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Opinion

NCAA loses public sentiment points in blogging issue

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"I have been ejected from U of L's Super Regional game against Oklahoma State by the NCAA for blogging live during the event. I won't be providing any more live updates."

This now well-reported "last entry" from Brian Bennett of The (Louisville) Courier-Journal occurred during the third and decisive NCAA baseball super regional game between Oklahoma State University and the University of Louisville in Louisville, Ky. The action has once again inspired criticism of the NCAA and ESPN as greedy, controlling sport properties. A spokesman for ESPN, which had the broadcast rights to the game, said the decision was based on the NCAA's policy and not requested by the network.

Regardless of whether such criticism is justified, the more critical issue that continues to plague sport governing bodies is how to protect the value of their properties as reflected in agreements with sponsors, Internet providers and broadcasters.

This is also where the law lags behind technology, thus the parties must stretch some traditional theories to cover the instant dispute. The C-J is reportedly contemplating legal action against the NCAA for potential First Amendment violations. The NCAA contends that a live blog is tantamount to a live broadcast in violation of its exclusive broadcasting agreement with ESPN and an infringement of its copyright of the live television broadcast.

But both the C-J and the NCAA have some major legal hurdles to clear.

First, as many others have already opined, reporting sports scores in a delayed format is essentially reporting facts, which are not protected copyright interests. Thus, while the NCAA may wish to broadly define its live copyrighted broadcast to include "live representation" of the game action, there is no guarantee a court would agree.

Likewise, the C-J admits its constitutional claims hinge on the



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NCAA being held to be a "state actor," which is unlikely despite attempts to play the "state university playing at public facility" card. This was an NCAA event. The NCAA is a private organization renting a public facility. The NCAA is not a state actor, thus, it is not subject to the First Amendment.

The text of a blog from the Louisville-Oklahoma State game read like a play-by-play transcript.

So while it is certainly more sexy and intimidating to characterize this dispute as a First Amendment or copyright issue, it is actually more of a basic contract dispute. The NCAA advised members of the media who received media credentials for the super regionals that live blogging was not permitted. It is legally permissible for the NCAA to condition access to the press box upon compliance with its blogging policy.

Public sentiment, and possibly common sense as well, is clearly against the NCAA. A quick search of Technorati revealed 577 blog posts about "NCAA baseball blogging" within a week of Bennett being ejected from the press box, and that figure does not include newspaper columns, talk radio and television talk shows. The overwhelming majority of people, including an NCAA communications employee on his blog, believed the NCAA's policy was outdated and silly.

But once ejected, Bennett did not head to the C-J offices, or his home, to continue his blog as he watched on ESPN or listened to the live radio broadcast. He simply signed off. One reason may be that the substance of his blog was significantly improved by his physical presence in the press box and the stadium.

Thus, is it really unreasonable for the NCAA to limit and/or control people who blog from the press box if that access carries with it something of value or if it could potentially interfere with its contractual agreements with official Internet providers and broadcasters?

From his prime seat in the press box, Bennett could feel the excitement in the stadium (and it was palpable). He could see genuine adoration of the Cardinals fans and fierce loyalty of the Oklahoma State fans as their disappointing weekend came to a close.

This is the atmosphere and the facts that Bennett should have been blogging about without running afoul of the NCAA's wishes, but the text of his blog entries read more like a live play-by-play transcript. Neither Bennett nor any other credentialed media outlet or representative has the right to report the facts, scores and events simultaneously as they happened during a live broadcast of a sporting event from the press box.

Today's sports consumer seeks opinion and commentary along with the result of the contest. Talk radio gained popularity because it allowed a forum for anyone to voice their opinion after an event. Blogging does the same thing, only it allows commentary as events take place. It is the natural evolution of the Internet age.

With more and more outlets and organizations competing for the attention of the sports fan, it is critical that sport governing bodies and their public relations professionals embrace, or at least integrate, the realities of how their consumers watch, view, listen and read about their product.

In an ironic coincidence, two days after Bennett was removed from the press box for blogging, the New York Islanders' communications staff announced it will dedicate space this season for bloggers. However, the organization was unsure how to handle the "live representation" issue.

Policies like the NCAA's demonstrate how out of touch many sport bodies are in this regard. As Deadspin.

com noted of the NCAA's decision, "It denies coverage of a signature event to a fan base that might want to read it."

Anyone who read Bennett's blog was doing so because he or she was interested in the product — the NCAA baseball playoffs. They were not shopping or reading political commentary. They were reading about the NCAA baseball playoffs.

Is that not what the NCAA was selling?

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