

# Copyright in sporting events

As a result of the article by Mr. Luc SILANCE on the rules of the International Olympic Committee and Law (No. 50-51), the Union Européenne de Radio-diffusion have sent us a very interesting study, which we are publishing below.

If, as its title implies, this article were to confine itself strictly to the copyright, or a right resembling that of an author over his work, which a sports promoter is supposed to exercise over his event or an athlete over his performance in the event, then the subject would rapidly be exhausted, at any rate as far as the countries of Europe are concerned. There is no international convention or domestic law which has granted to the persons whose business is to provide the public with sporting entertainment an absolute right to authorize or prohibit the communication or recording of their events. National legislation finds no precedent in the multilateral conventions protecting literary and artistic works, nor does the Rome Convention for the protection of performers, producers of phonograms and broadcasting organizations offer sports promoters any opportunity to oppose the televising of their events through protection of the sportsmen's performances, because assimilation of sportsmen to performing artists is expressly ruled out by the Rome Convention. Attempts have of course been made in this direction, and will be discussed later, but the member broadcasting organization of the EBU have countered pretensions to an absolute right by asserting their own right to seek and disseminate news of current events and, above all, by practising a contractual policy adapted to the circumstances.

Promoters had offered no resistance to radio coverage of sporting events, even though the event might be covered live and in full and broadcasting staff were admitted to sports venues without any claim for a financial return except the price of entry for the space occupied (and this only for some sports and in particular countries). However, the advent of television cameras at sporting venues created tension from the start. According to promoters, the televising of a football match or an athletics championship threatened, by adding the vision to the sound element, to reduce live attendances at events by recreating the event in full, in the home at no cost to the viewer. The promoters felt that this would have a significant effect on their income from ticket sales. Their fear of suffering material harm was manifested even in countries where television was just beginning and the number of television homes still small. Here, in theory, the televising of the event would prevent only a privileged minority from going to the venue and buying tickets, but the promoters realized that collective reception, through receivers in public places, cafés, restaurants, hotels etc., considerably swelled the television audience when sporting events were screened. Promoters were therefore particularly keen to exercise control over the televising of sporting events in the United Kingdom, one of the first European countries,

chronologically speaking, where television was introduced and rapidly developed.

## The first steps towards legislation

During the preparatory work for the British Copyright Act of 1956, sports promoters formed an Association for the Protection of Copyright in Sports to press their claims with the Committee reviewing the previous legislation. The Association was widely representative of the various sports popular in the UK, and included leading figures from the worlds of cricket, boxing, football, tennis, athletics, greyhoundracing etc. They proposed that the new Act should institute a copyright in spectacles which would enable the owners to control the reproduction of the event. It was suggested that the Act should define "*spectacles*" as including any exhibition, display, sporting contest, entertainment or parade organized by any person, firm or company with a view to its being seen by members of the public, and that a copyright should be granted to the organizer. The Association's aim was, among other things, to collect part

of the profits deriving from the public communication of television programmes in the UK and, for this purpose, to be able to control such communication. Furthermore, the Association made no secret of its intention to limit the quantity of television sports transmissions by the BBC and, for some transmissions, to prohibit country-wide reception and limit it to particular regions. The Association had made it clear, incidentally, that its concerns centred chiefly, if not exclusively, on television.

The attempt of the Association for the Protection of Copyright in Sport came to nothing. As the Report of the Copyright Committee shows, its failure may have been partly due to pragmatic reasons. The author of the Report was against the institution of a copyright vesting in promoters because one of the implications would, he felt, be the creation of a large number of royalty collecting societies, owing to the wide variety of sports with frequently opposing interests, and the many different kinds of spectacle included in the suggested definition. It would have been impossible to withhold from a festival organizer, for example, a right granted to a boxing promoter. The Report preceding the 1956 Copyright Act finally opted for the institution under the Act of protection for the programmes of broadcasting organizations. It is worth quoting the actual terms of the Report, since

they place the problem in its real context: ". . . . *if a right of control is given to broadcasting organizations, a good deal of the requirements of the sports promoters can be indirectly met, since these can make terms with the broadcasting organization with regard to the extent to which the material is subsequently used or publicly performed*". It is indeed in the contractual sphere that a just balance is most likely to be achieved between the interests involved.

## 1961 Rome Convention

The idea that the sportsmen themselves should be equated with performers and have a right to oppose television use of their performances in sporting events was not accepted when the Rome Convention was drawn up in 1961. The definition of performers in Article 3 (a) limits the application of the Convention to performers who are defined as "*actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, or other-*



*Television at the Olympic Games  
in Mexico - 1968*

*wise perform literary or artistic works".* At the diplomatic conference it was specified that the term "*literary and artistic works*" was to have the same meaning as in the Berne and Universal Conventions, with the result that not only variety artists and circus performers, who do not perform literary and artistic works protected by copyright, are excluded from among the beneficiaries of the Rome Convention, but also sportsmen. This can be explained by the fact that the protection conferred on

performers by the Rome Convention has an economic basis. The need was to protect the treaty beneficiaries from any loss of earnings resulting from the fact that in some cases television use of recordings involving performers may reduce their chances of subsequent live engagements. An argument frequently put forward by variety artists is not without foundation in their particular case. If a pop singer plans a tour in a country and the television of that country shows an imported

recording of the singer shortly before his live appearance, this may affect attendances at his concerts. The situation of these performers cannot be compared with that of athletes and sportsmen, since the latter do not perform a work or present a lengthily and carefully rehearsed turn, but offer the public constantly new and changing performances depending on the vicissitudes of sport. But the televising of a football team, unlike that of a variety artist, may incite the television viewer to go and watch the team "live".

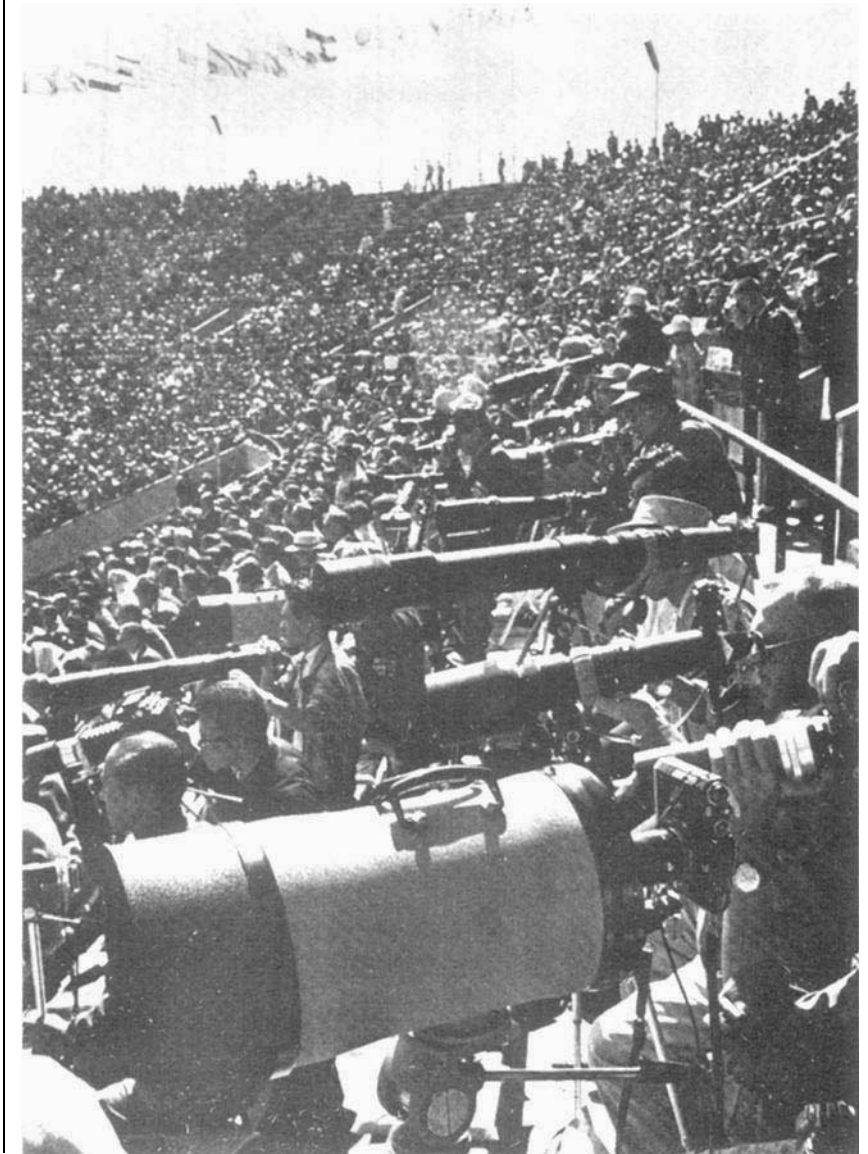
## Italy, for example

In the European countries other than the United Kingdom where the EBU has members, the sports promoters have pressed their claims not through legislation but in the courts, which have been asked to grant them a right in the events they organize. In Italy a particularly rich body of case law has grown up on this subject, as reference to past issues

of the EBU Review will show. Among the more important decisions was one handed down by a Rome court on 15th November 1955 (see EBU Bulletin, 40, page 815). In this case the organizer of the World Road and Track Cycling Championship had granted exclusive film rights for cinema and television distribution by contract to a motion picture producer. Despite this contract other motion picture producers had filmed the events and included the material in film newsreels. The Rome court refused the request of the producer with the exclusive contract for an injunction against the distribution of the films competing with his own coverage. Among other interesting grounds for its refusal, the court held that the parties to the contract had not thereby created an absolute right enforceable against all comers, since this could only be done by legislation. The organizer of the Cycle Championship had no pre-existing exclusive right, since this event was not a work of the mind protected by copyright. The court also observed that the cinema and television were information media which could not be refused access to a social event belonging to the general public, especially as the Cycle Championship had not taken place in an enclosure to which the public had to pay to gain admittance. Although a Milan court also held that a sporting event could not be assimilated to a copyright work

or confer on its organizer an exclusive individual right transferable to a third party (see EBU Review No. 48, page 30), other Italian courts came to different conclusions. Uncertainty persisted during passage through the appeal courts, until on 27th July, 1963 the Supreme Court rendered a judgement laying down a number of basic principles which have since been adopted as an authoritative by the Italian courts (see EBU Review Nos. 87, page 46 and 98, page 60). The Supreme Court held that a sporting event cannot be assimilated to a work of the mind and that the organizer does not enjoy an exclusive right to allow photographic and film reproduction of the event. Accordingly, the organizer cannot prevent third parties from taking pictures outside an enclosure to which access is by ticket. However, in a judgement of 17th July, 1964, concluding the action begun in the Rome court in 1955, the Milan court carried the Supreme Court's analysis still further. It held that if the sporting event is held in enclosed premises the organizer may validly make it a condition of admittance that the spectator undertakes not to make photographic or cinematographic records of the event. In consequence, the organizer can grant to a person the exclusive right to photograph or film an event, if necessary guaranteeing that the spectators will refrain from so doing.

What was the attitude of EBU member organizations in all



*Cameras in action in the stadium*

this? Their concern was to perform their essential task of informing the public and providing it with news reports on sporting events, and furthermore to secure from sports promoters, on reasonable financial terms, permission to televise the whole event live, in order to provide the television audience with a highly popular type of programme.

## The need for law and information

Even if the British Copyright Act and the Italian courts had yielded to the promoters' pressure and sporting events had been assimilated to intellectual creations (i.e. an ice hockey match treated as a copyright work), the exceptions to copyright for the purpose of news reporting would still have been applicable. As early as the Brussels Act of 1948, Article 10 bis of the Berne Convention made it a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography or broadcasting, extracts from literary or artistic works may be reproduced, recorded and communicated to the public. Many national

copyright legislations have availed themselves of Article 10 bis of the Berne Convention to enable broadcasters to perform their functions as information media. Moreover, the complementary and universally recognized principle of free speech entitles the press to seek, gather and disseminate information without discrimination between the print and broadcasting media. For television organizations to report on sporting events, which in the matter of public interest are on a par with social and political events, it was essential that they should have access to sports venues. Coverage had to be of the whole event, to permit the making of an edited version of the highlights for deferred transmission. It should be stressed that the television organizations were not pressing for authorization to televise sporting events live and in full free of charge; in view of their responsibilities as information media, they were merely anxious that sports promoters should place television on an equal footing with the press and radio. EBU members therefore approached the Council of Europe, one of whose specialized working bodies, the Legal Committee on Broadcasting and Television, had endeavoured to overcome the obstacles to television programme exchanges and even to facilitate the broadcasters' operations by drawing up international agreements. Plans for a European Agreement granting television organizations access

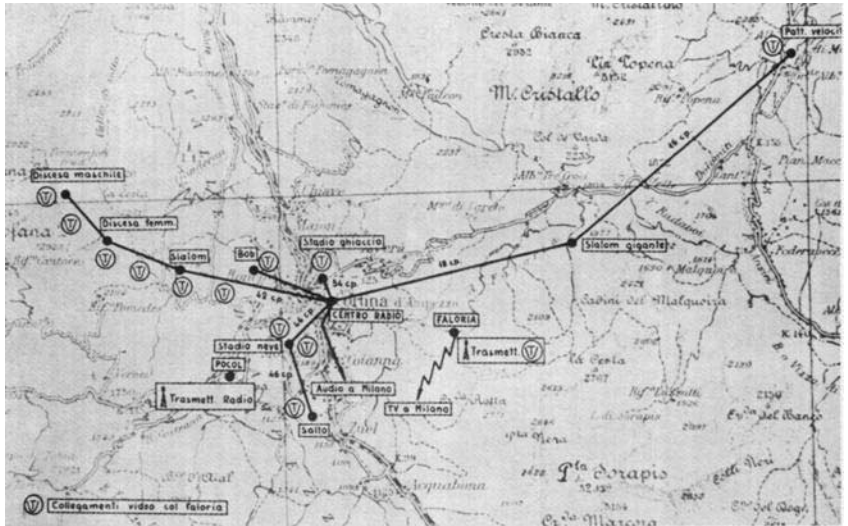
to sporting events were not realized, but the relevant studies and legislative projects in some countries to provide broadcasters with the means to perform their function as information media, despite property rights in sports venues, awakened public opinion to the situation of broadcasters and helped to weaken the resistance of the promoters. EBU members remain vigilant, however, and contracts for television transmission of sporting events include a clause affirming the principle of the right to information for all broadcasters.

## The organisers' rights and access to the events

Before outlining the terms of this clause, it should be mentioned that the EBU Administrative Council has drawn up a model contract for the use of member organizations. They are recommended to follow this model closely when drafting contracts with sports promoters, whenever the event is to be televised across national boundaries or is staged in a country other than that where

the transmission is originated. The model contract is also used in the numerous cases where the EBU negotiates on behalf of its members. The preamble states that the conclusion of an agreement *"shall in no way affect the right of any television organization to show in its regularly scheduled news bulletins up to . . . . minutes (per day, per match) selected from any recorded material of the event made available to it"*. Thus the right of access to the event is asserted as a general principle valid for all broadcasters, whether covered by the contract or not, and the extent of this right is precisely defined. The mention of *"recorded material"* eliminates any suggestion that broadcasters may be able to carry out live transmission of the whole event on the strength of the right to information. The sole purpose of this latter right is to permit deferred transmission of short extracts.

However, for live transmissions of entire events, or of large portions of events, it goes without saying that a payment must be made and a contract signed. The model contract evolved by the EBU to regulate contractual relations between EBU members and sports promoters has undergone successive revisions. It has the merit of all standard contracts, that is to say, it standardizes the conditions for the television broadcast, whatever broadcaster signs the contract, and ensures that dangerous and irrevocable concessions are



*Diagram of the communications of the radio and television stations at the Winter Games of Cortina d'Ampezzo - 1956*

not made in specific cases. It also settles the delicate problem of exclusive television transmission by the broadcasters covered by the contract and situated in a predetermined geographical area. The fact that the organizer of a sporting event is not invested with an absolute right over the event does not mean that he has no rights at all. In organizing and preparing the event the promoter invests capital, engages in the work of organization and takes financial risks. The event which he arranges by his investment and organizing

work is open to economic exploitation on terms which can be laid down by contract. What the television organization in fact purchases from the organizer is the permission to exploit the event in a particular way, i.e. by live or deferred television transmission according to the case. It also purchases ancillary authorizations, in particular to install the staff and technical equipment necessary for television coverage. However, the fact that the promoter does not possess an absolute right over his event is not an unmixed blessing for the contracting broadcaster. For sporting events, especially if televised live and in full, broadcasters pay the promoters not inconsiderable sums of money. The cost of producing the television picture is like-



*Interview in the snow - Innsbruck 1964*

wise heavy. In these circumstances, can the television organizations covered by the contract risk not having an exclusivity which would assure them of a monopoly of television coverage? They do not want their sports transmission to be despoiled by competitive coverage from other television stations, closed circuit television or unlimited public reception. How can the promoter guarantee them the requisite exclusivity? In view of these difficulties, the terms of the model contract for international sports transmissions have been very carefully weighed. The broadcaster which signs the contract obtains for itself and on behalf of the other broadcasters

interested in the transmission the "*exclusive right*" to transmit the event or cause it to be transmitted on television, on closed circuit and by any pay-television system, by wire or over the air, for private and public viewing. The nature and extent of this "*exclusive right*" are defined by the model contract as signifying that the contracting broadcaster alone, to the exclusion of any third party, may transmit the event or cause it to be transmitted in the countries covered by the contract, while the promoter undertakes not to allow third parties to cover the event for transmission in those countries. As a penalty for breach of this obligation by the promoter, his

contracting partner is entitled to terminate the contract, without prejudice to his other legal remedies.

To reinforce the effects of this exclusivity, the organizer guarantees that any contracts he may sign for coverage of the event by motion picture or film newsreel companies will contain a written stipulation that the resultant films or newsreels will not be released to television or a cable distribution system, in the countries covered by the contract, until a specified period has elapsed. Clearly, if the contracts for film coverage did not contain this restriction, television organizations not covered by the contract and cable television spectators could wreck the exclusivity acquired by the contracting broadcasters. The model contract stresses that this restriction does not apply to the reports which all television organizations are entitled to include in their television news bulletins by virtue of the right to information.

The model contract also includes safeguards against any claims which may be lodged by the sportsmen themselves, whatever their nature and foundation. The organizer guarantees his contracting partner against claims which may be brought by the people involved in the event, including the sportsmen.

## Towards a new form of contract

The contractual framework created by the EBU has been widely used for television transmissions of sporting events staged both inside and outside Europe. It serves to regulate relations among EBU members, or between the EBU itself and the organizing bodies for a wide range of sporting disciplines, for sports with only a minority following as well as events like the Winter and Summer Olympic Games and the World Football Championship, which rivet the attention of a worldwide television audience for days and require vast technical facilities for production of the television picture. Up to now this framework has made it possible to satisfy both the legitimate aspirations of sports promoters and the needs of broadcasting organizations. Will it continue to do so, or will further modifications be needed? It certainly seems that particular tendencies which are taking shape in other continents, where sportsmen are attempting to secure, sometimes successfully, an autonomous right over the events in which they participate, may also spread to Europe. If so, the member organizations of the EBU will need to strengthen their safeguards in order to meet this challenge.

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