking with shots of their reporter nodding understandingly when the star makes a point.) My network never uses the B footage, so I have stacks of beta tapes featuring the back of stars' heads with me nodding sagely in the background.

Although some people claim to hate junkets, it's really a glamour detail—you spend your day in a top floor of the Le Parker Meridien, Essex House or the Rhiga Royale enjoying Donald Trumpesque views of Manhattan. You sip coffee from a silver urn, eat a catered breakfast or lunch and wait your turn. You can even have hair and makeup if you want it. Sometimes some of the other e-reporters are celebs themselves, and you can watch them make cell phone calls, or talk about junkets past. The studio usually has monitors running promos for the film, and piles of helpful movie presskits to inform you about the production. That way your questions will be pithy and right on. Unfortunately every other reporter is doing the same thing, and by the time it's your turn, the star will have answered that same question ten, twelve times. And most networks want the same questions asked—*"What attracted you to the project?" "Tell us about your role?" "What was it like working with……?"* Or the perennial junket classic, *"What's next for you?"*

Most stars are very gracious and whether you're #1 in the morning, or #25 at 4 p.m., they smile, soldier on, and look fab. I remember trying to break the ice with Dennis Quaid by saying, *"I'm sorry, I know you've heard some of these before . . ."* And he flashed his Dennis Quaid smile and said, *"Hey, man, it's OK, we know what this is about, right?"* Cooler than cool. Although there was one major diss from a well-known actor—*think musical theater*—who disliked the fact that I was from the homevideo unit of the studio (OK, it was a last-minute freelance job*). "Oh, I thought this was opening in theaters . . ."* he sniped, and gave the fastest answers humanly possible. When he wasn't coughing directly into his microphone and rolling his eyes at the cameraman behind me.

The one thing you have to keep in mind is the Golden Rule of celebrity interaction—the star is not your friend. You want him to be. You'd love to grab a beer with him, or her, or visit the set of their next film, or just get one of the mass-mailed Christmas cards from their personal production companies. But it doesn't work that way, you are there to serve and then you leave. I remember interviewing the Welsh actor Ralph (pronounced "Rafe") Fiennes for "The End of the Affair." The year before I had interviewed him on "The Avengers" junket. I certainly remembered him, therefore, wouldn't he remember me?

"*Ralph*" I said, smiling into his pale blue eyes as we were miked up. *"We talked last year for* The Avengers."

"*Yes, quite*." He said, looking away as we waited for the beta cameras to roll. I was about to launch into how we spoke about Tunisia—he had shot "The English Patient" there, and I had gone there on vacation. Instead I offered, *"So . . . tell me about this project . . ."* And then he was on, it was just Ralph and me. For a few minutes.

In their defense, stars *know* everyone wants to be their friend, or have them come to their event, sign some memorabilia, say a few words about their charity, or leave a voicemail message for their sweetie. If they accommodated everyone, they'd have no time to make movies, or records—they'd be working stiffs like the rest of us. That's why they break eye contact, or ask, *"Do you have everything you need?"* (Star-speak for, *"There's the door . . ."*) If they're too nice, their publicists are happy to do it for them.

There *is* one element of stress in doing a junket—besides pondering the cholesterol content of

the cinnamon danish you've been eyeing for the last 20 minutes. Time. You only have six minutes with the star or director. And if their schedule gets backed up, your time gets shaved to five minutes, or four minutes—roughly two questions. And they'd better be good ones! Sometimes a star will decide they've had enough and they exit, leaving black-wearing publicists to clean up the e-carnage. (I've only seen that happen once.) During the interview, there's always an assistant crouched below the "B" camera, right in your line of vision. When you open your mouth, he or she clicks a stopwatch. When you are nearing five minutes, the assistant makes a "wind it up" gesture. Six minutes and you get the finger across the neck. One time the assistant had flash cards literally counting me down minute by minute until the last one, which read "Bye Bye."

Curiously in all the junkets I've covered, I only interviewed one screenwriter—the warm and witty Paul Rudnick ("Addams Family Values," "In & Out"). I remember my first comment was, *"Gee, I've never interviewed a film's writer before . . ."* He seemed almost as surprised as I was. But he was very gracious about working with the film's producer and director. (Maybe he should be negotiating for the WGA in their upcoming contract talks with the DGA and PGA.)

There are times when you know you are in the presence of greatness—like the wonderful Gordon Parks, or the frighteningly intelligent David Mamet. (He quoted liberally from Moliere and Shakespeare during our six minutes as I alternately prayed he wouldn't ask *me* any questions, and cursed myself for all of the lit classes I skipped in college.) There are times when you feel like a high school 17 year old trying to talk to the cheerleader at the next locker—the breathtaking Angelina Jolie. There are surprises—like when I interviewed Julianne Moore, and left saying, *"God, I never knew she was that beautiful."* Or Jon Stewart, who did a stream-of-consciousness James Bond riff that was truly hysterical. The one time I was sweaty-palms nervous was when I interviewed my childhood idol, the real James Bond, Sean Connery. I had worked on several 007 DVD documentaries, could quote 00-dialogue, and treasure the early Bond films. I had also heard that Connery can be quite exacting on the press if he's in a mood. I remember walking in to the hotel room, white hot video lights off to the side . . . and there he was—Indiana Jones' father, Commander Bond, The Man Who Would Be King—Sean Connery.

Junket sets are usually quite small, so you sit virtually knee-to-knee with the celeb. Most movie stars aren't quite as large as the screen makes them. Connery was huge, his dark eyes still penetrating under those famous eyebrows. As we shook hands I couldn't help but think, *"Wow, this was the fist that he cold-cocked the villain Largo with in* Thunderball*."* Connery's hands are immense. If he were a boxer, he'd be lethal.

I would have loved to ask him about making "Dr. No," or "You Only Live Twice." *("So Sean, what was it like to be on that volcano set?")* But that's another rule—stick to the movie at hand, in this case, "Playing By Heart." For this junket, he was teamed with his co-star Gena Rowlands, a sweetheart. I lobbed a softball question at her, then it was all Sean. I thought I had a killer question to start out with, one that would really impress—something about how he had usually played heroes, but in this case, his character was a normal husband and father . . .

"Yesh . . ." he said in that glorious Highland burr, *"I was asked that earlier . . ."* Ouch!

The minutes flew by, but this time I was prepared—anyone who knows anything about Connery knows he's a golf freak. (A sport he picked up while shooting "Goldfinger," by the way.) As I turned to leave I reached into my bag—the publicists tensed up fearing the worst, an autograph request (and Big Brother *is* watching—A & B camera feeds go to a control room where technicians and publicists monitor the interviews as they happen). Instead, I handed him two dime store paperbacks from the 1950s, *Ben Hogan's Power Golf* and Sam Snead's *Golf My Way*. *"I think you'll enjoy these, Mr. Connery"* I stammered. He lit right up, *"Oh these'r classics!"* he said as he pumped my hand. Gena Rowlands, bless her, smiled and said, *"Aww, that's so sweet."* Even the cameraman grinned. My mind reeled—I was in! Maybe Connery was feeling thirsty and he'd want to go to the Le Parker Meridien's bar for a pint, or a juice. Whatever, I'd buy. We could talk movies, or trade impressions of Spain's Gold Coast. Then fate's penalty buzzer rang in my ear. There were voices behind me. The door was already open and another reporter was pushing past, his arm extended for the movie star handshake. I left, and he sat down opposite Connery. The door closed.

The next time I saw Sean Connery it was at my local multiplex, and his face was ten feet high. (He's phenomenal in "Finding Forrester," by the way.) But hey, I had six minutes with him. And sometimes they can last a long, long time.

Mark Cerulli is a writer/producer with HBO.

Section Committees & Chairpersons

The Entertainment, Arts and Sports Law Section encourages members to participate in its programs and to contact the Section Officers listed on the back page or the Committee Chairs for further information.

Broadcasting and Cable
Douglas P. Jacobs
600 Third Avenue
New York, NY 10016
(212) 973-8910

Copyright and Trademark
Alan J. Hartnick
150 East 42nd Street, 26th Floor
New York, NY 10017
(212) 949-9022

Fine Arts
Ralph E. Lerner
875 Third Avenue, 14th Floor
New York, NY 10022
(212) 906-2355

Legislation
Steven H. Richman
32 Broadway, 7th Floor
New York, NY 10004
(212) 487-5338

Literary Works & Related Rights
Jay Kogan
1700 Broadway
New York, NY 10019
(212) 636-5465

Litigation
Peter A. Herbert
500 5th Avenue, 33rd Floor
New York, NY 10110
(212) 921-8399

Membership
Howard A. Singer
295 Madison Avenue, 19th Floor
New York, NY 10017
(212) 532-3590

Motion Pictures
Donna L. Bascom
250 West 57th Street, Suite 2420
New York, NY 10107
(212) 582-0555

Music and Recording Industry
Mark Andrew Allen
225 Broadway, Suite 400
New York, NY 10007
(212) 964-3300

New Technologies
David G. Sternbach (Co-Chair)
235 East 45th Street
New York, NY 10017
(212) 210-9791

Kenneth Neal Swezey (Co-Chair)
40 West 57th Street, 21st Floor
New York, NY 10019
(212) 974-7474

Professional Sports
Jeffrey B. Gewirtz (Co-Chair)
3424 Peachtree Road, NE, Suite 2050
Atlanta, GA 30326
(404) 262-6313

Jeffrey A. Rosenthal (Co-Chair)
One Liberty Plaza
New York, NY 10006
(212) 225-2086

Programs
Mary Ann Zimmer
40 West 57th Street, Suite 2104
New York, NY 10019
(212) 974-7474

Publications
Elissa D. Hecker
711 3rd Avenue
New York, NY 10017
(212) 834-0156

Rights of Publicity, Privacy & Merchandising
Joshua R. Bressler
919 Third Avenue
New York, NY 10022
(212) 756-2002

Theatre and Performing Arts
Peter S. Cane
230 Park Avenue, 4th Floor
New York, NY 10169
(212) 922-9800

Young Entertainment Lawyers
Jennifer Unter
42 West 72nd Street
New York, NY 10023
(212) 541-8641

NEW YORK STATE BAR ASSOCIATION
ENTERTAINMENT, ARTS AND SPORTS LAW SECTION

The New York State Bar Association's Entertainment, Arts and Sports Law Section offers many ways to enhance your knowledge and expertise through committee involvement. Committee work allows you to network with other attorneys from across the state and gives you the opportunity both to research issues and to have a real impact upon the law. Committees are also outstanding avenues to achieve professional growth and recognition for your efforts.

☐ Please consider me for appointment to the Entertainment, Arts and Sports Law Section Committees as indicated below.

☐ Please send me information on membership in the Entertainment, Arts and Sports Law Section.

Committee Assignment Request

Please designate in order of choice (1, 2, 3) from the list below, a maximum of three committees in which you are interested.

___ Broadcasting and Cable
___ Copyright and Trademark
___ Fine Arts
___ Legislation
___ Literary Works & Related Rights
___ Litigation
___ Membership
___ Motion Pictures
___ Music and Recording Industry
___ New Technologies
___ Professional Sports
___ Programs
___ Publications
___ Rights of Publicity, Privacy & Merchandising
___ Theatre & Performing Arts
___ Young Entertainment Lawyers

Name _____

Firm _____

Office Address _____

Home Address _____

Office Phone No. _____ Office Fax _____ Home Phone No. _____

E-mail address _____

Please return this application to:

Membership Services Department
New York State Bar Association
One Elk Street
Albany, NY 12207
Telephone: 518/463-3200, ext. 5573

Publication of Articles

The *Journal* welcomes the submission of articles of timely interest to members of the Section. Articles should be submitted on a 3 1/2" diskette (preferably in WordPerfect or Microsoft Word) along with a laser-printed originals and biographical information. Please submit articles to:

Elissa D. Hecker
The Harry Fox Agency, Inc.
711 3rd Avenue
New York, NY 10017
ehecker@harryfox.com

Entertainment, Arts and Sports Law Journal

This *Journal* is published three times a year for members of the Entertainment, Arts and Sports Law Section of the New York State Bar Association. Members of the Section receive the *Journal* without charge. The views expressed in articles published in this *Journal* represent those of the authors only, and not necessarily the views of the Editor, the Entertainment, Arts and Sports Law Section or the New York State Bar Association.

We reserve the right to reject any advertisement. The New York State Bar Association is not responsible for typographical or other errors in advertisements.

ISSN 1090-8730

Entertainment, Arts and Sports Law Section
New York State Bar Association
One Elk Street
Albany, NY 12207-1002

ADDRESS SERVICE REQUESTED

NON PROFIT ORG.
U.S. POSTAGE
PAID
ALBANY, N.Y.
PERMIT NO. 155