

Sports Law Masterclass 2014

Tuesday 24 June 2014



Welcome & introduction

To view the presentation, please click here:

<http://prezi.com/hztcm3cau-cj/sports-masterclass/>

Sports Regulation & Doping Issues: Horseracing

Matthew Lohn, Fieldfisher



The Sports Broadcasting landscape: Murphy/QC Leisure- 2 Years On

Martin Davidson, BSkyB



Murphy/QC Leisure – 2 years on

Martin Davidson
Senior Legal Advisor
Sky Business & Sky Sports

24 June 2014

Introduction

Murphy/QC Leisure:

- Reaction at the time
- What did it decide?
- What has happened next?
- Rightsholders' responses
- Evolving European policy

Murphy/QC Leisure – Press reaction to the ECJ and High Court decision

Pub landlady Karen Murphy wins Premier League TV battle

High court quashes conviction for using cut-price Greek satellite decoder to bypass Sky's official satellite feed

Mark Sweney

theguardian.com, Friday 24 February 2012 18.24 GMT



Great result: Karen Murphy hails her victory over the Premier League. Photograph:

Murphy/QC Leisure – What did it decide?

- **What did it do?**
 - First decision challenging market practice of "absolute" territorial exclusivity
 - Relates only to decoder cards for DTH distribution
- **What didn't it do?**
 - Did **not** restrict PL challenging unauthorised “communication to the public” in commercial premises
 - No mention of geo-blocking
 - No mention of mobile roaming
 - No mention of encryption or any other means used to preserve market segregation and exclusivity
 - In fact *"the actual grant of exclusive licences for the broadcasting of Premier League matches is not called into question"*

Murphy/QC Leisure – What happened next?

Premier League lands £3bn TV rights bonanza from Sky and BT

New entrant BT to launch sports channel, as Premier League hail 71% income boost from live TV rights auction

Owen Gibson

The Guardian, Wednesday 13 June 2012 19.30 BST

 [Jump to comments \(294\)](#)



Manchester City finishing top of the league made for an exciting climax that helped fuel bidding war. Photograph: Michael Regan/Getty Images

The landscape of British broadcasting has shifted dramatically after BT bought large slice of televised football rights, boosting the Premier League's next TV deal to a record £3bn over three years, a 71% increase.

Murphy/QC Leisure – What happened next?

- Sky has taken successful civil action in UK/ROI against pubs for making unauthorised communications to the public of copyright works
- FAPL has also been successful in a number of proceedings against pubs in UK for similar copyright infringement actions
- FACT continues to take criminal prosecutions against pubs/suppliers

Copyright protection – What's covered?



How have sports rightsholders/broadcasters addressed the decision?

- Rights packaging:
 - Licensing by language within EEA
 - Change in how rights are packaged/licensed – EEA wide in certain cases
- Contractual mechanisms:
 - Acknowledgement of passive selling – residential DTH decoder cards only
 - Continuing obligations to geo-block internet transmissions
 - Limitations on standalone internet distribution
 - Closer scrutiny of regulatory intervention clauses
 - “*Value adjustment*” provisions

UK legislation – What is to come?

- Proposed amendment to narrow scope of the defence under s72 Copyright Designs and Patents Act:
 - *“The showing or playing of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe the copyright in –*
 - a) the broadcast;*
 - b) any sound recording...[...];*
 - c) any film included in it.*

European policy – What could happen next?

- The EU may see battle as only half won in delivering its “Digital Agenda”
- See:
 - Jan 2014 – Commission announces formal anti-trust proceedings into US studio licences with EU pay-TV broadcasters – DTH *and internet*.
 - May 2014 - Commission sanctioned study on sports’ organisers rights in the EU:
 - *“So far little has changed in way in which sports media rights are marketed in the EU”*
 - *“...new contractual conditions that, unfortunately, make consumers in the EU worse off...”*

Conclusions

- Beware what you read in the press!
- Market has developed legally compliant contractual mechanisms to preserve value
- Possible scope for greater impact if principle expanded to digital transmissions but beware of unintended consequences

Murphy/QC Leisure – 2 years on

Martin Davidson
Senior Legal Advisor
Sky Business & Sky Sports

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Sports Data Rights

Matt Drew, Opta Sports





To view the presentation, please click here:

<http://prezi.com/n4gmk68pvdqy/opta/>

Commercial Issues and Practical Solutions

Chris Duffy, IMG





sports · entertainment · media

Commercial Issues and Practical Solutions

Chris Duffy

chris.duffy@img.com

Solicitor

Scenarios

- 1) Master Licensee Agreement with UEFA in respect of UEFA Euro 2016
- 2) Preparation for the 2013 FIM Speedway Grand Prix Event in Cardiff
- 3) Long term rights agreement with the FIA in respect of the European/World Rallycross Championship
- 4) 2013 Run to the Beat half marathon aftermath and future planning



IMG Background

- ❖ Started in founded on a handshake between Mark McCormack and his good friend Arnold Palmer in 1960
- ❖ World's leading sports, entertainment and media agency with over 3,000 employees in over 60 offices around the world
- ❖ Retains long standing associations with the world's most important sports organisations, leagues and federations
- ❖ Largest independent distributor and producer of televised sports in the world (TWI)
- ❖ Owns and runs some of the world's most sought after events and manages some of the biggest stars
- ❖ Commercially involved in an average of 11 major sports and cultural events around the world every day

Events & Individuals

- Tennis



- Motorsports



- Mass Participation



Licensing Brands (Sporting)



Master Licensee Agreement

- Less day to day involvement
- Recourse to only one party
- No direct involvement in litigation
- Financial guarantees
- Retention of all above rights and broad warranties/indemnities
- Base level of approval (or deemed approval)
- Clear and unambiguous carve outs
- Delineation of roles in litigation
- Ensuring Licensor motivation
- Liability caps and mitigation

Master Licensee Agreement

14. INDEMNITY AND INSURANCE

- 14.1 The Company agrees to indemnify and hold harmless UEFA, **UEFA's Affiliates, CAA, the OCs** and any of their directors, members, officers, employees, agents and subcontractors from and against any and all claims, demands, suits, actions, proceedings (formal or informal), investigations, judgments, deficiencies, damages, settlements, liabilities and expenses (including reasonable legal fees and expenses) **arising out of or in connection with:**
- (a) **any breach of this Agreement** or any negligent act, wilful misconduct or omission or alleged act or alleged omission by the Company and/or its Affiliates (including their directors, members, officers, employees, agents or subcontractors (including, for the avoidance of doubt, any third party appointed pursuant to Clause 17.4)) in connection with this Agreement;
 - (b) the manufacture, distribution, sale, advertisement, marketing and/or promotion: (i) any Company Material; and/or (ii) any Product Material;
 - (c) **any Product Claim;**
 - (d) **any claim that the manufacture, distribution, sale, advertisement, marketing and/or promotion of the Company Materials, Licensed Products and/or other Product Material constitutes an infringement or alleged infringement of the Intellectual Property Rights of any third party; or**
 - (e) **any claim arising as a result of or in connection with the Company's failure to properly reflect the Key Principles in any PLA and/or ARA or to comply with any provision of this Agreement in connection with any PLA and/or ARA (including Clause 7.4).**

Product Claim

- *“means any action, proceeding or claim against UEFA, any UEFA Affiliate and/or CAA (or any of their directors, members, officers, employees, agents or subcontractors) resulting from or arising out of or in connection with the manufacture, production, distribution, sale, handling, promotion, marketing, advertisement, consumption or use of, or otherwise relating to, any Licensed Product (or any packaging therefor) or any other Product Material whether or not such action, proceeding or claim arises during or after the Term.”*

Practical Solutions

- Negotiate as much as possible (!)
- Split out our direct and indirect indemnities
- Add in mitigation wording
- Different liability caps/'top up' liability
- Introduce 'claims amnesty'
- Liaise with insurance/finance on specific coverage/gaps
- Tighten our sub-contracts
- Improve general methods of dealing
- Introduce additional sign offs

FIM Speedway Grand Prix, Cardiff





Nicki Pedersen @nickipedersenDK · 31 May 2013

Just been to The stadium 23.50 a clock having a look at the track looks like they have to work all night 👍 😊 #SGP



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[View more photos and videos](#)



Retweeted by Nicki Pedersen



Patch @garypatchett · 31 May 2013

So I'm told the track is that bad that its having to be completely relaid overnight. #speedwaygp



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Practical Solutions

- Broad consideration of **all** relevant contracts
- Get **all** relevant people involved internally
- Liaise with **all** potentially affected parties as soon as possible
- Consider **all** eventualities and plan
- Post event review **all** best practice and contractual relationships
- Learn lessons and share

Rallycross Rights Agreement with FIA



Rallycross Rights Agreement with FIA

Commercial Pressure Points

- Duration
- FIA Regulations
- Financial considerations
- Certainty for promoters/
sponsors/suppliers
- Management of drivers &
third parties
- IMG competitors
- Expansion

Solution/Compromise

- Exclusive negotiation &
automatic renewals
- Warranties on changes
- Certainty and
prescriptiveness
- “Best Endeavours” & “Good
Faith” obligations
- Use of IPR & “Premier”
- Realistic KPI’s

Post Event Administration

- Things can and will go wrong from time to time
- Understand what has happened and business implications
- Manage colleagues and initial reactions
- Canvass broad opinion
- Listen fully before acting sensibly
- Best option may not be the most palatable
- Consider bigger picture and alternative solutions

Some tips . . .

- Be as proactive as you can and prepare for all foreseeable eventualities (and unforeseeable!)
- Use existing experience in similar scenarios/environments
- Focus on real 'must haves' if you won't get everything
- Consult as many people as possible as early as possible (but manage inputs!)
- Be prepared to 'think outside the box' and act fast if necessary
- Also be reactive but not rash in decision making
- Ensure that relationships are maintained with all key stakeholders and participants
- Always consider effect on brand and on organisations goals
- Conduct wide reviews of positives and negatives and learn going forward!

ANY QUESTIONS



AMBUSH MARKETING

24 June 2014

Sonal Patel, Senior Associate



ISSUES TO BE COVERED TODAY

- What is ambush marketing?
- Types of ambush marketing
- Protections
- Risks and Sanctions
- Practical tips

WHAT IS AMBUSH MARKETING?

- Marketing technique
- Used by companies who are **not official sponsors or partners** of an event to associate themselves with that event without authorisation – i.e. an unauthorised or unlicensed association
- Can be:
 - a direct association
 - an indirect association
 - impromptu/opportunistic



DIRECT ASSOCIATION

- Unauthorised references to events, teams, athletes, words, logos and trade marks e.g. via advertising and distribution of unlicensed merchandise



INDIRECT ASSOCIATION

- Advertising campaign makes no direct reference to the event but...
- Infers an association through either the context, imagery, the look and feel or the message conveyed in the campaign.
 - Inside and outside venues
 - Participants
 - Imagery

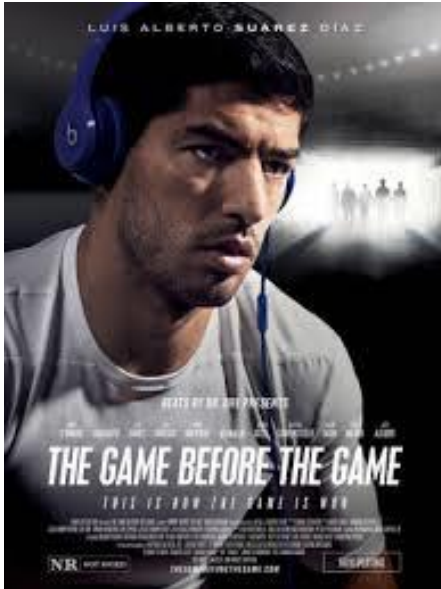
INDIRECT ASSOCIATION - VENUES



INDIRECT ASSOCIATION - PARTICIPANTS



INDIRECT ASSOCIATION - PARTICIPANTS



http://youtu.be/v_i3Lcjli84



<http://youtu.be/3XviR7esUvo>



<http://youtu.be/Kefile0xwD6w>

INDIRECT ASSOCIATION - IMAGERY



<http://www.youtube.com/v/RzRm9--UmPw>



IMPROMPTU/OPPORTUNISTIC MARKETING



Zippo
507,927 likes · 12,701 talking about this



MEASURES OF PROTECTION

- Event specific laws e.g. Association rights
- Registered trade marks and copyright protection of logos, symbols, images, designs, look and feel
- Protected words and combinations of words e.g. London and 2012
- Contractual terms with participants and teams
- Control at venues by event organisers – evicting spectators
- Ticket terms
- Broadcasters ignoring or moving cameras away

RISKS AND SANCTIONS

- Trademark infringement claims = Damages claims
- Copyright infringement claims = Damages claims
- Passing off/unfair competition claims = Damages claims
- Misleading advertising complaints = Negative press or public reaction and possible wasted costs
- Devalues official sponsorship = Potential damage to existing and future commercial relationships – what if you are sponsoring the next event? Perpetrator could become the victim!
- Damage to third parties – players, managers, spectators

PRACTICAL TIPS

Logos, symbols and designs

- ✓ Be aware of any specific laws protecting an event
- ✓ Ensure your marks, descriptors and logos are distinct from the Official Marks.
- ✗ Don't use protected logos, symbols, words, designs etc.
- ✗ Avoid using the official "get-up" (the look and feel) of the event on any advertising material.

Venues

- ✗ If there are any clean venue areas, do not:
 - Offer free samples or distribute promotional material
 - Use vehicles (parked or mobile) for promotional purposes
 - Use aerial or nautical marketing.
- ✗ Do not place branding in locations around stadia so that it is visible from the stadia

PRACTICAL TIPS

Participants/Teams

- ✓ Check if participants or teams prohibited from entering into sponsorship arrangements during black out periods
- ✓ Check who owns the rights – team or player?
- ✗ Don't use images of individual participants or teams without their express written permission.

Other

- ✗ Don't offer tickets to an event in promotions.
- ✗ Don't assume that published content, e.g. on a website, is freely available for re-use.
- ✓ Social media is a form of advertising!
 - When looking at copy, ask yourself this – “does it make me think of the event”? If it does, then it is likely to be an unauthorised association unless consent has been given.

BE CREATIVE, BE EXCITING, BUT STAY ON THE RIGHT SIDE OF THE LAW

Coffee Break



Commercial Sponsorship Arrangements

Ravi Mohindra, Vodafone





Slides not available for distribution

A Venue Perspective: The Sponsorship Market, Current Trends and Challenges

Chris Kangis, AEG





Sponsorship – A Venue Perspective

Chris Kangis
AEG Europe



Overview

- A little about AEG
- Current sponsorship market
- A multi-use venue perspective
- Challenges





AEG Facilities



AEG Sport

AEG is the world's largest owner and producer of sporting franchises and events. Our portfolio includes:

Teams:



Events:

- NBA Europe Basketball
- NHL Europe
- 2013 World Hockey Championships
- World Figure Skating Championships
- World Handball Championships
- ATP Tennis Finals
- World Championship Boxing
- Euroleague Final Four Basketball

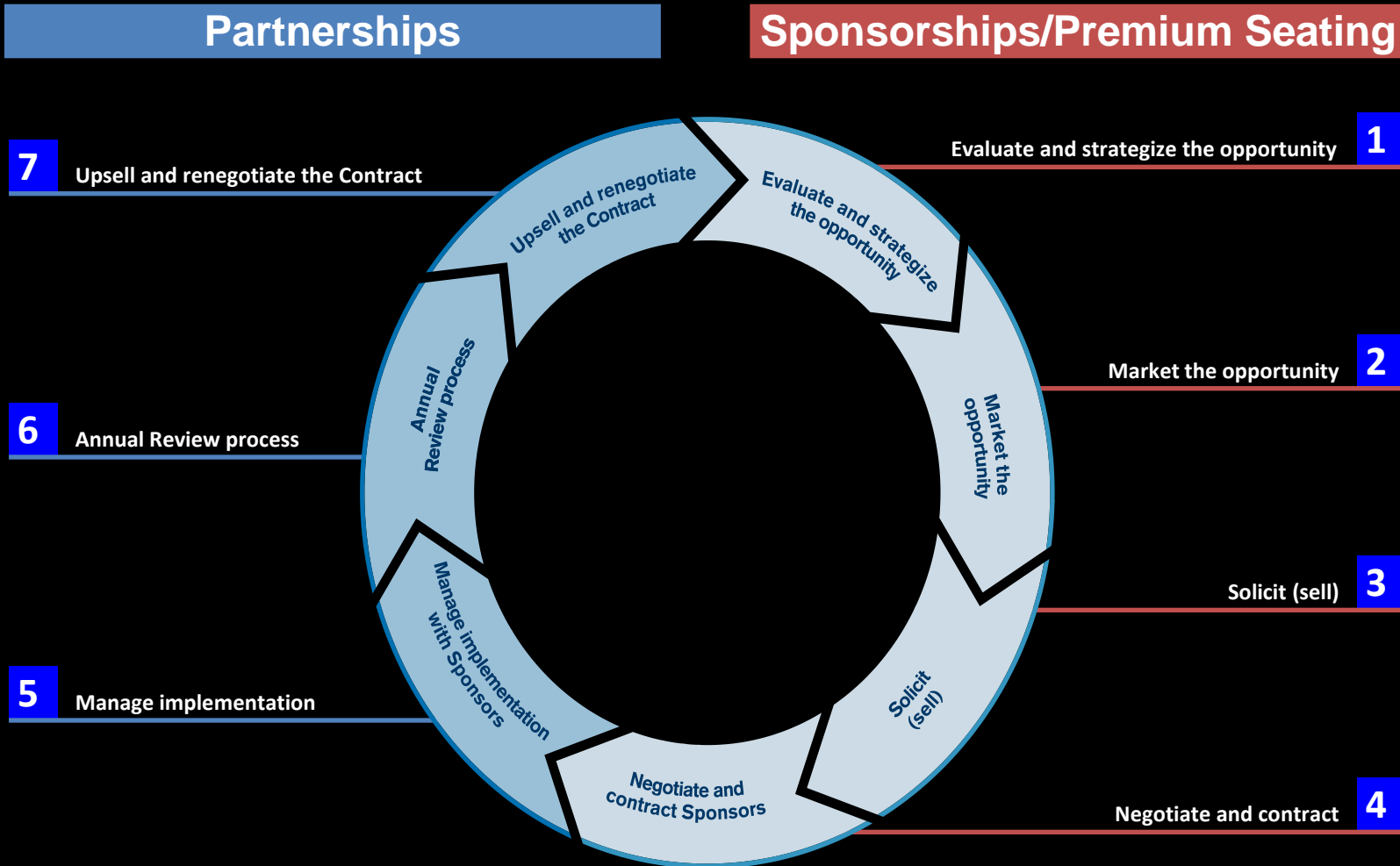
The Sponsorship Market

European Sponsorship Association Data (2012):

- European sponsorship industry - €25.9bn
- The ratio of sport to non-sport sponsorships - 70:30
- Global sponsorship top sector industry by number of deals - Cars/Auto 190 (\$1.4bn)
- Global sponsorship top 2 sports:
 - Football (\$436m)
 - Golf (\$131m)



The Global Partnership Process



Sponsorship Contracts (Multi-purpose venues)

- Category?
- Physical delivery
- Benefits/rights
- Force Majeure/Damage
- Ambush
- Naming rights – implications in long term deals
- Content is king.

But...



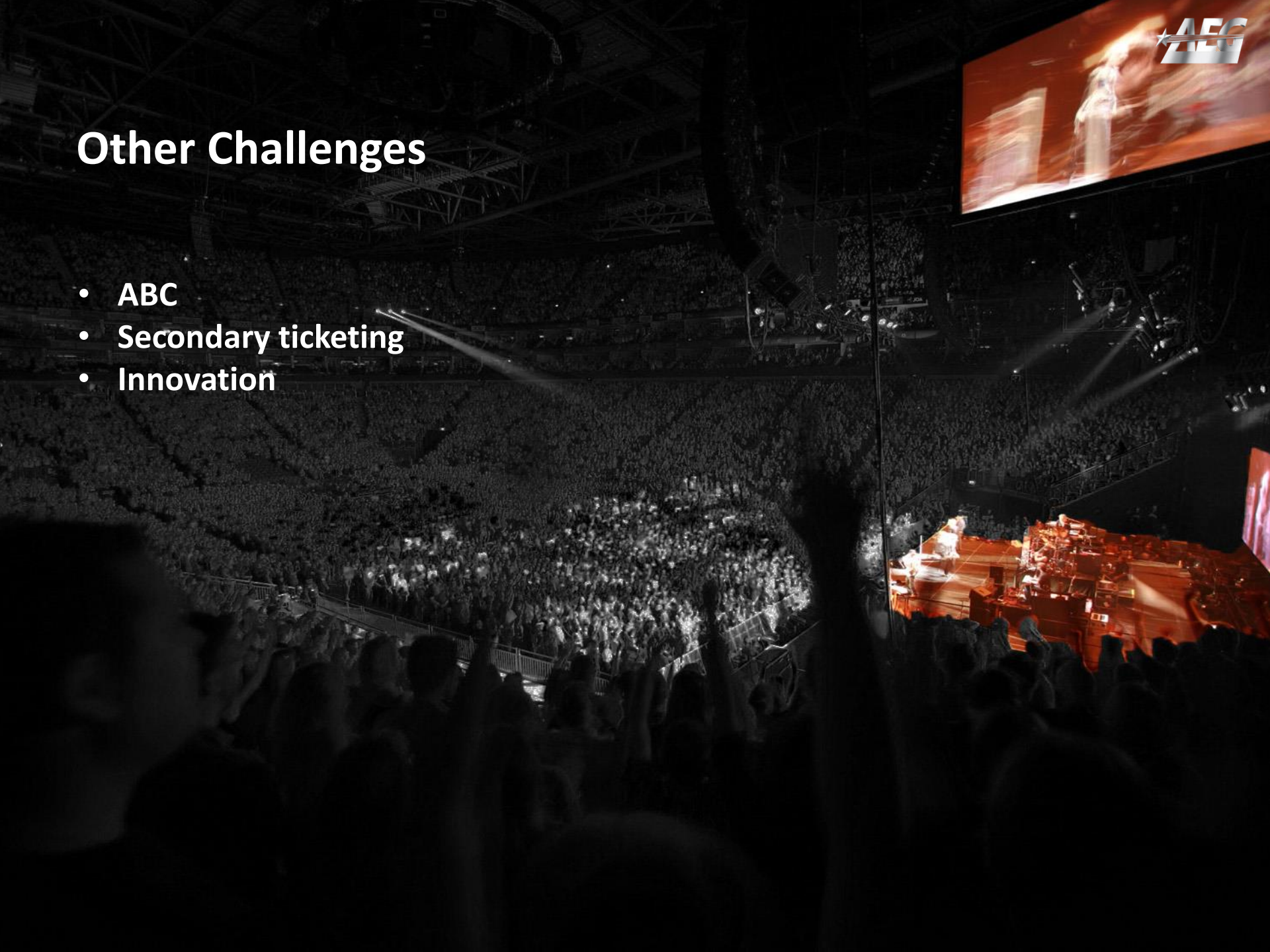
Sponsorship Contracts (Multi-purpose venues)

- Challenges of being multi-purpose
- Great content drives footfall
- Great content attracts sponsorship
- Music vs Sports



Other Challenges

- ABC
- Secondary ticketing
- Innovation



Any Questions?



Panel Discussion: The Role of Lawyers at Football Clubs

Simon Cliff, Manchester City FC and Jamie Arnall, Norwich City FC



Financial Fair Play: The Regulations and their Impact

Settlement, Sanctions and Next Steps

Daniel Geey, Lawyer in the Field Fisher Sports Group and Trevor Birch, Head of Sport at BDO



General (UEFA) FFP Objectives

- To improve the economic and financial capability of the clubs;
- To place the necessary importance on the protection of creditors;
- To introduce more **discipline and rationality** in club football finances;
- To encourage clubs to **operate on the basis of their own revenues**;
- To encourage responsible spending for the long-term benefit of football; and
- To protect the long-term **viability and sustainability of European club football.**

FFP/Financial Regulation Snapshot

UEFA

- Permitted total €45m loss over an initial 2 year and then 3 year rolling period (i.e. 11-12 and 12-13).
- Watch out for RPT issues.
- Full range of sanctions available to the CFCB.

Premier League

- Permitted £35m loss per year over a 3 year rolling accounting period (i.e. the first being 13/14, 14/15 and 15/16) i.e. a total loss of £105m
- Only a £4m increase in the wage bill for PL clubs per season will be permitted with a few exceptions.

Football League

- Permitted losses start at £8m and decrease to £6m and £5m in subsequent seasons.
- No sanction even if breach for the 11-12 and 12-13 seasons.
- Luxury tax implemented from 13-14 season for fine redistribution to Championship clubs.

Sanctions

- **Football League:** A club can be **fined** (if the club is in the PL at the time of the decision) or be subject to a **transfer ban** (if the club remains in the Championship at the time of the decision).
- **Premier League:** Not explicitly defined.
- **UEFA:** Sliding scale from reprimand to expulsion.

Latest Updates

- Settlement and Articles 15/16, Negotiations and Decisions
- Full Assessments Published?
- Commercial Agreement Issues
- Affected Parties
- Fine Distributions
- Championship Updates
- Premier League Soft Salary Cap

UEFA Settlement Summary Table

Club	Fine	Squad Reductions	Other
Anzhi	€2m	21	1 year squad salary restrictions
Bursaspor	€200,000	-	1 year squad salary restrictions
City	€20m with €40m suspended	21	Transfer spending restrictions and 2 year squad salary restrictions
Galatasaray	€200,000	-	1 year squad salary restrictions
Levski Sofia	€200,000	-	1 year squad salary restrictions
PSG	€20m with €40m suspended	21	Transfer spending restrictions and 2 year squad salary restrictions
Rubin Kazan	€6m	21	Transfer spending restrictions and 2 year squad salary restrictions.
Trabzonspor	€200,000	-	1 year squad salary restrictions
Zenit St Petersburg	€12m	22	Transfer spending restrictions and 2 year squad salary restrictions

Talk Takeaways

- Settlement has been controversial but effective
- Sporting sanctions have teeth
- Lack of published, reasoned judgments on break-even may be a concern
- FL and PL will be sanctioning clubs in the coming seasons



Closing remarks

Patrick Cannon, Fieldfisher



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