

U.S. Court Precedents On Sports Data Could Haunt Professional Leagues

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Federal court rulings in New York and Missouri could become an albatross around the neck of the National Basketball Association (NBA) and Major League Baseball (MLB) as their lobbyists attempt to persuade state legislatures to restrict the sources of data that can be used by sports-betting operators.

On January 30, 1997, the 2nd U.S. Circuit Court of Appeals in New York City rejected the NBA's lawsuit to block [Motorola](#), the multinational telecommunications company, and its partner STATS, a sports information firm, from updating scores of NBA games on wireless pagers.

In response to the NBA's argument that its games are copyrighted, U.S. Circuit Judge Ralph Winter wrote: "Sports events are not 'authored' in any common sense of the word."

Live-game data from the NBA and other sports leagues are in the public domain, and therefore, cannot be considered intellectual property, according to the court's decision.

Kate C. Lowenhar-Fisher, a gaming attorney at the Las Vegas firm of Dickinson Wright PLLC, said Motorola is a case "the leagues are hoping everybody forgot about."

"I swear their lawyers are whispering in their ears to do this propaganda campaign like, 'Say intellectual property; talk about how we own the game data,'" Lowenhar-Fisher told about 80 people attending a sports-betting conference on March 5 at [Prairie Meadows](#) Casino in Altoona, Iowa.

The fact is, Lowenhar-Fisher said, the leagues do not own data from their games.

In recent weeks, lobbyists for the NBA and MLB have been advocating across the country for model sports-betting legislation that would grant sports leagues a 1 percent cut of betting handle as a so-called "integrity fee," while also permitting leagues to restrict the sources of data that bookmakers may rely upon.

A [bill introduced in the New York Senate](#) last week would expressly require sportsbooks to use "official league data" in the case of in-play wagers.

Leagues argue the use of official data is necessary to ensure accuracy and consistency of betting outcomes, with all wagers settled the same way by different operators in different states.

"We do not believe that data companies should be allowed to enter sporting events under the guise of fans to commercially collect real-time data for use in betting," Pat Courtney, MLB's chief communications officer, told GamblingCompliance in an email.

"The alternative for sportsbooks — using data from public sources to support in-game betting — creates significant integrity issues because public source data is time delayed," Courtney said.

The NBA declined to comment.

The Motorola decision "could cast a shadow over current sports-betting legalization efforts, especially in New York," according to [Ryan Rodenberg](#), an associate professor at Florida State University.

The decision "has never been applied to a real-time sports-betting data case, but there is a chance it could in the future," Rodenberg said in an email to GamblingCompliance.

Motorola is not the only case that looms as a formidable impediment to the leagues in their campaign for an integrity fee on the handle of wagers on their games.

In August 2006, U.S. District Judge Mary Ann Medler of Missouri ruled that MLB could not prevent a fantasy sports company from using the names of major league baseball players and their statistics.

The 8th U.S. Circuit Court of Appeals affirmed Medler's ruling on October 16, 2007.

The key factor in Medler's decision may have been that [CDM Sports](#), a fantasy sports company in St. Louis, only used the names of players and their publicly known statistics, not the players' images.

"From my perspective, there is no good faith intellectual property basis for granting a professional sports league a share of the proceeds from sports gambling," [Marc Edelman](#), a law professor at Baruch College in New York City, said in a phone interview.

During the one-day conference in Iowa, which was sponsored by Drake University Law School, renowned bookmaker [Vic Salerno](#) of Las Vegas said the leagues do not appreciate the integrity protection provided by regulated sportsbooks in Nevada.

"All of a sudden we hear about this integrity fee," said Salerno, who is president of USFantasy Sports. "Well, who's protected the integrity [of games] for the last 50 years? We have. We have been the police. Because who loses if the integrity of the game isn't there? The people that lose are the bookmakers."

Another issue that came up during the conference is how the [1961 Wire Act](#) would apply to sports betting if it is legalized in states outside Nevada.

[Ted Olson](#), the prominent trial attorney who represented New Jersey in oral arguments before the U.S. Supreme Court on December 4, recently said the Wire Act will not block sports-betting expansion if New Jersey prevails in its challenge of the federal ban in the Professional and Amateur Sports Protection Act of 1992.

[David Rebeck](#), director of the New Jersey Division of Gaming Enforcement, also has said the Wire Act was enacted to prevent the spread of illegal sports wagering, and should not restrict state-regulated online betting.

During her remarks in Iowa, Lowenhar-Fisher disagreed, saying the Wire Act will prevent wagers from being transmitted across state lines whether they are legal or illegal.

"The Wire Act is one of the few federal gambling laws that doesn't require a violation of a state law as a prerequisite," Lowenhar-Fisher said.

Lowenhar-Fisher also cited the so-called "safe harbor" provision of the Wire Act which allows the transmission of information about games from one jurisdiction to another but not bets.

"This is how legal sportsbooks could globally manage their risk," Lowenhar-Fisher said.

She said the fact that the "safe harbor" provision applies only to information underscores the act's intent to prohibit the transmission of wagers.

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