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Letter From The Editor

"The Future is unwritten."
—Joe Strummer

Dear Forum Members,

Welcome to Issue 33:4 of the *Entertainment and Sports Lawyer*! We hope everyone is enjoying their Summer! As of this writing, the Cubs have reclaimed first place in their division (Go Cubs!), the outdoor festival season is in full swing, sports teams are on the move to new locales, and training camp is just opening for the NFL. Leaving political commentary (and jokes) to others, our entire Forum is reminded that what we do—the business of Sports and Entertainment—allows people an opportunity to escape from the world around them. Let's not lose sight of the notion that what we do allows those around us to enjoy life…despite the strife that surrounds us, despite recent military actions…what we do is what makes life worth living.

This issue sees a few new authors, and a few returning one. We open with Carol Bass' most relevant article on estate planning for athletes—an absolute must read for anyone working with athletes or performers! Jeremy Evans returns with part III in a series of articles, this time addressing where and how sports franchises derive their revenue. Scott Sisun, a new author for the Journal, provides an update on the use, and protection of Trademarks and Copyrights in Sports. Michelle Wahl and Ken Freundlich have one again compiled, with the help of a few student authors, another incredible Litigation Update which everyone in the Forum should find most useful. Honorable Michael Panter (Ret.'d) shares with the Forum an interview with Ted Burzynski from Paramount's lot.

Expanding our international coverage, Zehra Betul Ayranci returns with her article comparing Rights of Publicity for Athletes in the United States and Europe, while first-time author Zia Akhtar provides a detailed look at gambling and ethics in South Asian Cricket.

Karim Popatia, a 3L at Northwestern University's Pritzker School of Law provides us with a Law Student's perspective on the differences between the NHL and MLB Collective Bargaining Agreements.

We are actively seeking articles from authors for the Journal. I encourage anyone interested to reach out to me and submit articles. We welcome submissions from any and all authors, and are always seeking amazing articles. The Author Guidelines can be found at: http://www.americanbar.org/content/dam/aba/publications/entertainment_sports_lawyer/esl16authorguidelines.authcheckdam.pdf.

The pending deadlines for article submissions are:

Fall 2017 *(anticipated October Publishing)*	August 15, 2017
Winter 2017/2018 *(anticipated January Publishing)*	November 15, 2017
Spring 2018 *(anticipated April Publishing)*	February 15, 2018
Summer 2018 (anticipated July Publishing)	May 15, 2018

And…as the new ABA Year begins, I want to personally thank Janine Small for her service as the Chair of our Forum. Under her stewardship, the Forum has grown, our finances have increased, and the Forum has expanded exponentially both in terms of leadership, substance, and membership! Janine's guidance will be sorely missed…BUT…at the same time, we welcome our new Chair—Len Glickman. Len has been a member of our Governing Committee for several years, and is looking forward leading the Forum!

Best Wishes for a Happy, Health, and Successful New (ABA) Year!

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We Have Come Full Circle: Where Sports Franchises Derive Their Revenue

by Jeremy M. Evans

In our third article of the sports stadium and franchise series,[1] we now move to discussing professional sports franchise revenues. Professional sports franchises derive their revenues from many different areas. In general, sports franchise revenue comes from television broadcasting contracts, merchandise sales, and third party sponsorship agreements. However, what this article will explore is the complete picture—all the recognized areas where revenue is derived and how they work together to build more revenues.

We begin with maybe one of the more obvious, but somewhat "newer," revenue sources, revenue from broadcasting deals.

1. Broadcasting Revenue: Television, Radio, and Internet Contracts

The television was invented in the 1920s[2], but it took until the 2000s for the large television contracts that we know today to really start making money for sports leagues and the franchises within them. The standard for television contracts[3] changed when, in 2008, TNT (owned by Turner Broadcasting) bought the rights to air National Basketball Association (NBA) games for $445 million USD per year.[4] The NBA, like other professional sports leagues, in turn split the revenue among the sports franchises in the league.

Per *The Richest*:

> TNT has been airing games since 1988 and has been paying $445 million per year for the rights to air these matches. This is a far cry from its first contract when it was paying $25 million a year to cover NBA games in its first two years. TNT eventually went on to pay close to $70 million a year for the rights to air NBA games after that first contract ended in 1990. The value of its contract has expanded dramatically ever since. Today TNT has the rights to air one conference final as well as festivities for the All-Star Game, outside of the actual game itself.[5]

By comparison, Fox pays $500 million per year to air Major League Baseball (MLB) games, while ESPN pays $1.9 billion per year to air Monday Night Football games with the National Football League (NFL).[6] In case you are counting, that is seventeen games per year for $1.9 billion. MLB's contract is worth $4 billion over an eight-year period and the agreement ends in 2021.[7] The NFL's contract is the same length as MLB's (2014–2021), but it is worth $14 – 15 billion over the life of the contract.[8] Across the pond in the Premier League, SkySports pays $1.22 billion per year to air soccer games.[9]

Of course, the above figures do not paint the entire picture. The NFL still has other contracts with CBS for the American Football Conference (AFC) and with Fox Sports for National Football Conference (NFC) games.[10] Among MLB teams, we also have regional and local television contracts. For example, the Los Angeles Dodgers have an $8.3 billion, twenty-five-year contract with Time Warner Cable (TWC) (later purchased by Charter Communications)[11] that airs most of its baseball games with additional supportive and complimentary Dodger programming. Why is this happening?

Per the *New York Times*:

> There is a good reason for all this: With a few exceptions, regional sports networks are money-printing operations that heavily promote the teams they carry and play on the loyalties and wallets of local fans.[12]

Interestingly, what once was secondary revenue has now become the primary source of revenue for professional sports franchises and their

leagues. Furthermore, colleges have cashed in as well with lucrative television contracts, like the Pac-12[13] and other major conferences.[14] Some television deals are worth more than others based on the team, league, and geography, but the bottom-line has grown since television became a primary source of income for sports franchises. These revenues will likely only grow as Internet television outlets like YouTube,[15] Netflix,[16] Hulu,[17] and social media outlets like Twitter[18] and Facebook[19] are invited to the party. All of the above and we did not discuss radio, which still brings in additional revenue for sports teams.[20]

2. Merchandise Revenue: Sales, Royalties, and Licensing Agreements

Where television revenue may be the more obvious source of revenue for teams, because we see our favorite professional sports teams playing on, well, television, there is actually much more to the story. Let us pose a question with that thought in mind. What is the most likely thing you are going to see while watching a professional sports team on television, besides the on-the-field action? Without reservation, we are going to see merchandise of the team being worn by the fans in the stands (e.g., jerseys of the fans favorite player). Merchandise sales are by far one of the top sources of revenue for many professional sports franchises.

Some teams are much more successful at merchandise sales for three reasons. First, the significance and extent of the team brand, its marketing efforts, and sponsorship partners. Second, the existence of star players on the team. Third, whether the team is successful on the field. We will explore the third point in more detail at the end of this article.

The team brand[21] comes down to marketing and reaching fans.

Per *HALO branded solutions*:

> A sports franchise is more than a group of players putting a ball through a hoop or kicking one into a net. A professional sports team is an institution, defined by its history and its cultural impact on the world. It's more than the sum of its parts. The power of a popular team name and logo is nearly limitless. Some of the most well-known teams, such as the Dallas Cowboys, are famous all across the world. Even people who aren't familiar with American football know the Dallas Cowboys.
>
> How do these teams reach such wide and varied audiences? One way is through the power of merchandise and branded products.[22]

As a baseline, consider that, in 2014, the total merchandise sales figure was $12.8 billion among American sports fans.[23] The $12.8 billion figure does not include other royalty and licensing agreements among the various professional sports leagues, teams, and third party companies. We explore those later under sponsorships.

Prime examples of large merchandise revenue are the jersey sales of LeBron James of the Cleveland Cavaliers and Tom Brady of the New England Patriots. It is not any surprise that the sports teams with the most merchandise sales have the biggest star athletes[24] in their respective sports and their teams have had the most success on the field. Unsurprisingly, fans and their city government's reward their professional sports teams with loyalty in sales, stadium money, and tax-free land in exchange for the team's consistent success.

3. Game Day Revenue: Ticket and Concession Sales

In thinking about professional sports stadium revenue, not all teams and their home fields are the equal. Some teams own their stadiums. Others share their stadiums with other sports teams. Others share revenues with the city where the team is located. However, the difference in revenue-sharing agreements does not discount

the revenue source. Teams are making great money from ticket and concession sales.

According to the *Boston Globe*, Fenway Park, the home of the Boston Red Sox, made roughly $75.2 million in 2011 from concessions and souvenirs (merchandise),[25] not including ticket sales. More specifically, the Dallas Cowboys of the NFL again set the standard in terms of dollars for "personal seat licenses," which allow a person to purchase season tickets, for, you guessed it, another fee. For example, the Cowboys brought in $369 million in total stadium revenue in 2009 for Cowboys Stadium, a.k.a., AT&T Stadium.[26]

While attendance may change from year to year and sport to sport for various reasons,[27] it is certain that professional sports teams and their leagues will find new ways to reach fans through mediums like social media and virtual reality. Furthermore, as with merchandise sales, ticket sales are directly related to success on field.[28] In addition, the more ticket sales (fan game attendance), the more likely a team will sell merchandise and concession products, and the professional sports franchise business model comes full circle.

4. Special Events Revenue: All-Star Games, Super Bowls, Concerts, and Conventions

If the 1960s,[29] 70s, and 80s were about building domes and multi-purpose stadiums, with the 90s[30] and early 2000s about revitalizing downtown areas and making new stadiums look retro, then from 2017 and into the future stadiums will be more about fan experience and off-season events. In other words, stadiums are now more than just venues, but destinations.

> According to *Forbes*:
>
> Stadiums are now viewed as a separate entertainment hub and business model. With premium concessions and dining options, giant high-definition video boards, expanded Wi-Fi access, and various promotions and other activities, stadiums are now a destination for the entire family. Faced with this new normal, smart owners with second-rate venues can either evolve—by renovating or building a brand new one—or struggle to remain financially competitive within their leagues.[31]

Where we have additional events, we have additional revenues. In some sense, sports owners and leagues have gotten smarter over the years in terms of capitalizing on their venues as sources of revenue, as opposed to simply using their stadiums as places to compete in sport.[32] Venues have become like Disneyland, as the "happiest place[s] on earth." Sports teams may not share stadiums much anymore, unless you are the New England Patriots and Revolution (Major League Soccer) or the Oakland Raiders and Athletics, but where teams have separated homes, other entertainment opportunities have taken their place.

While team revenues from special events are hard to come by, we can determine ballpark estimates, pun intended. According to the *San Diego Union Tribune*, when discussing the San Diego Padres and their home of Petco Park, and the City of San Diego that owns the ballpark:

> Big events are key, as they have brought in the bulk of non-baseball revenue over five years. Last year, those [special] events provided more than 90 percent of the city's $1.4 million in non-baseball revenue . . . The problem is, such events can't be counted on every year.[33]

Similarly, West Virginia's College of Physical Activity and Sport Sciences concluded in a recent study that the Super Bowl brought in roughly $5 million in tax revenue to Houston, Texas for Super Bowl 51 in 2017, while Major League Baseball and its All-Star Game possibly brought in less, closer to $1 million.[34] However, other sources dispute the revenues that special events from a sport bring into a city.[35] In the end, even if a team is splitting revenue with a city, another team, or entertainment company for special events, there are profits being made that are going back into a team's revenue stream. As some sports analysts

have questioned rhetorically: sports venue or convention center? Currently, it is both, a sports and entertainment convention with revenues growing every year.

5. Revenue Sharing: League, Luxury Tax, and More

Where sports teams are built on competition, league offices are seemingly built more and more on parity. Leagues want to see a fair playing field in spending money, so that the product on the field has the same opportunity to be good and to win. In some sense, the money being equal, the responsibility is laid on the front office to bring in the talent, while the talent on the field and sidelines must perform to be successful. League revenue sharing agreements are an example of this intentional equity.

For example, long gone are the days when the Kansas City Athletics (now the Oakland Athletics) were considered a farm team of the New York Yankees.[36] Leagues, sports franchise owners, and players unions now want parity when it comes to winning, which means success being spread around the teams winning percentages from year to year (e.g., competitive balance).[37] Therefore, league offices have instituted revenue sharing agreements, a seemingly liberal policy in the capitalistic and competitive setting of sports.

For numerical context, in the NFL, all thirty-two (32) teams receive $27 million per year in national broadcasting revenue.[38] In the MLB, each team is required to share thirty-four percent (34%) of its regional television revenue evenly with the other twenty-nine (29) teams.[39] You can imagine that the actual contributions from each team vary because, for example, the New York Yankees ($191 million per year), Los Angeles Dodgers ($140 million per year), and San Diego Padres ($50 million per year) have different television deals in terms of total value.[40] Over in the NBA, the Los Angeles Lakers took home a league best $122 million in the 2013–2014 season.[41] Even the National Hockey League (NHL) and Major League Soccer (MLS) have revenue sharing, although the financial figures are harder to determine.[42]

It is important to note that the NFL secures its television broadcasting deals on a national level for all teams, resulting in even financial input and output splits among the teams. In the MLB, however, teams receive the same overall split, but the teams have the ability to secure their own regional television agreements in addition to whatever national games are sold by the MLB office to ESPN, Fox, etc. This means that the contribution (the 34% contribution) from the Dodgers differs from the Padres because the Dodgers television deal is nearly triple the value of the Padres. Therefore, the Dodgers are putting out more revenue to be distributed than the Padres, but the Dodgers are also making more from their television deal. Right or wrong, in some sense, if you make more, you are taxed more, which should sound familiar to all taxpayers.

The Dodgers and other high-spending teams[43] also contribute to the revenue sharing pie through the MLB's luxury tax and from the previous international spending pool fines[44] before the MLB's 2017–2021 collective bargaining agreement. Of course, leagues and their teams also split playoff revenue[45] and revenue with the players, some a 50% split.[46] Again, not all revenue sharing is equal among the leagues and teams, but it is another source of significant revenue for professional sports franchises.

6. Third Party Revenue: Advertising and Sponsorships

In what may be unsurprising, sports leagues and franchises derive most of their revenue from sources other than ticket sales on game day. Similar to athletes who make most of their money from endorsement deals,[47] as opposed to team salary, or tournament and match winnings,[48] professional sports franchises cash in, literally, from sponsorship deals as opposed to ticket sales.

Per *Forbes*:

> [W]hat separates the Dallas Cowboys ($2.3 billion value) and Oakland Raiders ($825 million) is their stadiums and the revenue derived from each venue. **Sponsorship revenue plays a huge part in this. The Cowboys earned $100 million from sponsorships and advertising signage last season, and this was before owner Jerry Jones inked his 25-year, $500 million naming rights deal with AT&T.** *Teams like the Raiders and Buffalo Bills generate less than $20 million in sponsor revenue.*[49]

In breaking that down, we can see where the NFL derived its sponsorship revenue.

Per *CNBC*:

> According to IEG . . . [Microsoft and the NFL] agreed on a $400 million deal that secures the exclusive right for Surface tablets and other Microsoft technologies on the sidelines for all 32 teams . . .
>
> Another major money maker for the NFL is its four-year $4 billion partnership ($1 billion per season) with DirecTV—a service that allows viewers to watch every football broadcast on several channels.[50]

In the MLB, the league reached $695 million[51] and $778 million[52] in sponsorship revenue for 2014 and 2015, respectively. Since 2011, sponsorship revenue has gone up every year.[53] The most common sponsors among the league's team were New Era, DraftKings, and Anheuser-Busch InBev, covering the three essentials of sports—satirically, hats/jerseys, gambling, and beer. Interestingly, as with television broadcasts, the NFL mostly negotiates from a national/thirty-two team level, while the MLB allows its thirty teams to negotiate individual team and ballpark advertisements and sponsorships. There are various reasons for that, but the common result is that the NFL has a better chance to bring in large corporate sponsors like Microsoft because the sponsor is paying one fee for an entire league and its teams, as opposed to thirty individual deals. Regardless, leagues and teams are bringing in significant sponsorship dollars as a source of their revenue.

7. Foundational and Loyalty Revenue: Private Investment and Winning!

Coming full circle—with revenues, there are expenditures and expenses. A sports franchise must spend money and invest resources (money or otherwise) to win. Actor Charlie Sheen was right, "Winning" matters.[54] However, there has to be a cash flowing business that supports the team during the downturns (e.g., losing seasons). If you were to survey the types of owners and their current companies (not the sports franchises, but their actual corporations), one thing is certain: sports team owners are millionaires and billionaires in successful and profitable industries.

Per *Investopedia*, we can see a list of who's who in terms of professional sports franchise owners and their companies:

- **Miami Heat**—The Heat's owner is Mickey Arison, CEO of Carnival Corporation, the world's largest cruise ship operator.
- **Seattle Mariners**—The Mariners' owner is Nintendo of America, one of the world's largest videogame manufacturers.
- **Chicago Cubs**—The Cubs are owned by a family trust established by TD Ameritrade founder Joe Ricketts.
- **Toronto Blue Jays**—The Jays' owner is the Rogers Blue Jays Baseball Partnership, a division of Rogers Communications.
- **New York Knicks & New York Rangers**—Both teams are owned by Madison Square Garden, Inc., a spin-off of Cablevision.
- **Atlanta Braves**—The Braves are owned by Liberty Capital Group, a division of Liberty Media Corporation.
- **Philadelphia Flyers**—The Flyers' owner is Comcast-Spectacor, a Philadelphia-based sports and entertainment firm.[55]

Other owners may rank higher in individual wealth,[56] but the Los Angeles Dodgers owner Mark Walter of Guggenheim Partners and Guggenheim Baseball Management, is Chief Executive Officer of a $260 billion asset management company.[57] Not all investments are successful, however.

> Per *The Sports Advisory Group*:
>
> Donald Watkins, a lawyer-turned-dealmaker, has made multiple attempts to buy a major league baseball team. He lodged back-to-back failed bids for the Minnesota Twins and Anaheim Angels in 2002 and 2003, respectively. Despite his interest, however, he warns that an investment in the wide world of sports is no sure thing. 'You have to have the right team, in the right market, under the right terms and conditions. If you don't have all three of those factors in perfect alignment at the same time, you will be upside down in the investment.'[58]

We wrote about this previously in *Presenting the Case to Build and Maintain a Successful Sports Franchise: A Great Venue, Lease, Market, and Personnel*.[59] Again, professional sports franchises must have a positive cash flowing business as the backer of the team. Without private investment, a great venue, lease, market, and personnel, it will be hard to succeed. It is possible that private investors and their companies will transition to eSports in the future, as the barriers and cost to entry continue to increase in traditional professional team sports.[60]

In conclusion, where a professional sports franchise has a wealthy team owner backed by a successful company bringing in investment dollars, and having accumulated revenue from its broadcasting contracts, merchandise sales, ticket sales, special events, league revenue sharing, advertisers, and sponsors, the team must still win to be and to stay successful. Why is this? It is because fans, sponsors, league offices, athletes, coaches, and other team owners will not allow mediocrity for too long. Losing can only go on for so long before changes are made in geographic location, team personnel, and/or team leadership. And yes, you guessed it, it takes financial investment to develop, trade, invest, and build the best athletes, coaches, and venues to win and to win consistently. Is it any surprise that the most successful professional sports franchises in the world have the most recognized brands, most wins, most championships, and highest value? Indeed, we have come full circle when revenues result in success and increased success results in increased revenue.

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The Ball Is in Your Court: An Update on Trademarks (and Copyright) in Sports

By Scott Sisun[1]

I. Introduction

MAKE VINCE GREAT AGAIN, THAT'S A CLOWN QUESTIONS BRO, VEGAS GOLDEN KNIGHTS, blue football fields, announcer sounds and hand gestures are some of the traditional and non-traditional source-identifying trademarks and trade dress used by athletes, teams, merchandisers, announcers, and other players in the multi-billion dollar sports industry. A review of current trademark, trade dress and copyright matters reveals that individuals and entities from quarterbacks to franchises to boxing announcers (online, off the field, and virtually) are becoming more creative in protecting, monetizing and enforcing their brands and copyrights.

II. Team Names and Other "Traditional" Trademarks

As a bit of background, Section 43(a) of the Lanham Act defines protectable trademarks as "any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which . . . is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person."
The protectability of trademarks and trade dress depends on distinctiveness and consumer recognition. Marks are classified along a spectrum of distinctiveness and are classified as generic, descriptive, suggestive, arbitrary or fanciful—with generic marks on the non-distinctive side, and fanciful on the