

Sports Credentialing and the Battle over Competitive Coverage

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The good news: getting fast and reliable news concerning the progress of sporting events has never been easier as a result of the Internet.

The bad news: consumers may one day have fewer choices about where to get news, despite the influx of Internet providers, because of the natural monopoly that sponsors hold over sporting events and their power to control who gets press credentials.

Because reporters and commentators must often obtain approval from private sports organizations to cover golf tournaments, basketball games, and other events, the credentialing process is often used to restrict traditional media outlets and stifle competition from information sources other than those produced by the sports organization itself.¹ Competition from outsiders (the traditional media and online reporters) can be restricted because private organizations have a natural monopoly over their own corporate-sponsored events and facilities, such as sports arenas and golf tournament courses.

The public's apparently insatiable demand for "news as it happens," or real time information, has led to a fiercely competitive struggle among traditional media, online news services, and the sports organizations themselves, and has triggered numerous public disputes.² Many have been settled amicably in the past, but lately they have escalated into litigation at the state and federal level. Both sides have invoked a variety of legal theo-

ries, leading to a veritable tug-of-war among First Amendment concerns, antitrust law, contract law, and intellectual property protections. The year 2000 was marked by several landmark lawsuits that will ultimately determine who controls information and how the public receives it.

Pregame Warm-up: A Real Time Collision of Legal Theories

The courts will have to decide which of the competing legal theories trumps the others and under what factual circumstances. Given the obvious value of real time information to private businesses that collect it, some commentators believe that such businesses should have the proprietary right to enjoy the fruits of their labor.³ Private organizations and their advocates argue that potential free riders discourage the development and publication of real time information by weakening the incentives to stay in the real time business, and that the public ultimately pays the price.⁴

This article contends that there is no ownership of factual real time information. Nor is there a legitimate public policy reason to thwart competition by allowing private entities to control information through the credentialing process. Instead, once sports organizers release such information through their own facilities, there should be no proprietary rights to it. Moreover, the public is obviously negatively affected when there are fewer information providers in the marketplace. Media organizations should stand up to protect the free flow of information to the public as well as their own right to distribute the news.

Round One: Sports Credentialing as a Competitive Weapon

A number of recent conflicts have highlighted this debate by showing how willing sports organizers are to limit coverage. In 1997, the National Football League (NFL) announced plans to revoke the press credentials of the *Florida*

Times-Union if the newspaper refused to sign waiver forms that would prohibit it from publishing Jacksonville Jaguars game photographs on its website.⁵ However, the newspaper refused to sign the waiver, emphasizing that its website was, in fact, its Internet "newspaper." The *Times-Union* said it would not allow the NFL to control the contents of its website any more than it would allow similar restrictions on its print publication.⁶ The NFL ultimately backed down.

More recently, the International Olympic Committee refused to accredit online journalists for the 1998 games in Nagano, Japan, claiming that it did not know enough about the new medium and would not begin granting coverage rights to journalists for freestanding websites until at least 2010.⁷ Several commentators have reported a perceived bias against online reporters, and private entities have allegedly continued to discriminate against Internet journalists by refusing to grant credentials.⁸

The National Collegiate Athletic Association (NCAA) added to the March Madness in 2000 by denying credentials to online reporters who wanted to cover the Division I men's basketball tournament, effectively eliminating the chance to report real time scores unless the reporter was connected to a traditional media organization that also possessed a website.⁹ Even website reporters for traditional media organizations, such as CBS Sportsline.com and USAToday.com, were denied access to the floor during the tournament.¹⁰ Although NCAA representatives cited the lack of physical space as the primary reason, some felt that the association was blocking out online reporters to gain advantage for its own website.¹¹

Also in 2000, the National Basketball Association (NBA) sued the New York Times Co. for selling five photographs from the 1999 NBA playoffs for \$900 through the newspaper's online store.¹² The NBA claimed that the sale of the photographs violated the terms of the association's credentials issued to news-

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paper photographers.¹³ However, while the NBA's interest was to protect the publicity of its stars, the *New York Times* was intent on safeguarding its ability, and that of other media organizations, to profit from photographs taken by its own staff members.¹⁴

The NBA claimed that its credentials limited the use of photographs to news coverage of the specific games for which the press pass was issued. The *Times* countered that the NBA was using its credentials, which photographers must have to gain access to games, to prevent media organizations from competing with the NBA's own website, which also sells photographs and other goods.¹⁵ The *Times* believes that it is free to use photographs, like the scores from the games, in any way it chooses, including sales to a third party.¹⁶ However, the NBA shows no signs of relenting, and a prolonged fight is expected.¹⁷ The NBA has maintained that it has the right to protect the huge public demand for its photographs through direct sales and third party licensing agreements for NBA products, as well as contracts that limit the marketing activities of the players themselves.¹⁸

Round Two: The Battle Over Real Time Information Warms Up

*Morris Communications Corp. v. PGA Tour, Inc.*¹⁹ was the first reported decision to address the tension between a media company's desire to provide and sell Internet information obtained from sporting events and a private sports organization's conflicting objective to exclusively provide that same information through its own source.²⁰ The final outcome is likely to determine how the provision of information will be shaped by antitrust and intellectual property law. In denying the plaintiff's motion for preliminary injunction, the U.S. District Court for the Middle District of Florida noted that a complete factual record was needed as well as "an examination of both bodies of law and their proper application in a rapidly changing world" to determine the relative rights of the media vis-à-vis private hosts of events intended for public consumption.²¹

Morris Communications Corp. publishes news in both traditional print format and on the Internet. In 1996, Morris began publishing information about golf

tournaments on its websites, including those sponsored by PGA Tour, Inc.²² The most popular feature of its electronic coverage was its publication of real time golf scores.²³ These scores are especially important during tournaments because individual golfers are competing at different holes of the course at the same time, necessitating an update of individual scores at differing times during the tournament.

Volunteers assembled by the tournament promoter at each of the eighteen holes on the golf course collect the scores of individual golfers.²⁴ The scores are then relayed through handheld wireless radios to a remote production truck and other locations, including the media center located on the tournament premises.²⁵ Once the media center publishes the scores, they are effectively released to the entire world and can then be entered into other computers, including those owned by traditional media organizations, for further dissemination and publication in electronic newspapers.²⁶

Because the media center is the only location where the official tournament scores for all competing golfers are continuously updated, it is not feasible for media organizations to rely on scores reported on radio, television, or even the tournament's own website.²⁷ This is particularly true during the first two days of most golf tournaments when there generally is no television or radio coverage.

Eventually, Morris Communications contracted with outside entities to market real time scores. Cable News Network/Sports Illustrated (CNN/SI), for instance, was impressed with Morris's electronic coverage of golf tournaments and contracted with the media company for the syndication of real time golf scores. The new contract included all professional golf tournaments promoted by the PGA Tour, Inc., but Morris soon ran into restrictions imposed by tournament organizers.²⁸

Through press credentials that are issued before each tournament, the PGA Tour, like other sports promoters, regulates the coverage of golf tournaments provided by television and print media.²⁹ The only way for a news organization to gain access to the tournament and its media center is to get a press credential, which is obviously necessary

for providing any current information, including real time scores. Nonetheless, the relationship between media outlets and the PGA Tour, similar to that between the media and other sports organizations, is symbiotic. The district court noted in *Morris* that "the media are better positioned to satisfy the public's demand for golf-related information, and [the PGA Tour] enjoys enhanced publicity, which in turn generates greater demand for its golf tournaments and related goods and services."³⁰

Despite this mutually beneficial relationship, however, the PGA Tour imposed restrictions on Internet coverage through its credentialing process for the first time in January 1999. Of most significance was the PGA Tour's requirement that access to its media center be conditioned upon the agreement that all "[s]coring information appearing on a site . . . be provided no sooner than thirty minutes after the actual occurrence of the shots."³¹ The purpose of the new restriction was to gain a competitive edge: it allowed the PGA Tour to be the first to publish real time scores on its own website and therefore prevent effective competition from Morris and other media organizations.³²

Because the PGA Tour prohibits the use of wireless communication devices on the golf course, scores cannot be collected, reported, or transmitted directly from the tournament course by anyone other than the volunteers who collect scores for the PGA Tour's own website.³³ Even if other entities were allowed to collect scoring information, any independent efforts to gather and transmit real time golf scores would duplicate the efforts of the volunteers, a process that the *Morris* decision describes in detail.³⁴ Instead of pooling information gathered by the Tour's volunteers, more people would perform the same tasks, leading to crowding at the various tournament holes and other logistical problems.

Thus, press access to the media center is essential for the publication of accurate, reliable, and "official" real time tournament scores.³⁵ The new restriction had the practical effect of causing sports journalists in the media center to delay their reporting of golf scores by thirty minutes after the scores' publication in the media center. Golf fans interested in real time scoring obviously had less rea-

son to visit any website other than the PGA Tour's own,³⁶ and competition would effectively be weakened, if not eliminated altogether.

Morris vehemently objected to the new restriction. After intense negotiations, the PGA Tour agreed to add the phrase "or after the time such information is legally available as public domain information if sooner than thirty minutes after the actual occurrence of the shots."³⁷ For the moment, the amendment was satisfactory to the involved parties because it allowed Morris to continue collecting the scores once they became available at the Tour's media center. Morris newspapers continued to publish real time golf scores on their websites. Morris Communications Corp. also continued to provide real time scores to CNN/SI and other media organizations under its existing agreements.³⁸

Round Three: PGA Tour Adds a New Requirement

The controversy was far from over. In January 2000, the PGA Tour rekindled its restrictions on real time scores by promulgating additional regulations providing that "no scoring information may be used by, sold, given, distributed or otherwise transferred to, any party other than the Credentialed Site in any manner whatsoever, without the prior written consent of PGA Tour."³⁹ The new restrictions allowed Morris newspapers to publish real time tournament scores on their own websites, but prohibited the syndication of the same information to third parties, such as other newspapers or CNN/SI, if they were not part of the newspapers' credentialed websites.⁴⁰

Morris again objected to the new restriction. Negotiations came to a standstill, and the PGA Tour stood by its new regulation.⁴¹ Left with no effective means to provide real time scores without completely duplicating PGA Tour's efforts, Morris Communications Corp. filed suit in October 2000, seeking a preliminary injunction to prevent the Tour from enforcing its new restriction on the publication of real time tournament scores via the media company's Internet websites.⁴² The lawsuit is based on several antitrust theories, including the essential facilities doctrine, monopoly leveraging, and refusal to deal.⁴³ In summary form, Morris alleged that

PGA Tour has monopoly power over its golf tournaments, which it uses to squash competition from media outlets, such as Morris's Internet newspapers in the separate markets for the publication and syndication of real time golf scores.⁴⁴

In its response, PGA Tour argued that it has developed a system—at significant expense⁴⁵—to collect and report golf scores.⁴⁶ The Tour also argued that it enjoys a property right in its system of collecting and scoring the various tournaments,⁴⁷ that the tournament scores are gathered through the use of that system, and that its new restrictions on the syndication of real time tournament scores are therefore a reasonable safeguard against potential free riders seeking to capitalize on the Tour's significant investment.⁴⁸

In opposition, Morris Communications argued in seeking a preliminary injunction that PGA Tour does not have a protected proprietary right in its golf scores, which, Morris contended, are factual and public information that is not subject to intellectual property protection.⁴⁹ Morris analogized its case to *National Basketball Association v. Motorola, Inc.*,⁵⁰ in which the Second Circuit ruled against the NBA by holding that athletic events themselves are not copyrightable, even if the broadcasts of the events are subject to intellectual property protection.⁵¹ In *Motorola*, the court reasoned that factual information from athletic events, such as scores from NBA games, are not subject to proprietary protection.⁵² Therefore, the providers of hand-held pagers that displayed scores and statistics from NBA games while the games were underway did not violate the NBA's copyright interests in the broadcasts.⁵³ Likewise, Morris contended that PGA Tour, like the NBA, could not claim proprietary protection for its actual scores during the tournament.

Morris also argued that the Tour does not have a legally sufficient justification for its refusal to deal with the media outlet. Instead, Morris alleged that PGA Tour, as the NCAA had done previously,⁵⁴ was using the excuse of not being able to accommodate press credentials for competing parties as a pretext to stifle competition altogether. Morris suggested that the PGA Tour could simply allow one media organization to provide the information to

other media outlets, similar to media pooling agreements used in courtrooms and battlefields.⁵⁵ By denying credentials to report real time scores to a pooling organization, the PGA Tour, according to Morris Communications, was using its natural monopoly power over its own tournaments to illegally monopolize the separate market for real time information.⁵⁶

Additionally, Morris Communications analogized its case to another decision involving the monopolization of information at sporting events, *Weinberg v. Chicago Blackhawks Hockey Team*.⁵⁷ In *Weinberg*, the Chicago Blackhawks denied a program publisher access to game facilities because its programs competed with the team's own program books.⁵⁸ In suing the hockey team for violations of the state antitrust act, the plaintiff alleged that the team was engaging in intentional anticompetitive practices solely for the purpose of furthering its own competing publication.⁵⁹

The *Weinberg* court agreed, holding that the hockey team used its natural monopoly power to illegally gain a competitive edge by denying access to pressrooms, boxes, and conferences—access that was essential to cover the games.⁶⁰ Furthermore, the court added, consumers ultimately paid the price due to decreased product quality from the lack of competition.⁶¹ Morris claimed that its case was essentially identical to *Weinberg*, in that the PGA Tour's denial of an essential facility was an abuse of its monopoly power to gain full market advantage for its own product.⁶² The PGA Tour was using its monopoly power over its own events to intentionally and improperly extract a competitive advantage in the market for the syndication and dissemination of real time scores via the Internet and wireless communications.⁶³

Lastly, although PGA Tour, Inc. is a private entity, Morris, like media organizations before it, contended that an injunction should issue to protect the press and public's free speech interests. Courts have previously held that the loss of First Amendment freedoms, even for short periods, causes irreparable harm to the press and public.⁶⁴ Even though the case law is not directly applicable to private entities such as the PGA Tour, Morris claimed it is analogous; once the public loses valuable in-

formation due to restrictions on the press's rights to independently gather and disseminate information, injunctive relief is justified because irreparable harm results.

In essence, *Morris* argued that the First Amendment should protect its right to gather and disseminate news for public consumption, even if it wishes to sell the information to third parties.⁶⁵ This should be true whether the restricting entity is the government or a private corporation.⁶⁶ Private entities should not be allowed to engage in restrictive and monopolistic behavior that impedes the media's right to disseminate public information, such as real time scores, any more than the government should be allowed to do so.⁶⁷ *Morris* asked the court

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to preserve the status quo by allowing the dissemination of real time information under the previous year's credentials. This would benefit the public by ensuring that more quality information is available in the marketplace than would be available if the PGA Tour were the sole provider.⁶⁸

Round Four: PGA Tour Scores a Birdie

Morris's motion for a preliminary injunction was denied. The court found that the plaintiff had not sufficiently shown that the "extraordinary relief" of a preliminary injunction was justified at this early state of the litigation.⁶⁹ In so holding, the most critical issue for the court appeared to have been the potential existence of a legitimate procompetitive reason for the Tour's new regulations on the publication and dissemination of real time tournament scores.⁷⁰

The court was especially concerned that PGA Tour may possess what has previously been called a "hot news" property right to the scoring information collected during its tournaments.⁷¹ The hot news property right was first expounded more than eighty years ago in *International News Service v. Associat-*

ed Press.⁷² In *INS*, the U.S. Supreme Court first recognized a publisher's property right in time sensitive news for which the publisher had spent its own resources to collect and provide to the public as soon as practically possible.⁷³ The Supreme Court reasoned that free riding by a secondary publisher could cause the initial publisher to abandon its efforts to provide the information in the most timely manner possible, and therefore the public would be the ultimate loser as it would be deprived of access to the most current information.⁷⁴

In *Morris*, the judge concluded that if the PGA Tour has such a "hot news" property right in its own golf scores, it may in fact have a procompetitive reason for restricting competitors from reaping the benefits of its own investment in the system used to gather the tournament scores.⁷⁵ At such an early stage in the litigation, the court said that it could not conclude that such a procompetitive reason for restricting dissemination of real time scores did not exist with the kind of certainty necessary to meet the exacting preliminary injunction standard.⁷⁶ Instead, the court identified two issues that will require further development by *Morris* and the PGA Tour during the course of litigation.

First, the court described the parameters of the hot news property right recognized by the U.S. Supreme Court, reasoning that the concern over free riding is only problematic when the incentive to produce a product or publish information is so reduced "that its existence or quality would be substantially threatened."⁷⁷ In *Morris*, the court held that the first order of business must be to determine whether PGA Tour would continue to collect and publish real time tournament scores at its tournaments if *Morris*, and potentially other media organizations, were also permitted to disseminate this information.⁷⁸ In the end, the court held that the issue could not be resolved without the benefit of a complete factual record.⁷⁹

Second, however, the court also observed that PGA Tour's new restrictions might actually demonstrate an anticompetitive intent by tournament organiz-

ers. The court reasoned that a more complete factual record is necessary to determine the reasonableness of the PGA Tour's ban on wireless communications devices, a record that could lead to a finding of anticompetitive actions on the part of the Tour.⁸⁰ In effect, the court said that PGA Tour's new restrictions might in fact be broader than is necessary to protect any hot news property right that the Tour may have in its scoring system.⁸¹ Therefore, the Tour may be unfairly and illegally eliminating legitimate media competition in the market for real time tournament scores via the Internet.⁸²

Sudden Death: Will "Hot News" or Open Competition Prevail?

Morris is the first case to demonstrate the impact of both antitrust and intellectual property on the publication of real time information. As the public demand for high-speed information accelerates, there will be more cases like *Morris* that highlight the tension between the news-gatherer's control over its own information and the public's right to know. The *Morris* case and its inevitable progeny raise important concerns about who will ultimately control the dissemination of news and information, an issue that goes beyond the reporting of facts from sporting and other entertainment events. Although traditional media, now publishing on the Internet, obviously would like to be the major providers of this information, the real possibility exists that the final control over publicly demanded information could rest with private corporations. The issue will be for the courts to decide.

Both the drafters of the Constitution and the courts have recognized that the traditional media play a protected role in our democracy by reporting the news. However, *Morris* demonstrates that the newsmaking entity itself may actually fill that role, if the courts allow it to report on its own news while at the same time excluding traditional media. The significant drawback is the threat of censorship and controlled regulation of the public's reception of news, if private entities are allowed to dominate and regulate the flow of information to the public.

Nonetheless, the *Morris* case and its predecessors also demonstrate that private corporations, such as PGA Tour, have now established themselves as

website publishers in their own right. As publishers, these entities have the ability to directly compete with the traditional media for the dissemination of news and entertainment information. They may have the ability to control and monopolize the use of the information from their own events, such as the golf tournaments involved in *Morris*, if the courts do not step in and provide for competition from traditional media.⁸³

The battle over credentialing in other sports also looms in the future. On April 2, 2001, the baseball season opened with the *Detroit News* and other newspapers challenging a new credentialing restriction imposed by Major League Baseball (MLB) that would limit the newspapers' use and distribution of photographs after a game.⁸⁴ The new rules would also likely hamper the provision of real time baseball scores, including pitch-by-pitch coverage of games in progress.⁸⁵ The *Detroit News* returned the credentials to the Detroit Tigers rather than agree to the new restrictions, adding fuel to the fire of the debate over whether sports organizations can limit the media's use of its own content.⁸⁶ The *New York Times*, *Dallas Morning News*, and *Detroit Free Press* are also battling MLB over the new restrictions, which also require that game photos be used "only in connection with news coverage of, or magazines, books and stories about, the games," with other uses necessitating approval by the baseball commissioner.⁸⁷

If organizations such as the PGA Tour and MLB are allowed to prevent traditional media organizations, such as *Morris Communications*, from syndicating and disseminating factual information, the provision of information via both the Internet and traditional media could be forever changed. Newsmakers could become the exclusive news providers.⁸⁸ Private entities, such as other sports organizations, political parties, and other entertainment venues, might even become censors themselves, as they require traditional news organizations to agree to both time and content restrictions as a condition of reporting news from private, corporation-sponsored events.⁸⁹

The censorship that could not be engaged in by the government under the First Amendment could become the norm if private entities control access to events and information in response to

public demand, through the use of restrictive credentials. Media organizations must continue to pursue their own legal rights in the competitive marketplace for the provision of Internet information. **C**

Endnotes

1. *See, e.g.*, *Cable News Network, Inc. v. Video Monitoring Serv. of Am., Inc.*, 940 F.2d 1471, 1472 (11th Cir. 1991).

2. *See, e.g.*, Barbara W. Wall and Cary A. Eure, *Press Access to Sporting Events*, 522 PLI Pat. 279, 281 (1998) (discussing how promoters of sporting events often attempt to use credentials to impose restrictions on the ways traditional media can cover the event).

3. *See* Louis Klein, *Future Prospects for Protecting Real Time Information*, 64 BROOK. L. REV. 585 (1998); *see also* Anne M. Wall, *Sports Marketing and the Law: Protecting Proprietary Interests in Sports Entertainment Events*, 7 MARQ. SPORTS L.J. 77, 79 (1996) (discussing how sports entertainment organizers can protect their investment in sports teams and events, including the protection of intellectual property rights, privacy and publicity interests, and sponsorship and licensing agreements).

4. *See* Klein, *supra* note 3. Klein argues that Congress should enact legislation to prevent "out-and-out copying by second comers" because traditional copyright law has failed to protect the investments in real time technology. *See id.* at 624; *see also* Marc S. Williams, *Copyright Preemption: Real Time Dissemination of Sports Scores and Information*, 71 S. CAL. L. REV. 445, 467 (1998) (arguing that common law should protect scores and information as the business of real time dissemination of sports scores and other information "continues to grow and certainly provides a competitive alternative to sports broadcasts on radio or satellite.").

5. *See* Wall and Eure, *supra* note 2, at 281.

6. *See id.* (stating that the NFL attorneys felt that the website did not look like a newspaper site but the *Times-Union* refused to abide by the restrictions and threatened to stop covering the Jaguars if the restrictions were imposed).

7. *See id.*; *see also, e.g.*, Julie Panna, "Why Can't I Get One of These?," QUILL, Sept. 1, 2000 ("[E]ven the most well-known Web publications continue to have trouble 'getting respect'—and getting access to press conferences, sporting events and other news opportunities.").

8. *See, e.g.*, David Noack, *Bias Against Online News Reporters: The Second Class Citizens of Journalism*, EDITOR & PUBLISHER, Jan. 31, 1998, at S13. Noack noted that in 1998, organizations such as the National Collegiate Athletic Association

were consistently discriminating against Internet journalists because they were not traditional reporters; the NCAA cited its own "exclusive" rights to provide coverage of its events. *See id.* However, at the time online reporters were stressing that they in fact were not interested in competing with the so-called exclusive websites by providing real time information. *See id.*

9. *See* Panna, *supra* note 7.

10. *See id.*

11. *See id.* In 1997, it was first reported that the reason the NCAA refused a credential to *USA Today* was because the newspaper operates a website that competes against the NCAA's own proprietary website. *See id.*

12. *See* Suzanne Craig, *These Pictures Worth More Than A Thousand Words*, GLOBE AND MAIL, July 17, 2000, at B1.

13. *See, e.g.*, *NBA Sues N.Y. Times over Sale of Playoff Photos*, DESERET NEWS, July 11, 2000, at D9.

14. *See* Craig, *supra* note 12.

15. *See* *NBA Sues N.Y. Times*, *supra* note 13 (George Freeman, assistant general counsel for the *New York Times*, stating that the NBA simply wants to stifle competition and to only allow the media " 'a tiny sliver of coverage limited to the day after after' the event.").

16. *See id.*

17. *See* Craig, *supra* note 12. Richard Winfield, a noted New York media lawyer, commented that " '[t]he press has been made the victim of these increasingly restrictive provisions on the credentials because the organizations control access to the venue.' " *Id.*

18. *See id.* The NBA is suing for damages that include the profits earned by the newspaper on the sale of the photographs through its on-line store. *See id.* The NBA has sued both Motorola (National Basketball Ass'n v. Motorola, 105 F.3d 841 (2d Cir. 1996)) and America Online, charging both with misappropriating league information by providing real time scores via wireless and Internet communications. *See id.* Neither legal action was ultimately successful. *See id.* In an August 7, 2000, letter to the *N.Y. Times*, the Chicago Bears instituted similar actions in an apparent effort to protect the team's perceived rights.

19. 117 F. Supp. 2d 1322 (M.D. Fla. 2000).

20. *Morris* was not in fact the first time a dispute arose over the reporting of scores over the Internet. Previously, the *Augusta Chronicle*, a *Morris Communications* newspaper, wanted to provide real time score updates from the Masters Tournament on its website, but the Augusta National Country Club conditioned reporters' credentials on the agreement by journalists not to report scores in real time to protect the interests of IBM, the tournament's sponsor. *See* Wall

and Eure, *supra* note 2. Because wireless communications were not allowed on the course during the tournament, the newspaper could not itself hire individuals to report scores in real time during the tournament. *See id.*

21. *Morris*, 117 F. Supp. 2d at 1324.
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *See id.*
27. *See id.* at 1324–26.
28. *See id.* at 1325.
29. *See id.* at 1325–26.
30. *Id.* at 1324.
31. *See id.* at 1325.
32. *See id.*
33. *See id.* at 1324–25.
34. *See id.*
35. *See id.* (describing in detail the PGA Tour’s process of collecting and transmitting accurate scores to the media center).
36. *See id.* at 1325–26 (discussing thirty-minute restrictions placed on the media, including *Morris* Communications, by the PGA Tour).
37. *See id.* at 1325. The addition of the term “public domain” to the media restriction developed during the parties’ negotiation as a reference to the basketball scores at issue in the case of *National Basketball Ass’n v. Motorola, Inc.*, 105 F.3d. 841 (2d Cir. 1997).
38. *See id.* at 1324–1325.
39. *See id.* at 1325.
40. *See id.*
41. *See id.*
42. *See id.* at 1323–24.
43. *See id.* at 1326–28.
44. *See id.*
45. PGA Tour, Inc. estimated this expense at \$26 million, but *Morris* disputed the cost, especially because unpaid volunteers serve as the collectors. *See id.* at 1324.
46. *See id.*
47. This so-called electronic relay system, where volunteers collect and relay scores through wireless radios to a production truck for transmission on the Tour’s website, is known as the Real Time Scoring System (RTSS). *See id.*
48. *See id.* at 1324–25.
49. *See id.*
50. 105 F.3d 841, 847–48 (2nd Cir. 1997).
51. *Motorola*, 105 F.3d at 847–48.
52. *See id.*
53. *See id.*
54. *See* Noack, *supra* note 8.
55. *See* Memorandum of Law in Support of Motion for Preliminary Injunction, *Morris* Communications Corp. v. PGA Tour, Inc., Case No. 3:00-CV-1128-J-20C (M.D. Fla. 2000).
56. *See id.*
57. 653 N.E.2d 1322 (Ill. App. 1995).
58. *See* *Weinberg*, 653 N.E.2d at 1324.

59. *See id.* at 1323.
60. *See id.* at 1325.
61. *See id.* at 1325–26.
62. *See id.*; *see also* MCI Communications Corp. v. American Tel. & Tel. Co., 708 F.2d 1081, 1182 (7th Cir. 1983); Florida Mun. Power v. Florida Power and Light, 81 F. Supp. 2d 1313 (M.D. Fla. 1999); Phone Programs Illinois, Inc. v. National Jockey Club, Inc., 692 F. Supp. 879, 886 (N.D. Ill. 1988) (reporters who were denied access to horseracing tracks alleged that defendant owners engaged in illegal monopolization by denying access to essential press facilities).
63. *See* *Morris* Communications, Inc. v. PGA Tour, Inc., 117 F. Supp. 2d 1322 (M.D. Fla. 2000).
64. *See, e.g.*, *Cate v. Oldham*, 707 F. 2d 1176, 1188 (11th Cir. 1983); *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *CBS, Inc. v. Davis*, 510 U.S. 1315 (1994) (indefinite delay of television broadcast would cause irreparable harm that would be intolerable under the First Amendment).
65. *See* *Associated Press v. United States*, 326 U.S. 1, 20 (1945).
66. In *Associated Press*, 326 U.S. at 20, for example, the U.S. Supreme Court discussed the relationship between the First Amendment and antitrust laws by stating that the First Amendment “rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources,” and therefore “[s]urely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom.”
67. *See id.*
68. *See, e.g.*, *Weinberg v. Chicago Blackhawks Hockey Team*, 653 N.E.2d 1322, 1325 (Ill. Ct. App. 1995) (“one of the primary goals of antitrust legislation is to enhance consumer welfare.”).
69. *See* *Morris*, 117 F. Supp. 2d at 1330.
70. *See id.* at 1329–30.
71. *See id.* at 1328.
72. 248 U.S. 215 (1918).
73. *See* *INS*, 248 U.S. at 215.
74. *See id.*
75. *See* *Morris*, 117 F. Supp. 2d at 1329–30.
76. *See id.*
77. *Id.* at 1328–29.
78. *See id.* at 1329.
79. *See id.*
80. *See id.* Without the use of the wireless communications systems, it would obviously not be possible to duplicate the Tour’s efforts to provide real time scores during golf tournaments, as people must be stationed at each hole to provide the most up-to-date information. *See id.* at 1325.
81. *See id.*
82. *See id.* 1329–30. Although the court in

Morris did not award a preliminary injunction, it did not foreclose the possibility that *Morris* may eventually be successful on its antitrust claims. The court noted that “[t]here is a difference . . . between success at trial and a success in meeting the standard for a preliminary injunction.” *Id.* at 1330. Discovery is currently underway in this case, which is set for trial in June 2002.

83. *See, e.g.*, Penna, *supra* note 7.
84. *See* *Baseball, Newspapers Duel Over Photo Use*, DETROIT NEWS, Apr. 3, 2001.
85. *See id.*
86. *See id.*
87. *See, e.g.*, Felicity Barringer, *Baseball Trying to Limit How Coverage of Games Is Used*, N.Y. TIMES, Mar. 31, 2001, 2001 WL 17366526. George Freeman, assistant general counsel of the *New York Times*, stated that Major League Baseball (MLB) is trying to restrict the intellectual property rights and free speech rights of the publishers. *See id.* Freeman stated that, like NBA games, baseball games are public news events that should be in the public domain as opposed to private performances subject to MLB’s total control. *See id.* This new controversy is one more example of the battles being waged as new media outlets, such as the sports organizations themselves, become publishers themselves and try to block competition from traditional publishers. *See also* Cicely K. Dyson, *Online Journalists Have Major-League Issues over Sports Credentials*, ASNE REP., Apr. 6, 2001. Notably, the *New York Times* recently issued a press release announcing that it has entered into a marketing agreement with the NBA as part of a settlement of their litigation. Under the agreement, the *Times* can continue to display and sell online photographs taken at NBA games and will provide a variety of promotional benefits to the NBA. *See* Press Release, New York Times Co., NBA and NYTC Enter into Marketing Agreement (Apr. 9, 2001) (on file with authors).
88. An estimated one in three Americans now access the Internet at least once a week, compared to only 20 percent in 1998; Americans generally find online news sources more credible than previously. *See* Panna, *supra* note 7.
89. *See, e.g.*, Scott L. Matson, *Organizers Limit Access to Sporting Events*, 24 NEWS MEDIA & LAW 912 (Oct. 1, 2000) (discussing a 1999 media protest when a former Sports Illustrated reporter was banned from covering the Indianapolis 500 because of his unfavorable coverage of the race.); *see also* *George Gets Lesson in First Amendment*, CHIC. TRIB., May 21, 1999, at A3 (“The media was sending a message not only to [Indy Racing League Founder Tony] George, but to all sports organizations. If George can ban Hinton, what’s to stop the Bears from denying a credential to a columnist they don’t like?”).