



体育法律资讯

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【欢迎大家关注“体育法”微信公众平台】



2013年5月，上海大成体育法业务组正式创建了“体育法”微信公众账号（微信号：sportslaw），历经三个月的发展，“体育法”微信公众账号已经成长为一个具有广泛影响力的体育法资讯平台，我们致力于体育法律理论研究、体育热点新闻共享、体育合作信息交流三大领域，力图通过微信公共平台的影响力，为大家提供专业、高效的服务。欢迎大家支持并关注“体育法”！

【热点体育动态】

国际体育仲裁院上海听证中心举行首次听证会



8月12日上午，国际体育仲裁院上海听证中心举行首次听证会，听证的案件是韩国FC首尔足球俱乐部对澳大利亚纽卡斯尔喷气机FC

足球俱乐部关于培训补偿金的上诉案件。本案由国际体育仲裁员Efraim Barak先生（以色列）进行独任仲裁。根据国际体育仲裁院仲裁规则，本次听证为不公开听证。

上海听证中心首次听证会的举行，体现了国际体育仲裁院、国际体育仲裁员和案件当事人对上海听证中心的认可，标志着上海听证中心在国际体育仲裁院管理模式创新中迈出了关键性的

一步，取得了实质性的突破。

国际体育仲裁院始建于在纽约和悉尼分别设有分中心。心是国际体育仲裁院在亚洲设

自2012年11月12日正式揭牌探索，不断完善内部运行机制，证中心支持团队进一步壮大，律师今年被国际体育仲裁理事会国际体育仲裁院临时仲裁庭仲裁理事会与上海（中国），阿布来西亚）以及开罗（埃及）建立合作伙伴关系，使用当地的场地设施举行听证会及会议，以促进体育仲裁在这些地区的发展。

上海市体育局巡视员、国际体育仲裁院上海听证中心理事长陈一平表示，将以首次听证会为起点，把握机遇，扩大影响，进一步发挥听证中心的作用。今后，国际体育仲裁院上海听证中心会将着力点放在以下几个方面：



1984年，总部在瑞士洛桑，国际体育仲裁院上海听证中立的首个听证中心。

牌以来，上海听证中心积极大力加强对外联络宣传，听上海的国际体育仲裁员吴炜会正式任命为索契冬奥会国员。2012年，国际体育仲裁扎比（阿联酋），吉隆坡（马

一是继续加强与国际体育仲裁院的联系，争取今后有更多的案件安排在上海听证中心；

二是筹备组建上海听证中心专家委员会，成员包括国际国内体育行政机构的官员及运动管理方面的专家、国际体育仲裁员、国际国内体育法专家、国际国内从事体育法实务工作的律师、反兴奋剂中心专家、体育医学专家等；

三是筹备举办国际体育仲裁培训班，使上海听证中心成为体育仲裁人才培养交流的重要基地；

四是适时承办CAS国际体育法研讨会，这是CAS每年举办的世界最高水准的体育法研讨会，以扩大上海听证中心的知名度和影响力。



国少领队暗示东帝汶年龄造假:我们做到问心无愧

继8月13日4比1大胜卡塔尔队后,中国U14国少队在亚青会男足小组赛A组第二轮比赛中0比1不敌东帝汶队。

国少队上半场非常被动,在第八击机会,5号球员萨尔门补射空门将赛基本被东帝汶队接管。最终,中国1胜1负与对手同积3分,小组出线形组赛最后一个对手泰国队。

国足1:5负泰国青年队的噩梦还分输给了缅甸,而今眼目下,国少队队地输给人们普遍意识中的鱼腩球解,被爆冷的背后是东帝汶队疑似以

第二届亚青会正在南京进行,在中国U14国少0:1不敌东帝汶,爆出了开赛以来的最大冷门。但是在国少副领队阳智看来,这场失利完全不能和国足1:5惨败泰国相提并论,因为身体素质上的差距,国少输掉这场比赛在教练组的意料之中。

8月13日进行的第一轮,国少以4:1大胜卡塔尔,而昨晚他们却以0:1败给了首场2:3不敌泰国的东帝汶,这让不知实情的国人大为吃惊。为此,记者昨晚联系了国少副领队阳智。

这场球,阳智觉得算不上是冷门。“今天这场比赛,不仅比分输了,场面上也处于劣势,对方利用身体优势占据了主动,拼抢和

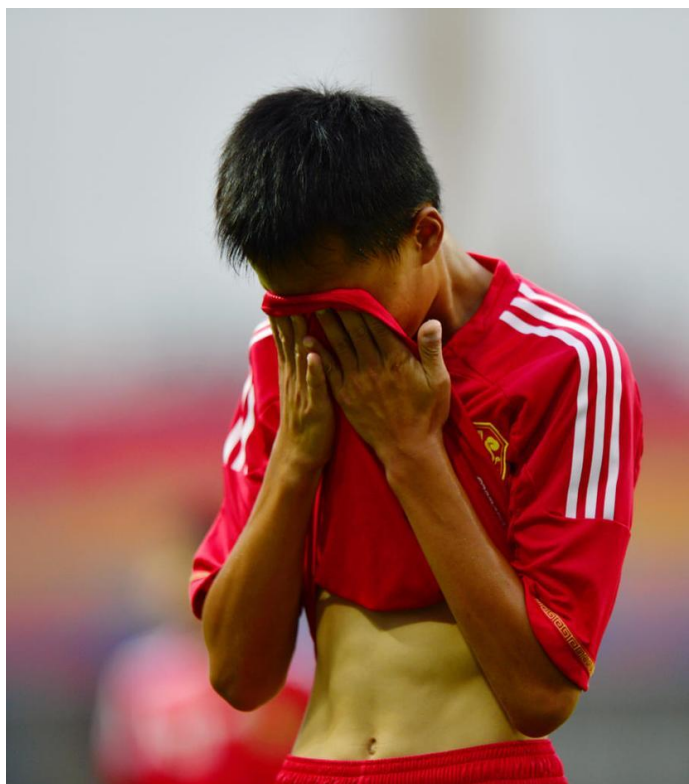


分钟便丢了球。当时东帝汶队获得反球打进。比赛进行到60分钟之后,比队0比1爆冷负于东帝汶队,两轮过后势急转直下。星期六,国少将迎来小

未从人们记忆中散去,国青又较大比又倒在了东帝汶脚下,成批次成梯队,引得网友惊诧莫名!但据记者了大打小。

昨晚结束的男子足球小组赛第二轮中,

脚下都比我们强。”他说，“这是我们第一次和东帝汶交手，开赛当天在餐厅看见他们的队员时，我们就知道这次的比赛很难打。泰国和东帝汶的球员平均比我们和卡塔尔高出半个脑袋，也要强壮得多。”



最近几年中国足协对骨龄查得很严，但这次亚青会并没有统一的骨龄检测，大家心知肚明。另一方面，球队的磨合程度也很重要。阳智介绍说：“通过第一场的观察，东帝汶这支球队应该组队至少有两年了。他们足球人口有限，这个年龄段就这么些队员，所以可以长时间集训。而我们的队员来自多家俱乐部和地方足协，从6月份才开始集训，也就是说这批队员只在一起练了两个月。”

按照“惯例”，青少年比赛往往有些队喜欢在年龄上做手脚，他们为了追求成绩通常以大打小。阳智虽然没有明确指出东帝汶和泰国有改年龄，但记者看了比赛照片后，发现双方球员的确存在比较明显的身体差距。阳智表示：“最近几年中国足协对骨龄查得很严，对弄虚作假的行为绝不姑息。但这次亚青会并没有统一的骨龄检测，大家心知肚明，我们做到问心无愧就行了。这是对娃娃们负责，也是对中国足球的未来负责。输一场比赛，不能说明什么。球队确实存在一些不足，但是希望球迷们不要打击和辱骂这帮孩子。”

在输给东帝汶后，国少的出线前景并不乐观，8月17日的最后一场小组赛，必须战胜同样“身高马大”的泰国才有机会晋级。对此，阳智再次呼吁球迷们理智看待。“今天打完比赛，好几个娃娃都哭了。压力肯定是有的，我们也可能无法小组出线。但通过这两场比赛，教练组还是比较满意的，孩子们都很能拼，至少在作风上没有丝毫的问题。希望球迷和舆论能够给孩子们一些正能量，真正帮助他们在逆境中成长。”

【经典体育法律案例】

德国马术运动员甘德尔案

案例名称: Arbitration CAS 91/53, G. v. FEI

仲裁机构: 国际体育仲裁院

涉诉法院: 瑞士联邦法院

【涉及的主要法律问题】

1. 国际马联的规则规定的是一种法律推定制度。通常由服用兴奋剂者承担的举证责任倒置,即服用兴奋剂者要承担举证责任。有关的检验结果证明存在禁用物质就足够了。处罚的严重程度决定于服用兴奋剂者的过错程度。

2. 考虑到对服用兴奋剂者处罚程度的严重性,毫无疑问,根据一般法律原则,服用兴奋剂者有权提供能够减轻或者消除自己责任的反证。服用兴奋剂



者也可以提供能够证明检验程序是无效的证据。在后一种情况下，如果有关的过错被证明或者有可能使得检验结果出现问题，那么将会转移对服用兴奋剂者的过错推定。



【基本案情】

甘德尔于1991年6月19日参加了一次马术比赛，其中对他的赛马进行了兴奋剂检验。7月18日的检验结果表明其赛马的尿样中含有禁用物质，而8月20日对B样的检验表明也含有同样的禁用物质。1991年12月5日，国际马联法律委员会宣布取消甘德尔和其赛马参加国际马联举办的所有比赛的参赛资格并收回其所获得的奖金。随后，国际马联决定对甘德尔禁赛三个月。1992年2月1日，甘德尔将国际马联法律委员会的裁决上诉到了国际体育仲裁院。

【仲裁裁决】

国际体育仲裁院在1993年3月15日就该争议作出了判决。仲裁庭裁定国际体育仲裁院是一个中立和独立的真正仲裁组织，其裁决是国际性的仲裁裁决。因此，根据瑞士法，其裁决具有和法院判决同等的效力，可以承认和执行。

仲裁庭部分接受了甘德尔的观点。仲裁庭认为，尽管有关的马匹尿样中含有禁用物质是勿容置疑的，这并不必然是甘德尔为了在比赛中获得非法利益而故意为之的结果。

然而，国际体育仲裁院认为负有疏忽责任的当事人并没有采取足够的预防措施以阻止其马匹在比赛前的数周以及比赛期间服用禁用物质，因此仲裁小组维持对甘德尔及其马匹不合参赛资格的裁决，但对禁止参加国际马术比赛的三个月的处罚减少为一个月，外加1000瑞士法郎的罚金以及承担诉讼程序的费用。

甘德尔随后将国际体育仲裁院的裁决上诉到了瑞士联邦法院。其上诉根据是因为国际体育仲裁院是由国际奥委会资助的，因此它不是一个独立的裁决机构。

【定案】

由于对该裁决不满意，甘德尔随后试图根据瑞士法来推翻国际体育仲裁院的裁决，便就国际体育仲裁院裁决向瑞士联邦的最高司法机构瑞士联邦法院提起了公法上的上诉。上诉人试图质疑国际体育仲裁院存在的合法性以及管辖权的特性，对国际体育仲裁院独立于国际马术联合会表示怀疑，同时对仲裁程序提出批评。瑞士法院认为国际体育仲裁院不是国际马术联合会的机构，它不接受该联合会的任何指示，并且在国际体育仲裁院的60名成员中选出三名仲裁员方面具有其足够的自治性。另外，国际体育仲裁院章程第7条规定了15名仲裁员在国际奥委会、国际单项体育联合会、国家奥委会以及它们之间组成的协会之外选出，因此它给予了当事人有可能在不属于国际马术联合会和其机构的15名仲裁员之中选择一名仲裁员。在具体的争议中涉及回避理由的国际体育仲裁院章程第16条又进一步保障了仲裁员的独立性。在这些情况下，国际体育仲裁院规定的独立保障视其为有效排除一般司法救济的条件。

联邦法官在判决中明确承认国际体育仲裁院是一个真正的仲裁组织，其裁决完全是国际水准的仲裁裁决。因此国际体育仲裁院是国家法院的可替代机构，当然同时它也承认了某些不可剥夺的基本权利，故这个中立的和独立的组织能够作出和国家法院判决具有同等效力的有约束力和强制执行力的仲裁裁决。因此通过将争议提交国际体育仲裁院仲裁，体育组织、运动员和其合伙人可以避免将他们之间可能产生的任何争议提交一般的国内法院作出裁决。



然而，瑞士联邦法院的裁决也注意到了国际体育仲裁院与国际奥委会之间存在的诸多联系：国际体育仲裁院几乎由国际奥委会独家提供财政资助；国际奥委会有权力修改国际体育仲裁院规则；国际奥委会和其主席有权力任命国际体育仲裁院成员。联邦法院的观点是，此类联系在国际奥委会为仲裁案件的一方当事人的情况下足以使人对国际体育仲裁院的独立性产生怀疑。瑞士联邦法院的意思是很清楚的，即国际体育仲裁院应当在组织和财政上更加独立于国际奥委会。

瑞士联邦法院第一民庭于1993年6月18日作出的最终裁决驳回了针对国际马术联合会和国际体育仲裁院的上诉，同时裁定甘德尔应付9000瑞士法郎的诉讼费。



【评析】

瑞士联邦法院所作的上述裁决承认了位于洛桑的国际体育仲裁院是一个独立的并且能够对产生于体育运动的实践或发展中的体育争议具有管辖权的仲裁组织，该裁决同时导致了国际体育仲裁院的重大改革，主要的变化是设立国际体育仲裁理事会以取代国际奥委会来监督国际体育仲裁院的运营和财政状况。

国际体育仲裁理事会将由20名高水平的法学家组成，它一年举行一次或两次会议。其20个成员中的16个将会来自“奥林匹克家族”内的高水平法学家，也即，他们将会由国际奥委会、国际单项体育联合会、国家奥委会以及运动员来担任。作为独立性的预先保障，其他4个成员将从“奥林匹克家族”外选任。独立性的

主要保证是20个法学专家不亲自裁决案件，只是对提名审理案件的专家小组负监督责任。理事会以此类方式组成的目的是保证国际体育机构代表的充分平衡。除此之外，国际体育仲裁理事会列出了一个可作为国际体育仲裁院仲裁员的150人的名单。它可以修改体育仲裁规则，监督国际体育仲裁院的财政状况并且任命国际体育仲裁院的秘书长。

设立国际体育仲裁理事会，这是为了更好地保护提请国际体育仲裁院进行仲裁的当事人的利益，是将保证国际体育仲裁院完全自治的责任转移给一个更高级的国际奥委会。目前国际体育仲裁的目的是为了避免国际体育仲裁涉足国际体育仲裁院的活动，同保证它的完全独立。为了国际体育行政管理和财政方面的作用，包括修改体育仲裁规则、保持和发展仲裁员提出质疑以及在必要时取消仲裁员资金、任命以及应主席的建议取消秘书裁院的日常工作。这对于增加国际体育因为它消除了国际奥委会对其施行的

团体而使国际体育仲裁院完全独立于院对国际体育仲裁理事会负责，该制度



国际体育仲裁理事会的创立使得国际体育仲裁院完全独立于国际奥委会，并且它给了运动员以公平的机会使其能够在其与体育组织的争议中寻求救济。国际体育仲裁理事会以及国际体育仲裁院所创立的仲裁体制构成一个独特的体系，它是一个很不错的、高效的、完全独立的、一直在不断发展并且适应现代体育运动需要的体制。

【国外体育经纪人及体育经纪活动的立法管理研究】

【摘要】体育经纪人和体育经纪活动是市场经济条件下运作体育的必然产物。从管理学的视角出发,对发达国家体育经纪人及体育经纪活动的管理机构、管理体制进行分析研究,旨为我国体育经纪人和体育经纪活动管理的规范化和法制化提供借鉴。

【关键词】体育经纪人 体育经纪活动 立法管理 国外

随着职业体育的发展,体育商业化和产业化的步伐大大加快。在发达国家,体育产业的国民经济统计地位日渐上升,有的已成为其国民经济的主导产业。其中体育经纪人作为体育市场发展的行为主体之一,对促进体育经纪活动、发展体育经纪市场起着不可或缺的作用,考察发达国家体育经纪业的快速发展,需要特别关注体育经纪人及经纪活动的立法管理,这对保证体育经纪人的法律地位,促进体育经纪活动的正常开展和良性发展,提供了体制和机制的保障。在我国,体育经纪人已开始逐步介入职业运动员的转会、商业性运动的参赛操作等经纪活动。但在体制上还缺乏管理立法,在机制上还缺乏操作原则,由此



引起的法律问题和经济纠纷还缺少对策,在若干事件上还引发了一定的负面影响。本文从立法管理学视角出发,对发达国家体育经纪人及经纪活动的管理机构、管理体制进行分析研究,旨为我国体育经纪人与经纪活动管理的规范化和经纪业的健康发展提供有益的借鉴。

1 国外体育经纪管理机构

发达国家由于体育文化、体育体制和职业体育运作方式的差异,使得体育经纪人和经纪活动的管理体制各有差异。但体育经纪人及经纪活动的管理机构主要是国际体育组织和国家政府机构,两者发挥着交叉管理的职能。

1.1 国际体育组织的管理机构 国际体育组织对体育经纪人和经纪活动的管理机构主要是:国际单项体育组织和体育经纪人行业协会。



1.1.1 国际单项体育组织 在国际体坛,足球、篮球、田径、网球、拳击、高尔夫球等项目的体育经纪人和经纪活动都由相应的经纪人联合体进行管理。其中,足球项目在欧洲的职业化程度较高,足球经纪人数量也较大。目前,经国际足联批准的有资格从事跨国运动员经纪活动的个体经纪人已达200多人,分布在44个国家和地区。为了加强管理,国际足联在1991年就制定了专门的“足球经纪人管理条例”,详细规定了许可证的授予、资格考试、相关权利和义务等。国际足联还设

立了专门的运动员身份委员会负责监督这些条例的实施。

1.1.2 体育经纪人行业协会 体育经纪人联合会是一种较为松散的、类似于我国行业商会性质的自律组织,是由一些有共同职业、共同利益的经纪人组成的联合组织,有一定的自发性。这些组织的基本职能是保护经纪人的合法利益,遵守经纪人的职业道德等。目前最有影响的经纪人联合会是国际田径经纪人联合会和国际网球经纪人联合会。国际田径经纪人联合会有60多名会员,他们各自代理着不同数量和等级的世界著名运动员的多项事务。联合会主要行使着以下方面的管理职能:负责确定经纪人的佣金标准,制定经纪人的行业规范,处罚违规经纪人和经纪行为。该组织每年还要评选年度世界最佳田径经纪人,意在规范经纪人的行为,维护经纪人的声誉。



1.2 各国政府机构 体育经纪人和经纪活动更多的管理是由国家政府和体育组织进行的。其中政府主要通过法律法规和市场规则,对体育经纪事务活动进行宏观管理,发挥指导、监督和调控作用,而体育组织则对体育经纪人进行行业管理。

1.2.1 政府对体育经纪人的管理 国家政府组织或单项体育协会对从事本行业(项目)经纪活动的经纪人,通常实施直接或间接两类管理。如美国的各项目运动员工会为保护职业运动员的利益不受损害,相继推出了体育经纪人管理条例。英国足球协会竞赛委员会负责英格兰足球经纪人的经纪活动,1998年度在该委员会注册并且有资格从事英格兰各俱乐部之间球员转会的足球经纪人为26人。意大利足协负责足球经纪人的管理,成立了专门的经纪人事务委员会,制定了专门的经纪人管理条例。还有一些国家则通过自律性的不同项

目经纪人协会与该国的单项体育组织密切合作,参与经纪人的资格认定、资格考试、争议仲裁等,在经纪人的管理中起着十分重要的作用。



1.2.2 政府对体育经纪活动的管理 体育经纪活动主要有:体育比赛;代理运动员收支理财、社会活动、形象开发、广告制作和纠纷调解等事务。因代理运动员的工作合同涉及劳资关系问题,政府非常重视这方面的法规建设,政府甚至作为调停者和仲裁者直接进行干预。在美国,政府通过依靠市场机制和法律手段对体育经纪活动进行管理。目前已有24个州制定了体育经纪管理的专门条例,并指定了相应的注册管理机构,各州设置的管理机构主要有四类:劳工会、行业管理部门、州政府专门秘书处和立法委员会法律办公室。欧洲有些国家如法国的体育法中有专门关于体育经纪活动的规定。劳工法和反垄断法对体育经纪活动均产生影响,法院依据公共立法处理经纪活动纠纷。

2 国外体育经纪的管理制度

2.1 资格审定制度 经纪人的从业资格,根据申请人的自然条件和相应的专业知识与能力。凡该国公民,无犯罪和违反体育法规记录,具备一定的文化程度和经济实力,都可申请从事体育经纪人职业。部分项目的申请人必须通过特定的经纪人行业考试,内容主要是申请人对该项目及其管理规定的熟悉程度、对法律的掌握和运用、是否具备提供咨询服务的能力等三个方面。申请人通过考试后,还必

须经过专门的机构进行资格审定。如国际田径经纪人的资格审定由国际田径经纪人联合会进行。



2.2 注册登记制度 申请人经资格审定后,须到相应的体育组织或经纪人联合会注册,同时交纳注册费。部分项目实行年度注册制,经纪人须年审,并交纳年度注册费。美国州立法规定,体育经纪人必须到州政府指定的经纪人管理机构注册,填写申请表,并交注册费。为保护自身及其成员的利益,体育组织规定经纪人只有取得经营许可证,才能操作体育经纪活动。

2.3 保证金制度 在注册的同时,申请人必须到指定银行存入一定数额的保证金,以押金的形式储存,作为违约的赔偿,以此来约束其履行义务和规范经营。经纪人如违反规定,管理机构将扣除全部或者部分保证金作为罚款,经纪人应立即去补足金额,否则取消经纪资格。保证金制度是利用经济手段,约束和规范经纪行为的重要管理措施。

2.4 合同管理制度 经纪人在实施代理前必须与委托人签订合同,以受到法律的保护。委托合同书一般包括双方基本情况、服务范围、经纪期限、佣金支付、合同终止、争议解决等条款。为加大管理力度,还采取一些特殊措施,如美国篮球运动员工会要求经纪人使用统一制作的规范的“经纪人/运动员”委托合同范本。

2.5 佣金制度 经纪人在完成经纪活动后得到的报酬,即为佣金,不同的事务与不同的运动项目,其佣金标准不同。佣金比例必须

在合同中写明,运动员在合同生效后一定期限内支付佣金,如擅自取消委托代理,必须赔偿损失。经纪代理运动员与俱乐部或职业体育组织的劳资谈判的收入问题,则佣金的提取比例较低;当经纪代理涉及运动员形象的商业开发、广告等合同,则佣金比例较高。在实际操作中,运动员与经纪人经过协商,通常确定基本佣金和激励佣金两个标准。

2.6 仲裁制度 经纪人在代理的过程中出现争议和纠纷时,都提请相关的机构进行调解和仲裁。欧洲已有法国、西班牙、希腊、挪威和土耳其等五个国家颁布了解决体育争议的专门法规。其中针对运动员与经纪人之间的争议,运动员工会、体育组织仲裁小组或体育法庭都可以成为仲裁者。争议需提请仲裁时,起诉人以书面方式向仲裁机构陈述事实及起因,并出示证据,同时须交纳仲裁费。仲裁机构在裁决前,会寻找调解办法,如果成功,按调解办法执行,如果不被接受,双方必须拿出证词、证据,仲裁机构进行裁决。在职业联赛体系相对完善的英格兰和意大利,体育经纪纠纷则根据公共立法提请法院按司法程序进行处理。

2.7 违法、违规处罚制度 对经纪人的违法、违规行为,轻者进行通报批评、经济制裁,重者取消资格、责令停业、吊销执照、甚至给予刑事处罚。在美国,罚金从1 000~10 000美元不等;若以民事论处,罚款高达10万美元;如牢狱,期限为90天至2年。



2.8 培训制度 体育组织和经纪人联合会在经纪资格考试前,都组织申请人进行培训,内容包括法律法规、市场营销、经济合同、公共关系和行业规范等方面,使申请人具备从事经纪活动所需要的知识或技能。在欧洲,有些大学还设立了专门培养体育经纪人的专业式学科,如法国的贝尔纳大学,荷兰的欧洲体育管理学院等。

3 结论与建议

3.1 结论 基于对发达国家体育经纪人及经纪活动的管理机构和管理体制的分析研究,结论如下:



3.1.1 管理体制的法制化 国际体育组织依托法律程序,建立法规体系相对完善的管理条例,依靠法律手段对体育经纪人和经纪活动进行管理、监督。各国管理机构根据国际体育组织的法律条款、国家的有关法律、法规制定和行业管理的规章制度,对体育经纪业进行宏观的调控与管理,并规定出现纠纷、违纪、违法,根据公共立法,提请法院按司法程序进行处理,这表明在管理过程中已经完全司法化,做到了有法可依,有章可循,违法必究。

3.1.2 管理机构多元化 发达国家对体育经纪人和经纪活动的管理由国际体育组织和国家政府机构共同执行(其中国际体育组织分为国际单项体育组织和体育经纪人行业协会),两者交叉发挥管理职能,互补不足,进行积极、有效、全面的管理和监督,使管理更具条理性,避免了管理盲区的出现,同时各个管理机构对经纪人的行为进行引导,促成体育经纪活动的繁荣和有序发展。

3.1.3 管理体制的规范化 发达国家经过长期发展与积累,逐步形成了一整套促进和规范体育经纪行业发展的基本制度。该体制内容健全,严格规定了申请体育经纪人的具体步骤,即申请人提出申请→资格审定→注册登记→交纳保证金→专业培训→通过考核→领取证书。同时通过合同管理、佣金、违规处罚、仲裁等制度对经济活动中的具体程序、报酬获得、违法违规处罚、经纪纠纷的调解和仲裁都做出了明确的规定,保障了体育经纪人的合法权利和义务,保证了体育经纪人的高素质发展及经纪活动的正常运行。

3.2 建议

3.2.1 建立和完善法规体系 法律是由国家制定或认可,受到国家强制力保证执行的规范性文件,对保障正常有序的社会秩序和维护公民、组织的合法权益发挥着非常重要的作用。体育市场经济应该是法治经济,我国体育经纪业发展缓慢的主要原因在于没有制定专门的经纪人管理法规。因此,国家应以1995年10月由国家工商行政管理局发布《经纪人管理办法》和国家即将出台的《中华人民共和国经纪人法》及经纪管理和市场规范方面的一系列基本法规为依据,结合体育行业的特点,制定《体育经纪人管理条例》,明确操作原则和操作规程。体育经纪人法规体系应包括以下几个方面:1)体育经纪人的资格条件审定、登记注册程序、批准机构;2)体育经纪人运作经纪活动的权限范围和禁止行为;3)体育经纪合同的规范管理和合同范本;4)体育经纪人的佣金管理及保证金制度;5)体育经纪人的法律责任、监督管理和纠纷的解决;6)体育经纪人社团组织(体育经纪人协会等)的管理规定;7)体育经纪人培训及考核制度。





3.2.2 建立和完善管理机构 根据体育行业的经纪人和经纪活动特性,体育经纪管理主要由国家体育行政管理部门(国家体育总局)和国家工商行政管理部门(国家工商总局)共同实行。国家体育总局负责体育经纪人管理、政策、法规的制定和实施,国家工商局负责体育经纪人和经纪公司的营业执照获取、登记管理、行纪检查等。另外,国家税务局、审计局对经纪活动进行监督管理,国家司法机关对经纪纠纷进行仲裁,在条件适当时,成立体育经纪人协会进行协助管理,建立自我监督、自我管理、共同发展的良性机制,最终形成职责分明、相互联系的管理体系。

3.2.3 规范培训及考核制度 国家体育总局和地方体育局如工商局可授权相关事业单位或社团组织(如高等体育院校、体育经纪人协会等)培训体育经纪人,课程内容涉及体育学、经济学、公共关系学、市场营销学、体育经纪理论与实践等学科和领域。培训可采用短期和长期等多形式,培训结束后统一考试,合格者发给国家认定的体育经纪人资格证书,凭证到工商局申请营业执照。

3.2.4 加强与国际体育组织合作 随着体育社会化和市场化的发展进程,体育经纪人的业务范围早已涉及到其他国家和地区。目前,我国体育经纪人为数不多,拥有国际体育经纪人资格证的更是凤毛麟角,从而阻碍了我国体育经纪事业做大做强。因此,加强与国际体育经纪组织和个人的合作,尽快使国内的管理体制、管理模式与国际接轨,有利于推动我国体育经纪业的国际化发展。

【体育法律业务组介绍】

○ 体育法服务范围

- 1、为各类体育俱乐部的组成和结构提供法律咨询服务；
- 2、起草赞助协议、商品化协议和许可协议；
- 3、就传统和新兴的传播、数字和数据的商业化利用提供法律咨询服务；
- 4、就赛事和体育活动的组织和管理提供法律咨询服务；
- 5、就体育品牌特别是有关体育用品和服饰的品牌的知识产权保护提供法律服务；
- 6、就运动员的签约、入会和转会提供法律意见；
- 7、就体育场馆的建设、融资、开发和相关事项提供法律咨询服务；
- 8、代表职业运动员、教练员、体育俱乐部、体育经纪人、体育行业主管部门、体育用品和服装制造商参加相关的争议纠纷的解决；
- 9、代表体育用品和服装制作商处理产品责任纠纷和知识产权纠纷；
- 10、为体育运动队和体育活动的主办方、承办方和赞助商协商和起草各类相关合同。



○ 服务方式

- 1、担任专项法律顾问：就各项业务提供全过程、全面、深入的专项服务，办理相关具体事务。
- 2、担任常年法律顾问：就各项业务提供日常法律咨询，处理日常法律事务。

非常感谢您的阅读，

本资讯由上海大成体育法业务组编辑，仅供参考。

如有任何问题，请通过电邮 zhang.bing@dachenglaw.com 联系我们。

内部文件，仅供交流





Sports Law Periodical

4th, 2013 Editor: Zhang Bing

Preview

★ Hotspot in Sports News

☆ Football & the Law review

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Financial Fair Play and the ability of European football clubs to raise finance - Part 1

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Hotspot in Sports News,

FOOTBALL & THE LAW REVIEW

Football supporters are being warned that abuse of players or fellow fans on online social media is being targeted this season by police and prosecutors.

New guidelines for tackling hooligans in England and Wales also address homophobic chanting for the first time.

Match-related incidents have been falling but there will continue to be a "robust prosecution policy".

Police say troublemakers given banning orders will find they are unable to attend the 2014 Brazil World Cup.

The **orders** prevent supporters from travelling to matches for a



minimum of three years and any imposed this season would also affect supporters hoping to attend Euro 2016 in France, the Crown Prosecution Service (CPS) and Association of Chief Police Officers added in a statement setting out the policy guidance.

The joint policy outlines the way violence, disorder, criminal damage and abuse in and around football matches will be approached.

Other "emerging challenges" for police and prosecutors highlighted include the assault of players by fans and the use of flares or fireworks within grounds.



Nick Hawkins, lead sports prosecutor at the CPS, said most football fans were well behaved and there had been a rise in the numbers of families at matches because of "friendlier atmospheres".

'Culture change'
Continue reading the main story
Analysis

Richard Conway
BBC Radio 5 live sports news
correspondent

It may be the start of a new football season but there's a determination to

prevent the return of old problems.

These guidelines set out potential action for a range of offences such as invading the pitch, the use of fireworks and flares, or discriminatory chanting.

In an age of social media there's a reminder of the consequences for those who abuse others online.

However it's the focus on homophobia - the last taboo within football - that is significant.

Terrace culture has undoubtedly changed over the years but many fans want the often passionate and occasionally bawdy atmosphere within grounds to be maintained.



But the message from the authorities is clear: there is a line and they'll take action if they feel it has been crossed.

Earlier this year, the **CPS unveiled guidance** specifying when communications on social media such as Twitter or Facebook that included threats of violence or damage to property, targeted individuals, or appeared to breach a court order should be prosecuted.

The CPS said there was a "place for humour in football but where the line between humour and offensive behaviour is crossed then positive action will be taken".

Mr Hawkins said: "It's not just criminality in the stands that will be taken on. Our legal guidance on

communications sent by social media clearly sets out how we will approach the abuse of players or fellow supporters online."

He said the "worst examples" of "vile abuse or threatening tweets" would be prosecuted.

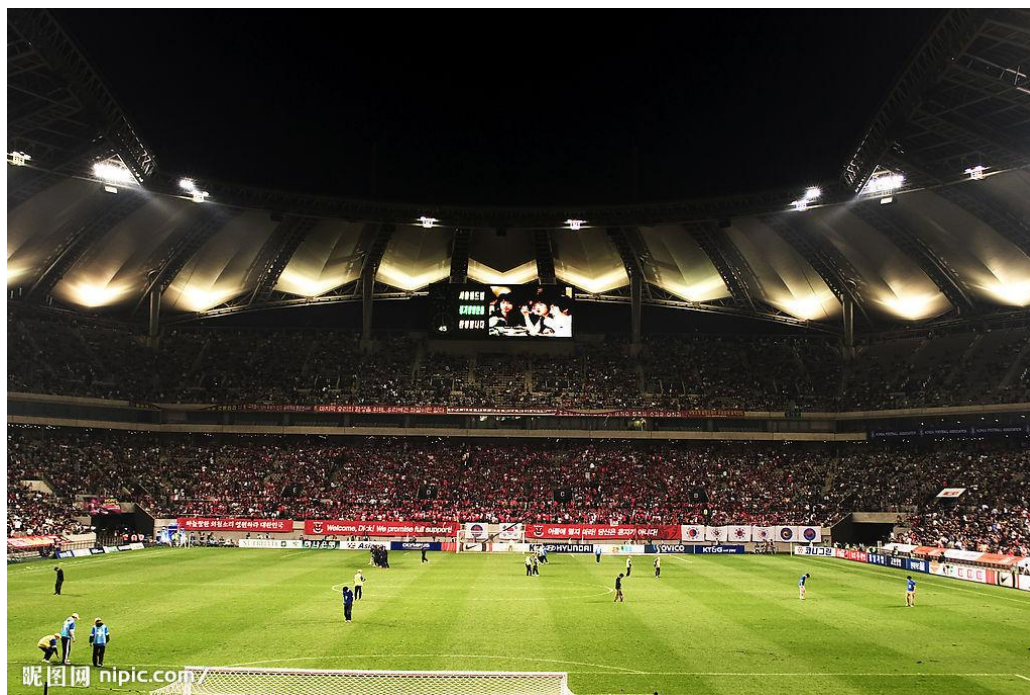
Prosecutions following online racist abuse of Fabrice Muamba, who suffered a cardiac arrest on the pitch last year, and Northampton Town players Adebayo Akinfenwa and Clarke Carlisle showed the CPS took such incidents "seriously", he said.

"Decent, law-abiding football fans deserve to be reassured that the criminal justice system is better equipped than ever before to protect their right to follow their teams in safety, while players, referees and supporters should know that harassment and abuse against them will not be tolerated," he added.

"In years gone by, racist and homophobic chanting in the stands was an ugly feature of football matches across the country, but I believe we are beginning to see a shift in culture... but hate crime legislation has a large part to play in this ongoing culture change."



Nick Hawkins, CPS: "Vile chanting has no place in any walk of society"



Mr Hawkins said research showed Brighton and Hove Albion fans were subjected to homophobic abuse at more than 70% of away games last season, showing such incidents were still happening "frighteningly" often.

Liz Costa, vice-chairwoman of Brighton and Hove Albion Supporters' Club, said she was "thrilled to bits" that homophobic abuse - aimed at Brighton fans because she said the city was viewed by some as a "gay capital" - was "at last" being treated with the same seriousness as racism.

Alice Ashworth, from gay rights charity Stonewall, said its research showed homophobic abuse "continues to be all too common in football

and deters gay fans, as well as many families, from attending matches".

Darren Bailey, director of governance and regulation for the Football Association, said: "The FA welcomes the CPS' policy and wholeheartedly supports its ambitions in continuing to make football a safe environment for everyone."

The latest available figures on offences at football matches are for 2011-12 and show the number of arrests at international and domestic games fell by nearly 24%, to 2,363. There were 2,750 banning orders in existence, down from 3,173.



SPORT, GAMBLING AND SPONSORSHIP

CONFERENCE

Short-term loan firm Wonga.com has become the principal sponsor of Newcastle United Women's Football Club (NUWFC) for the 2013/14 season.

Wonga, which agreed [a four-year deal in October](#) to sponsor Newcastle's men's team, will supply new home and away kits for NUWFC's first and reserve teams for the duration of the FA Women's Premier League season. It marks the first time a firm has sponsored both the men's and women's teams.

The deal was struck by former NUWFC chairman Phil Eadon, who recently stood down from the post after four years for medical reasons.

[New deal for Newcastle after impressive season](#)
[Newcastle United sign Thomas Cook](#)



Eadon said: “It is with great pride that we have been able to conclude this agreement with Wonga whilst within my chairmanship of NUWFC. I would like to personally thank Wonga for having the vision and interest to support the NUWFC women’s football team.

“Women’s football is getting bigger every year. As more media coverage is achieved, more companies are taking interest and helping to support the development and growth of girls and women’s football.”

Darryl Bowman, the head of marketing at Wonga, added: “As a proud partner of the men’s team, it made perfect sense for us to extend our support to the Newcastle United women’s team. We’re delighted to support the development of the women’s game in the North East, and we’ll be keenly following the team’s progress throughout the new season.”



【INTERNATIONAL SPORTSLAW PRACTICE】

. The NCAA Has Never Been Regulated by Congress, So Will Congress Finally Man-Up with Proposed New Legislation?

Going back just two decades, since separate formal hearings on the less than eight reports regarding the Congress has enacted no legislation to

On September 19, 2011, in my [Sports Business Journal](#) op-ed, I proposed that Congress should adopt the following Fairness Act, which would essentially solve most if not all of the current problems with college sports by inserting the free market into the system. CAEFA would require that:

1. The athletic conferences, the shall no longer be deemed IRS



1991, Congress has held over a dozen NCAA, and Congress has produced no NCAA during that timeframe, yet regulate the NCAA.*

[Business Journal](#) op-ed, I proposed that Collegiate Athlete and Employee solve most if not all of the current inserting the free market into the NCAA, and any related associations, 501(c)(3) charitable entities and shall

hereafter be deemed 501(c)(6) trade association entities;

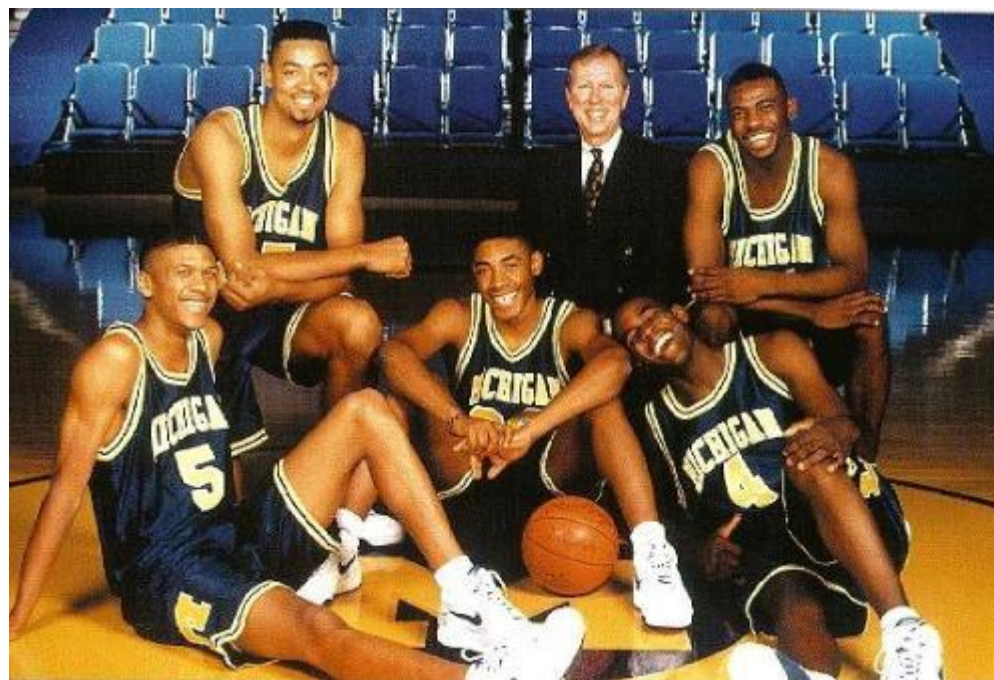
2. Any college or university with an athletic department that derives revenue from its athletic program shall operate from within that institution and not from within any separate entity, and the athletic department's finances shall be audited according to generally accepted accounting principles and publicly and separately reported with its annual IRS Form 990;

3. Any college or university with an athletic department that derives revenue from its athletic program shall provide disability, health, and life insurance to its college athletes and athletic department employees;

4. Any college or university's net profit from its athletic department shall be taxed under the unrelated business income tax theory, because making profit on amateur activities is inapposite to amateurism;

5. Any entity purporting to regulate college athletes or athletic department employees shall apply the same rights and privileges to these athletes and employees as it does to its members; colleges and universities shall apply the same rights and privileges to all of their students, whether they participate in athletics or not;

6. Any entity purporting to regulate college athletes or employees shall not make an agreement with any college or university that limits or attempts to limit any rules or regulations or terms of admissions and recruitment or attendance, a grant-in-aid or letter of intent, or athletic department employment;



7. Any entity purporting to regulate college athletics or athletic department employees shall not abridge any rights or privileges afforded by the constitutions and laws of the United States and its several states and territories as may be applicable to that athlete or employee, and no such entity shall attempt to penalize resort to the judicial system via restitution rules, penalties, or otherwise;



8. The Uniform Athlete Agent Act and any federal or state analogs are hereby superseded by this Act, which invalidates or withdraws the same and replaces them with the simple and universal truth that all college athletes and employees are entitled to representation of their choice at any point in time for any reason whatsoever under any terms agreed to by the agent or attorney and college athlete, which shall be deemed confidential and privileged; and

9. Congress shall establish an administrative law system within the Department of Education to adjudicate any enforcement of any rules or regulations of any entities purporting to regulate colleges and universities and their college athletes or athletic department employees, which shall be fully and totally financed by those entities on a yearly basis pursuant to a formula to be determined by the Department, which shall adopt rules and regulations to carry out this Act, including rules and regulations as to when the entity must provide counsel for athletes and employees, who cannot otherwise afford to retain the same. Appeals shall be heard by the Federal Circuit Court of Appeals, and certiorari may be entertained by the U.S. Supreme

Court.

On October 19, 2011, Representative John Conyers, Jr., Ranking Member of the House Committee on the Judiciary, called for hearings regarding antitrust and due process violations by the NCAA.

On November 17, 2011, Representative Bobby L. Rush, Member of the House Committee on Energy & Commerce, Subcommittee on Commerce, Manufacturing and Trade, along with sixty other members of Congress, called for hearings to evaluate those circumstances under which the NCAA would decide—along with what is the NCAA’s capacity—to independently investigate recurring student-athlete and administrative misconduct and violations of NCAA and member conference regulations.

To date, nothing has come of my proposal or of these calls for hearings on the NCAA by about ten percent of Congress, which is not an insignificant number at the hearing stage.



On August 1, 2013, Representative Charles Dent along with eight co-sponsors introduced legislation entitled [the National Collegiate Athletics Accountability Act](#), which has been assigned to the Committee on Education and the Workforce, and which provides in pertinent part as follows:

Section 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)) is amended by adding at the end the following:

‘(30) In the case of an institution that has an intercollegiate athletic program, the institution will not be a member of a nonprofit athletic association unless such association—

‘(A) requires annual baseline concussion testing of each student

athlete on the active roster of each team participating in a contact/collision sport or a limited-contact/impact sport (based on the most recent classification of sports published by the Committee on Sports Medicine of the American Academy of Pediatrics) before such student athlete may participate in any contact drills or activities;

‘(B) prior to enforcing any remedy for an alleged infraction or violation of the policies of such association—

‘(i) provides institutions and student athletes with the opportunity for a formal administrative hearing, not less than one appeal, and any other due process procedure the Secretary determines by regulation to be necessary; and

‘(ii) hold in abeyance any such remedy until all appeals have been exhausted or until the deadline to appeal has passed, whichever is sooner;

‘(C) with respect to institutions attended by students receiving athletically related student aid (as defined in section 485(e)), requires any such athletically related student aid provided to student athletes who play a contact/collision sport (based on the most recent classification of sports published by the Committee on Sports Medicine of the American Academy of Pediatrics) to be—

‘(i) guaranteed for the duration of the student athlete’s attendance at the institution, up to 4 years; and

‘(ii) irrevocable for reasons related to athletic skill or injury of the student



athlete; and

‘(D) does not have in place a policy that prohibits institutions from paying stipends to student athletes.’.

The media reported this introduction and noted that essentially it was introduced by proxies for Ohio and Penn State Universities, which have both been dealt severe penalties by the NCAA. According to GovTrack, this bill has only a seven percent chance of making it out of Committee, and only one percent chance of being enacted.

Why new legislation that is not comprehensive was introduced without seeking support from Reps. Conyers & Rush is unclear, but it underscores why any attempt to regulate the NCAA generally fails, and the reasons are litany with just a few being the following: (A) This never makes Congress’ top ten most important things to do; (B) those advocating regulation usually have a bone to pick about their college team being picked-upon, which makes their proposals suspect from the get-go; (C) Congress doesn’t understand the NCAA or how its cabal made up of the conferences, colleges, and universities actually work, which is more an example of modern day fascism; (D) Congress has no idea how much tax revenue it is missing by failing to investigate this pot of gold; and (E) Congress generally doesn’t care, beyond Reps. Conyers & Rush and their group, about the racist impact that the commercialization of men’s football and basketball have had on minorities.



If you are the NCAA, do you really care, when you know

that none of this will go anywhere? The obvious answer is no, if history is any example. With all of the hearings and reports on the NCAA, Congress has never regulated the NCAA directly, although it has chosen to regulate agents and gambling, as if those were of paramount importance, which they are only to the NCAA. So, if the NCAA wants legislation to help it, it has gotten its way in the past. But real policing of the NCAA won't happen unless a movement arises to address the massive inequities of the entire collegiate athletic industry, which must be done on a comprehensive versus piecemeal basis.





Congress should care: College sports generate over \$6BB in annual revenue, gambling on college sports is in excess of ten times that amount, neither the states nor the federal government have delegated the regulation of college sports to the NCAA, but by historical accident and Congressional apathy, the NCAA portends to regulate close to a half million college athletes every year, not to mention all the athletic department employees, while not allowing those athletes or employees membership in the NCAA or any say in how they are governed. Insult to injury, the NCAA disclaims any legal

relationship with college athletes and employees. Non-profits all, the NCAA and its member conferences, colleges, and universities, this commercial revenue should be taxed under the UBIT theory, but the IRS seems not to care. How does the NCAA maintain its IRS Section 501(c)(3) charitable, nonprofit status, when it is not incorporated as a nonprofit, and when it engages in political lobbying—both of which disqualify it as a 501(c)(3), before we even get to the fact that it spends almost nothing on its tax-exempt purpose? Where is the Department of Education in all of this, when the President is complaining about the rising costs of college, which can certainly be attributed to some extent to misallocation of resources to athletic departments?

【Introduction of Sports Law Group】

Sports Law Service Scope

- 1, Provide legal consulting service about the composition and structure of all kinds of sports clubs;
- 2, Draft sponsorship agreements, commercial agreements and the license agreements;
- 3, Provide legal consulting service about traditional and emerging commercial case;
- 4, Provide legal consulting service about events, sports organization and management;
- 5, Provide legal services of intellectual property protection in sport brands, especially related to sporting goods and clothing brands;
- 6, Provide legal opinions in signing contracts with the athletes, their initiation and transfers;
- 7, Provide legal consultancy services in the construction of sports venues, financing, development, and other related

matters;

8, Solve disputes in the name of the professional athletes, coaches and sports clubs, sports brokers, departments in charge of sports industry and sports goods, and apparel manufacturers;

9, Deal with product liability disputes and intellectual property disputes on behalf of sporting goods and apparel makers;

10, Event promoters and sponsorship negotiations and drafting all kinds of related contracts for sports teams and sports activities of the organizers.



Service mode

1, Served as special counsel: each business will provide the whole process, comprehensive , in-depth special services, and related specific issues.

2, Served as perennial legal counsel: each business will provide daily legal consultation, dealing with daily legal affairs.

Thank you very much for your reading,

Edited by Shanghai dacheng sports business group, the information is for reference only.

If you have any question, please contact us via email at zhang.bing@dachenglaw.com.

Internal documents, only for communication.

