



A challenge to “exclusive” sports data rights

Following reports that Sportradar have begun legal action against Genius Sports and Football DataCo in relation to their official supplier arrangement, this article looks at the nature of “exclusive” sports data rights and some of the arguments that Genius and DataCo might deploy to defend their position.

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Earlier this month, the Sunday Times reported that Sportradar had begun legal action against Genius Sports and Football DataCo in connection with the grant to Genius of the exclusive right to collect and distribute "official" data from football league matches to betting and gaming companies.

Case law (namely the DataCo v Sportradar litigation in 2012) has established that the live football database compiled by or on behalf of DataCo benefits from the EU "sui generis" database right. This grants a property right to a creator of a database who can demonstrate a substantial investment in obtaining, verifying and presenting that database.

However, there are no inherent intellectual property or other rights in football data itself (there can be no "monopoly on facts" as Floyd J commented in the 2012 case), so in theory a third party can also collect and distribute football league data, as long as it is not copying DataCo's or any other protected database.

In order to protect the value of any exclusivity granted to official data suppliers such as Genius, DataCo (in conjunction with the football rightsholders and their agents) find other ways to prevent "unofficial" data suppliers from collecting and distributing data from football league matches, most notably by barring or removing their personnel from stadia (based on contravention of EFL standard ticketing terms).

By disrupting the flow of data from these "unofficial" data suppliers, the value of Genius's official data feed is maintained, as it becomes the only party able to offer betting operators the fast, reliable, legitimate and uninterrupted data that those operators need to offer in-play betting markets.

This "cat and mouse" scenario between rightsholders and "unofficial" data suppliers has been going on for some time, but recent reports of a ramping-up of enforcement activities by the EFL and others, seems to have motivated Sportradar to escalate matters.

Reportedly Sportradar are claiming that the exclusive data arrangements between Genius and DataCo are in breach of competition law, namely Articles 101 (agreements distorting competition) and 102 (abuse of dominant position) of the Treaty on the Functioning of the European Union and the analogous UK legislation.

However, DataCo arguably have several legitimate objectives which underpin the granting of this exclusivity, including:

- **Investment** – DataCo invests significant sums of money producing its official data feed to ensure that recipients have confidence in its output. This feed is then distributed not only to betting and gaming operators but also to media organisations which serve to promote and enhance the global reach of English and Scottish football. If DataCo is unable to justify its investment, it may significantly scale back its operations, having a potentially detrimental impact on English and Scottish football. Arguments have been made that DataCo could derive similar (or even greater) revenue from offering non-exclusive partnerships to all operators in return for a "fair access fee", but the sports rights market has consistently shown that exclusivity drives a significant premium. Plus, if DataCo is unable to enforce its rights under the current regime, inevitably other operators would find ways to try to avoid paying that access fee, regardless of it being "fair".
- **Reinvestment** – rights fees paid to DataCo are reinvested by its shareholders back into football. Conversely, fees paid by betting operators to "unofficial" football data suppliers would not find their way back into the sport, and a source of grassroots funding for football would disappear.
- **Integrity** – DataCo works with their official data suppliers to invest in bet monitoring services and intelligence systems that identify suspicious betting patterns. This has included the development of an intelligence database and deployment of analytical capability that provides DataCo and the football rightsholders with greater visibility and protection against threats to the integrity of their competitions. The ability of Genius (and other official data suppliers) to assist DataCo in integrity-related matters is vital when it comes to curbing corruption in football. Equally, strongly policing unofficial data collectors in-stadia, diminishes the chances of so-called "courtsiding" at football matches – an activity which intrinsically threatens the integrity of betting markets.

It has been reported that under the terms of the DataCo agreement, Genius has no obligation to sublicense its rights to third parties, and that it is currently refusing to grant a sub-licence to Sportradar because they do not meet Genius's internal guidelines. This approach is understandable commercially, but it has its risks, particularly as prohibiting access to data is arguably more egregious than prohibiting the collection of data. Added to that is the claim from other unsuccessful participants in the tender process that the granting of sub-licences to third parties by the official data supplier was in fact a condition of that tender process.

A further point to note is that Sportradar are in fact an official data supplier to several rightsholders outside of English and Scottish football. The terms of these exclusive arrangements are not in the public domain but (reminiscent of the Nike v adidas "wars") conceivably the same arguments being thrown at Genius and DataCo could also be used against Sportradar in other markets.

Alongside intellectual property and competition considerations, the current challenge by Sportradar to rightsholders' ability to eject "unofficial" data collectors from stadia will also fundamentally test (i) the real property rights of venue owners (the right to have exclusive possession and control of their venue), (ii) the scope of contractual rights (the right to impose restrictive terms and conditions on entry to venues to protect the commercial value of events), and (iii) tortious acts (the right to make a trespasser of any person who enters a venue with permission but then infringes the terms and conditions of that permission). These legal principles will no doubt be vigorously defended by DataCo and Genius.

Finally, could a parallel also be drawn with exclusive broadcast rights? It is uncontroversial for sports rightsholders to offer their broadcast rights to partners on an exclusive basis (subject to certain controls on that exclusivity) so why should the position be different in the case of data rights? Under English law, there are no inherent intellectual property rights to a sports event from which broadcast images/data are generated, but it is well established that sports rightsholders can use legal mechanisms (such as ticket terms and conditions) to prevent "unofficial" broadcasters from setting up rival operations in-stadia or even fans from filming those events themselves. DataCo and Genius may argue that the position on official data is analogous.

Ultimately, whichever side you are on, rightsholders, data suppliers and lawyers will be watching future developments with interest.....

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