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New Fantasy Baseball Ruling May Impact Database Practices Generally

Does organized fantasy baseball require a license of Major League Baseball player names and records? In a case involving CDM Fantasy Sports, a federal district court in St. Louis has answered “no”.

The Court’s decision potentially may change business practices not only in the fantasy sports industry, but in other businesses in which information is bought and sold.

“No Challenge” Clause

The unusual element of the decision was the Court’s refusal to enforce a “no challenge” clause. The governing license included the following provisions:

- the MLB Players' Association (CDM’s licensor) owns rights to player names and records;
- during the license term, CDM will not dispute the rights of the Players’ Association to player names and records; and
- after the term, CDM will not continue to use such information.

The rationale of the latter two points, which are components of the “no challenge” provision, is that a licensee such as CDM who contracts to use intellectual property accepts the validity of the property.

Public Domain

In the Court’s analysis, player names and records, without more, are in the public domain, and accordingly, MLB’s interest in enforcing a “no challenge” clause has less weight than the public interest in free use of public information. As the Court explained, licensees may often be the only parties with sufficient economic incentive to challenge licensors’ aggressive claims. The opinion, however, does not address the countervailing public interest in encouraging the collection and publishing of public domain information.

In the database sector, a common licensing strategy involves multiple tiers of product -- lower tiers for information which may be public domain, and higher tiers for information products which include additional elements. The higher tiers “piggyback” on the lower ones.

For example, a private publisher of government filings, which are typically public domain, will often have a number of subscription tiers. The ability of a licensee, which bases its products on low tier information, to ignore post-term restrictions might potentially undermine the publisher's ability to maintain its higher tier programs.

Conclusion

The CDM case may yet be appealed. Whatever the ultimate result in that case, a wise course of action for a database owner may be to ensure, whenever possible, that its licensed products include protectible elements. If MLB's license to CDM had included additional features, such as footage of player highlights, along with player names and records, CDM would have had a more robust product, the consumer would have had a richer experience, and MLB would have had something to withhold post-term.

See *C.B.C. Distribution And Marketing, Inc. v. Major League Baseball Advanced Media, L.P.*, USDC, E.D. Mo., Aug. 8, 2006, No. 4:05CV00252MLM

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