

The Super Bowl III Problem: A review of the development of the property right in live professional sports broadcasts and a practical application of copyright law to an infringement action for the unauthorized reproduction and distribution of a taped broadcast of Super Bowl III

*by Chris Garmire**

I. Introduction

“Outlined against a blue-gray October sky, the Four Horsemen rode again. In dramatic lore they are known as Famine, Pestilence, Destruction and Death. These are only aliases. Their real names are Stuhldreher, Miller, Corwley, and Laden.”¹ The preceding quote is perhaps the most famous article lead ever written about any sporting event. The subjects of the article were the legendary Four Horsemen of Notre Dame coached by the immortal Knute Rockne.² The horsemen, along with other sporting heroes of the twenties, such as the “Galloping Ghost” Red Grange and Babe Ruth, became more than mere sportsmen; they became transcendent myths. The fearsome horsemen in reality weighed an average of 164 pounds.³ Grantland Rice’s portrayal of these rather small football players as Goliaths of the gridiron transformed them into mythic heroes equivalent to the Knights of the Round Table in the popular imagination. Rice’s writing style, along with the tremendous popularity and following that it attracted was indicative of the creation of a new right in intellectual property; a property right in the description and dissemination of the accounts and narrations of sporting events through publication and broadcast.

Although professional baseball began licensing World Series broadcasts as early as 1921,⁴ the decade of the twenties was the decade of the print sportswriter. Baseball was America’s national pastime, and with writers such as Grantland Rice painting fanciful word portraits of larger than life heroes, the American public identified with the day to day adventures of their favorite sports heroes. In time Rice passed the torch to new authors and to a new medium: radio. Radio sportscasters like Red Barber and Mel Allen proceeded to paint elaborate audio pictures to thousands of listeners across the country. Radio, in time, gave way to television and to a host of new sportscasters such as Kurt Gowdy, Keith Jackson, and Vin Scully. With each new medium and each new set of captivating narrators, the rights to bring sports information to the public became more and more lucrative.

This paper examines the 20th century development of the property right in the dissemination, and later broadcast, of professional sports contests. The first section of this paper addresses the genesis of the intellectual property right in the broadcasts of sporting events, the growth of that protection under the Sports Broadcasting Act of 1961 (“SBA”),⁵ and finally, the sections of the 1976 Copyright Act⁶ that address copyright infringement with respect to unauthorized rebroadcasts of NFL games in bars, taverns, and other business establishments.

The second part of this paper examines the novel question of copyrightability of Super Bowl III, as it is represented on videotape. A rare VHS copy of the live broadcast of Super Bowl

III was put up for auction on the website eBay. The seller used this tape as a master for copying several tapes for re-sale online. This sale brings up various novel copyright infringement issues. The current statutory provisions governing the copyrightability of sports broadcasts are different than those in existence when Super Bowl III was recorded on videotape. This paper will explore various avenues for copyright protection for the broadcasts of NFL games prior to the effective date of the 1976 Act. This paper will also explore the applicability of the 1909 Copyright Act because this game was broadcast in 1969.

Finally, the third section of this paper will discuss future infringement issues, specifically considering the effect of personal communications technologies on the current and future property rights in the broadcast of sporting events.

A. A Brief History Of The Development Of The Property Right And Eventual Copyright In The Broadcasts Of Sporting Events

Property rights in sports broadcasting originated in a challenge to a broadcast license renewal for an unauthorized rebroadcast of the 1934 World Series. Mr. A.E. Newton, who operated a home radio station, had listened to the authorized radio broadcast and repeated and rebroadcast the running commentary of the World Series on his own radio station.⁷ These activities by Mr. Newton led to a court action to have Mr. Newton's radio broadcast license revoked, arguing that such unauthorized rebroadcast violated the terms of the broadcast license. Mr. Newton's broadcast license was ultimately renewed; however, the Commission found that his conduct was, "inconsistent with fair dealing, dishonest in nature, unfair utilization of the results of another's labor, deceptive to the public upon the whole and contrary to the interests thereof."⁸ This was the first decision to address the intellectual property rights of a sports club in the descriptions and accounts of its games.

The first case establishing property rights of a professional sports team to the broadcast of its games was *Pittsburgh Athletic Company v. KQV Broadcasting Company*.⁹ In *Pittsburgh*, KQV had positioned several observers outside Forbes Field who, from their vantage points, could see into the game and broadcast the accounts and descriptions of the action.¹⁰ The Pittsburgh Athletic Company, better known as the Pirates, had licensed the exclusive broadcast rights of their games to General Mills. The National Broadcast Company contracted with General Mills to broadcast the Pirate games over two local radio stations. The defendant asserted that it had a legal right to broadcast its own account of the game, via its observers of the game, to the listening public.¹¹

The court disagreed, holding that "the exclusive right to broadcast play-by-play descriptions of the games played by the Pirates rests with the plaintiffs. That is a property right of the plaintiffs with which defendant is interfering when it broadcasts the play-by-play description of the ball games obtained by the observers."¹² The court observed that,

The plaintiffs and the defendant are using baseball news as material for profit. The Pirates have at great expense, acquired and maintain a baseball park, pays the players who participate in the game, and have, as we view it, a legitimate right to capitalize on the news value of their games by selling exclusive broadcasting

rights to companies which value them as affording advertising mediums for their merchandise. It is our opinion, that the Pittsburgh Athletic Company, by reason of its creation of the game, its control of the park, and its restriction of the dissemination of news there from, has a property right in such news, and the right to control the use thereof for a reasonable time following the games.¹³

This was the first judicial opinion which specifically recognized a protectable property interest in the accounts and descriptions of a professional sports team's performance. The opinion confirms that sports ball clubs do have a tangible property right in the descriptions and dissemination of the accounts of their games. This recognition of the intellectual property right in broadcasts of games and events was codified later in the 1976 Copyright Act.¹⁴

A case, which built on the reasoning of *Pittsburgh*, was *National Exhibition Company v Fass*.¹⁵ In *Fass*, the defendant had been sending out simultaneous teletype reports of the New York Giants baseball team games to radio stations across the country from accounts he heard from the live radio broadcast.¹⁶ The court's reasoning in finding for the plaintiff mirrored that of *Pittsburgh*. The court held that,

the plaintiff's property rights, as owner of such exhibitions, include the proprietary right to sell to others, who desire to purchase and to whom plaintiff desires to purchase and to whom plaintiff desires to sell, licenses or rights under which the purchasers are unauthorized to have their representatives attend such exhibitions, prepare oral and/or pictorial descriptions of such exhibitions and transmit such descriptions for broadcast over such, but only such, radio or television station or such radio or television stations located in such geographical area or areas as may be agreed upon between plaintiff and such purchasers.¹⁷

Fass reinforced the proposition that sports teams had a property right and interest in the descriptions, accounts, play-by-play, and other descriptions of their sporting events. However, in 1961, the passage of the SBA radically changed the relationship between sports clubs and those to whom they licensed the right to broadcast their games. Prior to passage of the SBA, each individual club would individually contract with radio and television broadcasters to broadcast games. The SBA radically shifted that relationship. It granted an anti-trust exemption to certain sports leagues, which allowed individual teams to pool their broadcast rights and license them on behalf of the sports league to one or several nationwide networks.

Congress passed the SBA in response to two decisions in which the court held that pooling agreements between the member clubs to authorize the NFL to market their collective broadcast rights as a package to several television networks violated antitrust law.¹⁸ This was the first time that a court required that any agreement between the NFL and the broadcast networks may not "have the purpose or effect of restricting the areas with which games shall be telecast and where such telecast and where such games may be played."¹⁹ The passage of the SBA was a direct response to this decision. The relevant portion of the Act states that the antitrust laws will not be applied to "any joint agreement by or among persons engaging in or conducting the organized professional teams sports of football, baseball, basketball, or hockey, by which any league clubs participating in (the aforementioned sports) sells or otherwise

transfers all or any part of the rights of such clubs.”²⁰ The property right in sports broadcasting had evolved from a suit involving the unauthorized rebroadcast of the 1934 World Series by a basement radio operator to a right for which Congress would provide statutory protection. The next change that would permanently affect the status of the property right in sports broadcasting was the passage of the Copyright Act of 1976.

The Copyright Act of 1976 extended copyright protection to live sports broadcasts.²¹ The live broadcasts are qualified for copyright protection under Sec. 102(a)(6), which provides protection for motion pictures and other audio-visual works.²² It also provides the copyright holder, under Section 106(4), “the exclusive right to perform [the broadcasts] publicly.”²³ The proceeding section will attempt to analyze each section of the Copyright Act with respect to a live sports broadcast, to try to further understand how these types of works may qualify for copyright protection. In order for any broadcast work to be protected under the Copyright Act, the work must satisfy a set of certain criteria.

For a work to receive copyright protection under the 1976 Act, it must be an original work of authorship. The threshold requirement of originality is relatively easy one for a work to meet. A work must simply contain a minimal degree of creativity in order to meet the statutory standard. “Originality means only that the work was independently created by the author and that it possesses at least some minimal degree of creativity. To be sure, the requisite level of creativity is extremely low.”²⁴ The broadcast of NFL games and other sporting events are original because each week a unique script of individual plays is shown to the audience. The result of each play is unknown to anyone until its conclusion, and the effect of the broadcast is to provide the audience member at the end of the day with a full and unique presentation of a sporting event. Teams and players change each week providing a new scenario and storyboard. Furthermore, the commentary and the different camera angles provide an original interpretation of the events, lending credence to the view that the work is highly creative in nature. For those reasons, it is more likely than not that live sports broadcasts are original in nature.

Under the current Copyright Act, live sports broadcasts are listed as works of authorship under section 102(a)(6) as a form of an audiovisual work.²⁵ The difficult question is in whom does the authorship of the broadcast subsist? Courts have rejected the contention that the players really have authorship rights in the broadcast of a sporting event.²⁶ As this paper discussed earlier, sports clubs had a property interest in the display and description of the action of their respective teams prior to the SBA and the Copyright Act of 1976. After the SBA allowed the teams to pool their broadcast rights, these rights were eventually assigned to the respective professional sports leagues for marketing purposes.

Another requirement for copyright protection is fixation.²⁷ In order for a work to be copyrightable, it must be “fixed in a tangible medium of expression now known or later developed.”²⁸ The question presented is whether the satellite and over the air broadcasts of sporting events qualify for fixation under the 1976 Act. Under Section 101 “a work consisting of sounds, images, or both, that are being transmitted, is ‘fixed’ for purposes of this title if a fixation of the work is being made simultaneous with its transmission.”²⁹ Under this definition, the broadcast of the sporting event qualifies as being fixed, as long as an archival copy is being made simultaneously with the broadcast. The copyright royalty tribunal “has noted that baseball

recording procedures are 'suitable' to 'establish proof of fixation.'"³⁰ Assuming that the procedures for other sports broadcasts are similar to those used in baseball, the broadcasters of the work in question have met the threshold for fixation. Under the forgoing analysis, the live broadcast of a sporting event qualifies as an original work of authorship, fixed in a tangible means of expression.

Therefore, the live broadcast of a sporting event is a copyrightable work and qualifies for protection under the 1976 Act. The property right within the broadcast of a live sports event has traveled a long way from the early days of Mr. Newton's basement radio station. Protection of copyright in the NFL and other sports broadcasts has become a multi-million dollar business. The focus of this paper will now shift to current issues in copyright infringement of NFL games in bars, taverns, and other business establishments.

B. Copyright Infringement Of NFL Games In Bars, Taverns, And Other Business Establishments

With the development of satellite technology, the property right in a sports broadcast has been threatened like never before.³¹ This section of the paper will address the threat of copyright infringement of NFL games. The main source of copyright infringement has been the unauthorized display of NFL games in public establishments, specifically, the display of blacked out games in the home team area via satellite or cable broadcasts. The explanation and evolution of the blackout rules of the NFL are quite complicated and are outside of the scope of this paper. However, a brief explanation is helpful to a reader when analyzing the copyright violation issue.

The NFL blackout rule provides that no home team game will be broadcast in the home team viewing area if that game has not sold out.³² There are various arguments that the league has forwarded in its defense of the blackout rule. The main argument is that if a home team's game were shown in the home viewing area, then the fans would attend the games in fewer numbers.³³ Consequently, such a drop in attendance would severely affect ticket revenue and undermine weaker franchises. This argument is rather obsolete, as the main source of revenues for the league are the television contracts themselves and not the ticket receipts.³⁴ The more tenable argument is that the lack of fan attendance would lead to the diminution of the television product itself, which in part explains why the rule is still in effect.³⁵

One of the first cases to address the issue of the broadcast of NFL games via satellite to a blacked out area was *National Football League v. McBee & Bruno's Inc.*³⁶ In *McBee*, the defendant challenged a judgment granting the NFL a permanent injunction against it from showing blacked out games in the home team's viewing area. *McBee & Bruno's* is a restaurant in St. Louis, Missouri that showed blacked out games of the St. Louis Football Cardinals. The defendant was accused of receiving the signals of the game from a satellite antenna affixed to the roof. The applicable blackout rule stated that, "games which are not sold out within 72 hours of game time are to be 'blacked out,' that is, not broadcast within a 75-mile radius of the home team's playing field."³⁷ Defendant's restaurant was within this 75-mile radius, and it had a satellite dish, which enabled it to receive a so-called "clean feed" from the satellite to CBS studios."³⁸

The court held that the permanent injunction granted by the lower court in the case was appropriate and found that the defendant had infringed the NFL's copyrighted broadcast. The defendant argued that its display of the Cardinals' games was satisfied the home-use exception in the Copyright Act, which provides that there will be no liability flowing from "communication of a transmission embodying a performance...by the public reception of the transmission embodying a performance...by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes."³⁹ The court identified the relevant legal issue as "how likely the average patron who watches a blacked-out Cardinals game at one of the defendant restaurants is to have the ability to watch the same game at home?"⁴⁰ The appeals court found that the district court's rulings were correct. The district court had stated in the case below that satellite dishes were not commonly found in homes.⁴¹ In fact, the relatively small number of satellite dishes that did exist were used in the business arena. The minority of the dishes that were used at home were in areas where reception of over the air broadcasts was poor. Consequently, the district court found that the home use exception did not apply and that the defendant infringed the NFL's copyright. From this rule, it appears that courts would have to decide in future cases the degree to which satellite dishes are commonly used in homes. In fact, a court has never found that these types of satellite dishes qualify for the home-use exception.⁴² Even the development of the Primestar and DSS home satellite systems has not changed this perception. Most of the home users of these type of satellite systems purchase an NFL game package, where the viewer can see every NFL game played each week, except those games that are subject to the blackout rule.⁴³

Thus, courts have responded to the broadcast of blacked out games in commercial establishments with little tolerance. Courts have refused to apply the home-use exception to the type of satellite dishes and antenna that receive the feed from the blacked out games. The development of newer technologies has provided more unique problems that have presented the same basic issues as described above.⁴⁴ Although there have been proposals to allow for a compulsory license to broadcast such games, no such proposals have been instituted as of yet.⁴⁵

II. Sale Of Videotaped Professional Football Games Prior To 1976, Specifically, The Sale Of A Videotape Copy Of The Broadcast Of Super Bowl III

The genesis of this section of the paper was an offer made on an online auction house for a VHS copy of Super Bowl III. Super Bowl III was originally broadcast in 1969, in an era when VCR's were quite rare. It was also an era when the property rights in live sports broadcasts were quite different than they are today. As was discussed earlier, the NFL holds the copyright to league games, via its polling agreement with the various teams and broadcast networks. Although such agreements were in effect in 1969, copyright protection was not available then. So, the question becomes what cause of action arises from the copying and unauthorized distribution of the taped live broadcast of Super Bowl III.

The exclusive right to license the television and radio broadcast rights subsists in the franchises. In this case, the right would subsist in the Baltimore Colts (now Indianapolis) and the New York Jets. However, for the purposes of this analysis, it is assumed that all rights in the Super Bowl game were assigned through league contracts.⁴⁶ If the NFL has the broadcast rights in Super Bowl III, would it be able to successfully sustain a suit against an unauthorized

distribution of a recorded copy of Super Bowl III? The question turns on whether or not the NFL has a valid copyright in a videotape representation of Super Bowl III.⁴⁷

From the holding in *NBC v. Sonneborn*,⁴⁸ the NFL could possibly pursue an infringement action against the distributor of this particular pirated tape. In *NBC*, Sonneborn had made a copy, for resale, of the 1960 NBC broadcast of *Peter Pan*. Sonneborn had repaired an old kinescope, which is a motion picture made from an image on a picture tube, of the broadcast and transferred it onto VHS cassette. In effect, what he had done was to make a VHS copy of the 1960 broadcast of Peter Pan.⁴⁹ The issue was whether Sonneborn infringed NBC's copyright in that broadcast?

NBC registered for a copyright in the broadcast of Peter Pan in 1980, under the provisions of the 1976 Act. No such copyright was filed under the 1909 Act. The simple answer is that if the court found that NBC's distribution of the kinescopes of Peter Pan to its affiliates constituted a limited publication under the standard established by the 1909 Act, then the legitimacy of NBC's copyright certificate would come into question. Sonneborn argued that NBC had published Peter Pan five years prior to the registration of the certificate of copyright. If NBC had indeed published the tapes/kinescopes of the broadcast, the certificate would be invalid, pursuant to the definition of publication as defined in the 1909 Act. That is the standard of registration under the 1909 Act. Applying the definition of publication under the 1909 Act, the court held that the distributions of the copies of Peter Pan amounted to a limited publication and did not render the certificate void. What NBC, in effect, was allowed to do in this case was to register for a copyright of a television broadcast twenty years after it was originally aired. NBC only registered for a copyright when they learned that Sonneborn had started to distribute the previously uncopyrighted tape.

The facts in the Super Bowl III case are comparable. The NFL currently has no copyright in the broadcast of Super Bowl III. Several individuals have now started to distribute this previously uncopyrighted tape. According to the reasoning in *NBC*, the NFL could obtain a copyright registration in the broadcast of Super Bowl III today. The remaining question would be whether there was a publication made of Super Bowl III that would invalidate a copyright certificate made under the 1909 Act.⁵⁰

The court in *NBC* argued that the distribution of copies of kinescopes by NBC to their affiliates for later rebroadcast was analogous to a limited publication. The court articulated the standard for a limited publication as "communicating the contents of a work to a definitely selected group and for a limited purpose, without the right of diffusion, reproduction, distribution or sale. The circulation must be restricted both as to persons and purpose."⁵¹ Under this definition the one time broadcast of Super Bowl III would likely be held to be a limited publication. It was intended to be a one-time broadcast and was intended for the private use of the audience. Indeed, the facts in this case are stronger than in *NBC* in that there was no distribution by the NFL to any subsequent third party for rebroadcast. The facts indicate that it can be categorized not only as limited publication, but as no publication at all. If the league copyrights the broadcast of Super Bowl III and that copyright certificate is held to be valid by the court, then the online auctioneer will be found to have infringed the rights of the NFL and, therefore, would be subject to liability.

III. Conclusion

The development of new technologies, such as the VCR, digital satellite and the Internet, have forced the courts, and will force the courts in the future, to fashion unique remedies to increasingly unique situations. The Super Bowl III problem is just one example of how new technologies stretch the dimensions and the applicability of copyright law. Hopefully, the only further discussion of Super Bowl III will be by football fans debating when Don Shula should have put Johnny Unitas into the game.

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1 DAVID MARANISS, WHEN PRIDE STILL MATTERED 35-36 (1999).

2 *Id.* Rice was writing his story on the 13-7 Notre Dame victory over the previously unbeaten army. See <http://www.fansonly.com/schools/nd/sports/m-footbl/spec-rel/1115999aaa.html>.

3 *Id.*

4 Robert A. Garrett & Philip R. Hochberg, *Sports Broadcasting and the Law*, 59 IND. L.J. 155, 157 (1983) [hereinafter Garrett I].

5 15 U.S.C. § 1291 (West 2000).

6 17 U.S.C. § 101-801 (West 2000).

7 Garrett I, *supra* note 4, at 157.

8 *Id.*

9 Pittsburgh Athletic Co. v. KQV Broad. Co., 24 F. Supp. 490, 492 (D.C. Pa. 1938).

10 The court did not indicate exactly know where the observers were stationed as they were viewing the game.

11 Pittsburgh, 24 F. Supp. at 492.

12 *Id.*

13 *Id.*

14 17 U.S.C. §§ 101-801.

15 Nat'l Exhibition Co. v. Fass, 143 N.Y. S.2d 767 (1955).

16 *Id.*

17 *Id.* at 777

18 United States v. Nat'l Football League, 196 F. Supp. 455 (D.C. R.I. 1961).

19 *Id.*

20 15 U.S.C.A. § 1291.

21 Technically, copyright did subsist under Section 12 of the 1909 Copyright Act. However, the somewhat cumbersome requirements of Section 12 were the most likely reason why Super Bowl III and other sports broadcasts were not registered under the 1909 Act.

22 17 U.S.C. § 102(a)(6)

23 *Id.*

24 CRAIG JOYCE ET AL., COPYRIGHT LAW 82 (4th ed. 1998).

25 17 U.S.C. § 102(a)(6).

26 Robert A. Garrett & Philip R. Hochberg, *Sports Broadcasting*, in REPRESENTING PROFESSIONAL ATHLETES AND TEAMS 321 (PLI Pats., Copyrights, Trademarks, and Literary Prop. Course Handbook Series No. 358, 1993).

27 It should be noted that I use the NFL here as an example. The passage of the SBA was a result of the efforts of Commissioner Pete Rozelle and was the result of concerns from the NFL that they would not be able to capitalize on their increasingly popular product as a result of the NFL case. I'm not making any conclusions or statements as to the assignability of rights by teams in MLF, NBA, or NHL. The NFL is used as an example of how a live sports broadcast would be protectable under the 1976 Act.

28 17 U.S.C. § 102(a).

29 17 U.S.C. § 101.

30 Garrett I, *supra* note 4, at 161 n.24.

31 This is not to negate the effect of the Internet on the level and mode of infringement in the future.

32 Garrett I, *supra* note 4, at 360. The rule is much more complicated than is stated in this paper. The rule comes from the SBA and its enforcement provision has lapsed, yet the NFL voluntarily adheres to the rule. The rule states that Leagues must lift a local blackout of any pooled telecast if all the tickets available for purchase five days before the game are sold 72 hours or more in advance.

33 WTWV Inc. v. NFL, 678 F. 2d 142, at 145-146 (11th Cir. 1982). Concluding that "the purpose of the [SBA] is clear. The broadcast exemption from the antitrust laws was intended to preserve the existence of the NFL by shielding its member clubs from a decline in game attendance due to the televising games in the area from which spectators are drawn.

34 In 1978, the FCC reported the financial effect of the rule on the NFL was 4.7 million dollars per year. Garrett I, *supra* note 4, at 360. Compare this figure, with the most recent pooling contract with Network Television in 1998

that yielded the NFL over 17.6 Billion Dollars. See Holly M Burch, *A Sports Explosion: Intellectual Property Rights in Professional Athletic Franchises*, 5 Sports Law. J. 29, at 35.

35 WTWV Inc. v. NFL, 678 F. 2d 142

36 792 F.2d 726, 728 (8th Cir. 1986).

37 *Id.*

38 *Id.*

39 17 U.S.C. § 110(5).

40 McBee & Bruno's, Inc., 792 F.2d at 731.

41 See National Football League v. McBee & Bruno's, 621 F.Supp. 880, 887 (E.D. Mo. 1985).

42 Basically the issue became mooted when the NFL and many other sports leagues simply formed partnerships with Satellite providers to establish subscription services.

43 The issues of DSS and Primestar system copyright violations are discussed in a separate line of cases. In these cases, the same issues arise as were discussed in *McBee*, and admittedly in painstaking detail. See 1995 WL 7377935. For a point by point analysis of the commonality of home satellite system and its application to the home use exception, see NFL v. Rondor Inc., 840 F. Supp. 1160 (N.D. Ohio 1993).

44 Some examples of these technologies are hand held cellular phone and pager services that give subscribers up to date information on the scores and status of professional sports contests. Many of these issues have been litigated and the NBA, in particular, sued under various misappropriation theories.

45 Alan M. Frisch, *Compulsory Licensing of Blacked out Professional team sporting event telecasts(PTSETS): Using Copyright Law to Mitigate Monopolistic Behavior.*, 32 Harv. J. on Legis. 403 . In short these proposals would provide for a compulsory license that would allow bars and other establishments to broadcast blacked out games in a home team's area for a royalty fee.

46 I was unable to find the copyright registration for Super Bowl III, under either the 1909 or 1976 Acts. A further request of the Copyright Office revealed the same thing. There was no record of a Copyright Registration for Super Bowl III by the NFL, AFL, Baltimore Colts or New York Jets. Secondly, the NFL in this case refers to the National Football League as it existed prior to the merger with the AFL in 1970. Thus, the New York Jets negotiated its television contracts in conjunction with the AFL. In 1970, both leagues merged into the NFL, as it is now known. There is a question as to whether or not the Jets' rights via the AFL were transferred to the newly credited NFL.

47 All videotapes, of any work, made prior to the 1976 Act were not protectable under the 1909 act. Thus, although the simultaneous archival fixation of the broadcast would have satisfied the requirements of the 1976 Act such that the unauthorized videotape reproduction of the broadcast would be prohibited now, fixation on videotape did not satisfy the requirements under the 1909 Act.

48 630 F. Supp. 524 (D. Conn. 1985).

49 *Id.* at 530.

50 *Id.* at 532

51 *Id.* at 534