

INTELLECTUAL PROPERTY AND SPORTS: A STUDY OF EXCLUSIVITY  
AGREEMENTS, TV RIGHTS AND BRANDING IN KENYA

BY

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## ABSTRACT

*This study sought to assess role of intellectual property in sports using Kenya as a case study. The study was a response to the growing recognition of sports participation in development. The beneficiaries of policy must themselves be key actors in identifying and addressing livelihood priorities. In the study, the data collection instruments used in-depth interviews and focus group discussion as this involved both a quantitative and qualitative study. Research findings revealed that whilst the sportsmen are aware of their rights and the Intellectual property assets, very few are well informed on the protection available to them and how they can commercialize the same. Very few sportsmen have so far benefited from exclusivity agreements and their personality rights. It was also established that there are various factors that resulted in this scenario, these include lack of clear defined roles by the stakeholders, weak enforcement practices, ignorance and greed among stakeholders. This study recommends the strengthening of the multi-sectoral partnership by setting clearly defined roles for the stakeholders in the sports Industry. There is need to legislate sports specific laws to cater for the industry. Training on the basics of Intellectual Property to the athletes is necessary so that they learn and develop a relationship with sponsors, marketers and the corporate world. Exclusivity agreements can succeed in making African and Kenyan sportsmen rich and economically sound through television with the long term benefits for the sport, sports fans, media and sponsors being massive.*

## **DECLARATION**

I, **GEORGE NABINA MBAYE**, do hereby declare that this research is my own work except where sources have been acknowledged. This work has never been submitted to another university in the awarding of another degree.

Signed

Student .....Date.....

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Supervisor.....Date.....

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## **DEDICATION**

I would like to dedicate this piece of work to all sportsmen and athletes .The hard work and man hours put in are not in vain. The pain and sacrifices you make will one day pay off as your dreams always remain valid. Hold fast: A change will soon come!

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## CHAPTER 1

### INTRODUCTION

#### 1.1 Background

Sport is an activity that is governed by a set of rules or customs and often engaged competitively. Sports commonly refer to activities where the physical capabilities of the competitor are the sole or primary determinant of the outcome (winning or losing), but the term is also used to include activities such as mind sports (a common name for some card games and board games with little to no element of chance) and motor sports where mental acuity or equipment quality are major factors.

The word sport comes from the old French *desport* which means leisure.

Today, both for sportsmen as well as sports associations, sports is not just a career or passion, but is looked at as a huge business opportunity. On formation of a sports team, the teams are generally recognized by a team name. For the purposes of identification, logos and fancy taglines are created. Off the field, on the commercial level, sportsmen get into endorsements and advertisements whereas sports associations get into branding, merchandising, licensing, sponsorship and other similar activities.

Once all these creative elements are put into commercialization, their protection becomes essential. For instance, today intangible assets such as the team names like



Royal Challengers, Manchester United, events such as Olympics, US Open etc., along with their colourful logos, emblems, taglines, hold high commercial value and are significant components of branding and merchandising activities and hence their legal protection is necessitated to prevent third party infringements.

On the other hand, broadcasting rights, licensing, sponsorships, and other important revenue streams also involve few legal requirements to safeguard the rights.

## **1.2 Intellectual property and sports in action**

The sports industry is a platform in which the products offered to the public are sport, recreational and leisure. Sport has thus become one of the fastest growing global industries in the 21<sup>st</sup> century. The magnitude of the sport industry can be measured by the cost of hosting sport events, the revenue generated by sport events and the earning power of top international athletes. One of the most important measures of the growth and success of a sport event these days is investment in social legacy. An examination of some of the figures will bear this out. Sports in the 21<sup>st</sup> century have become a standard source of income for economies, sportsmen and women, coaches and associations. It is estimated that the global sport industry is valued at over US\$400b.

In 2013, Tiger woods was the highest paid athletes in the world with earnings of \$71.5 million! Woods makes most of his money from endorsement deals with brands like Fuse Science Inc, Net Jets, Kowa and Rolex. Out of \$71.5 million in earnings, \$65 million came from endorsements.

In May 2013 the world witnessed Real Madrid Football Club sign Tottenham forward Gareth Bale. The Wales star agreed a £300,000 per week, six-year deal after sealing an £85.3m (100m euros) move. Most economies and governments stand to benefit from the huge financial investment in sports. Of particular interest is the growing concept of Television rights.

Intellectual property lies at the heart of the huge opportunities made available by sports. Our day to day lives revolve around a number of co-curricular activities that are aimed at relaxation and generally to take our minds from the usual hustle and bustle of daily routine schedules. Intellectual property is directly related to trade, competition, industrial growth and economic development. The business/economic sector related to merchandising and sponsorship is heavily linked and modeled around intellectual property rights. Intellectual property further seeks to reward and protect creativity.

A number of conventions and agreements exist to deal with Intellectual property right. As one of the most recognizable logos in the world, all States which are party to the Nairobi Treaty are under the obligation to protect the Olympic symbol against use for commercial purposes without the authorization of the International Olympic Committee. The Olympic symbol consists of five interlaced rings: blue, yellow, black, green and red, arranged in that order from left to right. It consists of the Olympic rings alone, whether delineated in a single color or in different colors. Others include Agreement on Trade

Related Aspects of Intellectual Property Rights(TRIPS),Berne Convention, Paris Convention, Hague Convention, Madrid Agreement just to mention but a few.

From Kenya's most decorated Olympian Kipchoge Keino to the current world 800 meters champion David Rudisha, Kenyan athletes have hit the sporting arena and are now world beaters. Athletics has contributed significantly to economic development and wellness in the specific regions the athletes come from and also the country as a whole. The fact that sport is no longer appreciated for its entertainment value but also as a business that contributes significantly to economic growth and employment.

Internal wrangling, corruption and greed within the FKL saw Kenyan club football sink to an all time low. By 2005, crowds at matches had dwindled to almost nothing. The Media focused almost entirely on European Leagues, This meant that there was no sponsorship, no grassroots development – all money from government or FIFA going directly into the hands of the Football associations or their cronies. However when South African Multinational broadcaster Supersport signed its first contract with KPL in 2008 worth US \$ 13.5 million before adding a five year extension to the deal in mid-2010 worth Kshs. US \$11.7 million to run up to 2015. Since then the match coverage has increased from 22 in 2008 up to 90 matches expected to be screened this season. This has enabled the screening to move from the traditional Nairobi city up to other towns in Kenya. The television coverage has proved success in terms of viewership as fans have

indeed trickled back into the Kenyan stadia and they are enjoying the game courtesy of Dstv-Supersport.

The sponsorship brought with it proper management of clubs and decent wages for players has made league more competitive. The League now attracts players from outside of Kenya including as far as Nigeria, Liberia, DR Congo, Uganda. Advertising Value Equivalent (AVE) of the Kenyan premier league in 2010 valued at US\$ 86 million – nearly double that of the nearest Kenyan corporate enterprise. By any standard of measurement, the KPL is now a truly professional league. Sports has contributed significantly to the country's Gdp. A look at the earning and spending power taking place in Kenya will also make us understand the figures involved. In June 2013 Kenya Airways agreed a two-year extension to its sponsorship of Kenya's sevens rugby union team in a deal worth 400m Kenyan shillings (\$4.6million). In March 2009 all Kenyan Rugby players who participated in the 7s rugby world cup were each paid Kshs 1 Million (\$12500) in bonuses.

It is evident that sportspersons especially in the international arena are being paid handsomely. This has significantly increased the commercial worth of our athletes as they find themselves being promoted by way of television commercials and endorsement agreements.

With the advent of technology most earnings in sport events and by individual sportspersons come from broadcast rights and endorsements. The revolutionary development which has taken place in the instant transmission of events and activities by way of digitized technological processes, have made the creation and provision of 'content' the main generation of revenue. Content is the live images of sporting activities which fills the space on television, websites and mobile phones. The digital revolution has seen the dramatic increase in television and other platforms such as computers, tablets and smart phones. This has spurred a hunger for content which sport has gladly filled.

In Kenya full realization of the value of broadcast rights is yet to occur. Most sporting disciplines and associations are persons who are hugely dependant on the government and the corporate world for sponsorship with a belief that returns are likely to come from gate collections.

### **1.3 Statement of the problem**

Controversies on intellectual property in sports revolve around the subject matter of coverage, rights that the holder of intellectual property enjoys and the equity of international arrangements for the protection of intellectual property.

Failure to effectively commercialize intellectual in African countries and particularly in Kenya has in the past led to the loss of profits accruing from the economic value chain

products directly resulting from sports. Worth noting is that not a single Kenyan athlete is managed by Kenyan agents. They are all managed by highly professional, multi-million dollar brand managers in Europe and US.

While some progress has been made by our local athletes, and sports associations there is still much work to be done in protecting the intellectual property rights of our athletes.

#### **1.4 PURPOSE OF THE STUDY**

The study seeks to find out how best our sportsmen should go about competing, while benefiting financially, from their commercial worth and how image and TV rights can fully be exploited.

I also seek to establish whether the development of sport can be used as a tool to fast-track economic growth and development.

#### **1.5 OBJECTIVES**

The objectives of the study are to:

1. Examine the role of Intellectual property in sport
2. Identify various ways in which Africa can benefit from exclusivity agreement.
3. Assess major problems in image and branding rights in sport.
4. Find possible solutions to overcome challenges in commercialization of sport and how to solve them.

## **1.6 RESEARCH QUESTIONS**

The study addresses the following research questions:

1. What is the role of Intellectual property in sport?
2. How can sport in Africa benefit from exclusivity agreements?
3. What problems arise from image rights and branding?
4. What solutions are available for the commercialization of the sport industry in Africa?

## **1.7 SIGNIFICANCE**

Sports is a tool for socio-economic development. The research will also provide an in-depth understanding on how the sport industry can benefit from exploiting fully the opportunities available to it. Sports are integral part of our social being. They are so ingrained in our lives that they have become an essential part of our lives. It has always been a popular sector across the world bringing together games, competition, entertainment, culture and clearly some monetary business.

Sporting activities that started as a hobby or a physical cum leisure activity today are no longer confined to the bounds of entertainment but have gained commercial importance of mammoth proportions. Many aptly consider this age to be an era of corporatization of sports. Marketing and promotions through franchising, advertising, brand building of

sports as well as sportsmen have gained gigantic importance, surpassing all other traditional intricacies of sports.

Sports has for a long time been considered a recreational activity has in the modern day become a fully commercial activity generating elephantine profits. A major portion of this revenue flows from activities such as branding, merchandising and licensing which involves exploitation of the various intellectual property rights. The intersection between intellectual property rights and sports means that sports franchisees are tabooing and capitalizing on various intellectual property rights that have been created. These IPRs are used in the form of merchandising, advertisements, licenses, online/computer games for creation of brand equity and reputation and of course, to achieve a common end of gaining hefty profits.

Once all these creative elements are put into commercialization, their protection becomes essential. Top clubs like TP Mazembe, GorMahia, AfcLeopards, Orlando pirates along with their colorful logos, emblems, taglines hold high commercial value and are significant components of branding and merchandising activities and hence their legal protection is necessitated to prevent third party infringements.

There is no single law that protects all such proprietary material and resolves all the issues that arise out of them. A set of multiple laws are resorted to in order to safeguard the business interests involved in sports. IP laws form major part of such laws and are often pressed into service in tackling various legal issues. IP is an umbrella term used to



describe properties created by human intellect and includes patents, trademarks, trade secrets, copyrights, designs and so on.

In a country where youth make up approximately 75% of the entire population, the successful protection of the sporting industry has far reaching implications on the overall development of the nation. There is therefore need to empower athletes to ensure that they are fully in charge of their intellectual property assets and can reap the maximum and full benefits of their efforts. There are concerns that the monies meant to benefit and reward the athletes are not being used by the right people.

Kenya's journey towards prosperity also involves the building of a just and cohesive society that enjoys equitable social development in a clean and secure environment. This quest is the basis of transformation in eight key social sectors, namely: Education and Training; Health; Water and Sanitation; the Environment; Housing and Urbanization; as well as in Gender, Youth, Sports and Culture. It also makes special provisions for Kenyans with various disabilities and previously marginalized communities. Whilst some athletes have benefited from the use of Intellectual property assets, the full benefits have not been realized. There exist a lot of barriers towards achieving this goal. This is what the research seeks to look into and further assess the challenges that are faced by the sector in attempting to achieve full realization of the IP assets.

The outcome of the research will be added on to the available body of knowledge on the existential realities of youth in Kenya. The research will also further support or challenge existing knowledge regarding the sporting industry in Kenya and add to the discourse on Intellectual property and sports in Kenya. The study will provide a new lens for looking at and understanding these issues.

### **1.8 SCOPE OF STUDY**

The research was conducted within organizations that deal with sports and the sportspersons themselves in Kenya. This will include Track and field events, cricket, horse racing industry which has always been second only to South Africa's since the 1950s, soccer and rugby have grown considerably over the last 10 years in Kenya. They are among the most watched and fanatical sports with wide coverage offered for any events hosted by any of the three associations running the sports.

The research will be confined to the type of assistance offered by these organizations to athletes and the challenges that come with it. The research seeks to establish how the organizations compliment the industry and particularly how TV rights fees can have a direct effect. This research makes an attempt to recognize various species of IP that are created in the field sports . On creation of any property, protection of the same is the foremost important aspect one would look at. Once we speak of property and rights, it is obvious that lot of legal issues are bound to crop up. Thus in this article, attempts are made to understand ways through which one can protect his IP and create value out of it. Few of the frequently arising IP related issues are also discussed.

Chapter 1 gives the background of the problem to be studied. It gives an overview of the Intellectual property, its history and the key aspects. It also highlights the central research questions, objectives, justification and purpose of study. Chapter 2 offers a Literature review and theoretical framework that informs the study. Literature on Intellectual property and sports issues is laid out with focus on Africa. Chapter 3 will focus on the research method that will be used and explains why the researcher chose those methods. It describes the research design, population and sampling methods that were used and their validity with regards to the research topic. Chapter 4 gives the presentation and interpretation of research findings and chapter 5 gives conclusions and recommendations.

### **1.9 LIMITATIONS**

The researcher expects some limitations in data collection due to the fact that the study is sensitive to the organizations and individuals concerned.

The researcher foresees delay in data collection because most of the respondents work out of their stations and it will be hard to find them in their offices. Failure to access other informants such as the Officials of these bodies will also be a limitation.

## **CONCLUSION**

The study seeks to conduct a critical analysis of the sports industry in Kenya with respect to the commercialization and image rights. It will particularly focus on athletics, soccer and rugby which are popular sports in Kenya.

In the end we seek to establish a mechanism of effective exploitation and development of the industry

## **CHAPTER 2**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

This chapter provides theories that form different facets of the sporting Industry. It reviews literature on issues related to sport and intellectual property, how it has been and continues to be shaped through research and international, regional conventions and then adopted by nation states. The importance of sports in development is rationalized. Literature reviewed in this chapter includes theory from empirical study which explains the difficulties in matching theory with practice in an African context. The main focus of the discussions will revolve around protection of IPR's in sports, commercialization of television rights and branding.

This chapter also helps the researcher to identify the latest developments in this area of research and also helps to identify gaps in literature.

Literature review reveals investigations similar to the researchers study and can show how the other researchers handled the situations and helps the researcher in evaluating his/her research findings and provide new ideas in the sector.

The topic of Sports in Intellectual property is trending globally and is not peculiar to Kenya only. More than ever, with the proliferation of digital media, hungry for content, intellectual property is playing even greater role in sport. Sport continues to provide

employment throughout the world for millions of people. The researcher used previously done work in the area of study. Views of different scholars and professional were examined.

According to Arry, Jacobs and Razavieh (1990) literature review enables the researcher to demonstrate how other authorities grasped the field and awareness of recent developments. Literature review helps in finding other sources of data unknown to the researcher. The researcher used expositions of previous work in the area of study. Views of different scholars and this Chapter reviews literature on the scholarship on the place of sports its challenges and benefits. The role of the State in sports and youth development were also reviewed together with Changing perceptions in sports were also considered.

To this end the review of this literature was premised within the framework of the structure of sporting events, branding, viewership and the figures involved.

Literature has already been drawn linking intellectual property and sports and will be highlighted below.

## **2.1 Intellectual Property and Sports**

The World Intellectual Property Organization considers Innovation and creativity as key drivers in the world of sport. In every sporting field, teams of inventors and creators are working behind the scenes to push the boundaries of possibility, creating new

opportunities for athletes to better their performance and for broader participation in and enjoyment of sport. (Wipo, 2004) Professor J.Gordon (Hutton, 2012) states that intellectual property rights have become a major source of revenue for the sports industry. Legal theories of copyright, trademark and event patent have been successfully been invoked to permit individual sports teams, leagues and sports organizations to which they belong to capture more and more revenue. Although many scholars have different views on how IPRs in sports can be protected the general consensus is that there is need for protection.

Intellectual property rights (IPRs) are important in business generally and in sports in particular. According to Elizabeth March (Wipo,2006) the branding and visibility of sports, sports events, sports clubs and teams, through the application and commercialization marks and logos, is a marketing tool which over the years has led to a new lucrative global business of sport marketing.

Sport shows intellectual property in action. She explained that teams and leagues enter into lucrative licensing agreements for their logos and trademarks with a variety of manufacturers of consumer products and athletes continually finding new ways to capitalize on their image and publicity rights. They explain how these developments have led to the signing of multi-million dollar broadcasting contracts which has become the norm in the world of sport.

Robert L. Stoll (2014) states that *Patents* encourage technological advances that result in better sporting equipment and other sport-related innovations. Brands and designs contribute to the distinct identity of sports events, teams, players and their gear. Copyright-related rights generate the revenues needed for broadcasters to invest in the costly organizational and technical undertaking of broadcasting sports events to millions of fans all over the world. IP rights are the basis of licensing and merchandising agreements that earn revenues to support development of the sports industry. From the foregoing the types of problems outlined above that exist in the current intellectual property system are real. They are barriers to further exploitation and the paper will be exploiting how such barriers can be solved.

In the past, sports authorities were very cautious about intellectual property and saw Intellectual property rights as the Trojan horse of commerciality and money in an area dedicated to gratuity and aristocratic ideal.

The World Intellectual Property Organization (WIPO) administers the Nairobi Treaty on the Protection of the Olympic Symbol (The Nairobi Treaty), which was signed in 1981. Any State party to the Nairobi Treaty is obliged to protect the Olympic symbol of the five interlaced rings from commercial use in advertisements (or on goods or as a mark, etc.) Without the explicit authorization of the IOC. If the IOC grants authorization for use of the symbol, the NOC of that State is entitled to a portion of the IOC's revenue for granting that authorization.



The Nairobi Treaty has forty-six contracting parties, which is relatively few compared to the main international IP treaties. The original signatories of the Nairobi Treaty in 1982 were Egypt, Equatorial Guinea, Ethiopia and Kenya. The Treaty has a wider reach today, including some European and Latin American countries. For stronger protection of the Olympic symbol and related words and symbols, however, countries began implementing domestic Olympics legislation. An example demonstrating the Nairobi Treaty's effects, as well as the effects of some domestic laws and policies, is how the interconnected rings (the Olympic symbol) and the word mark "Citiusaltiusfortius" are registered in various databases across the globe.

As stipulated in Article 7 of the Olympic charter it is important to state that Olympic Games are the exclusive property of the IOC which owns all rights relating thereto, in particular, and without limitation, all rights relating to their organisation, exploitation, broadcasting, recording, representation, reproduction, access, and dissemination in any form and by any means or mechanism whatsoever, whether now existing or developed in the future. In Kenya, a need to combat this continued exploitation is expressed through the enactment of the Sports Act. (Sports Act no. 25 of 2013). This Law seeks to correct the historical economic imbalances that resulted in the marginalization of sports persons prior to the enactment. Such exploitative legacy oversees the continued deprivation of the socio-economic and economic aspirations and prosperity of athletes, (Ministry of Youth and Sports, 2010).

In this vein, all Kenyans and sportsmen in particular are called to forge a united economic front towards the development of the nation.

Whilst the outlook on sports policy appears positive, in practice this may not always be the case. When researchers examine how sportsmen are depicted in the media, it is observed that they hardly get a chance to speak for themselves. They are rarely depicted in positive terms and few stories speak on their accomplishments (Figueroa 2000).

Accordingly, this exacerbates their marginalization because policy agenda is often set by public opinion which is fed by the media.

William Damon (2004) reinforces this idea by noting how the media portray sportsmen in a consistently negative fashion. This in Kenya has made the marketing and selling of athletes an uphill task.

According to Ms.Marianne Chappuis, in-house lawyer to the international Olympic Committee (IOC), Olympism is a philosophy of life that places sport at the service of humankind. The Olympic Movement encompasses concerted, organized, universal and permanent action, carried out by many individuals and entities who are inspired by the values of Olympism under the overall umbrella of the IOC. It brings together athletes from across the globe for one of the worlds most well-known and celebrated sporting, cultural and entertainment events - the Olympic Games.

The Olympic properties, in particular the Olympic symbol, are the visual ambassadors of Olympism. The Olympic symbol, seen by millions of people throughout the Olympic Games, is one of the world's most recognized brands. The five interlocking rings represent the coming together of five continents and symbolize the Olympic values: striving for excellence, demonstrating respect and celebrating friendship. The Olympic properties have become iconic – they are more than just “logos”. People around the world associate them with the fundamental values of sport and of the Olympic Movement.

Because of their honored place on the world stage, it is essential that the IOC protect its Olympic properties at the international level. The IOC benefits from special legal means to do this, but it also relies on ordinary means of trademark protection. The IOC also benefits from an exceptional international legal instrument that protects the Olympic symbol. Adopted in 1981 and administered by WIPO, the Nairobi Treaty on the Protection of the Olympic Symbol obliges each state that has ratified it to refuse or invalidate the registration as a mark and to prohibit the use for commercial purposes of any sign consisting of or containing the Olympic symbol, except with the IOC's authorization.

According to Prof. Jacques de Werra, (2012) *“If intellectual property has something to learn from the sports industry, it can conversely be considered that the sports industry may have something to gain from the assimilation of the key values of IP law.”*

Across the world, we're seeing ever closer convergence between the sport and entertainment industries, as both sectors continue to rise to the challenges of new digital technologies which shape the way we spend our leisure time. At the same time sponsorships and media rights emerge as the main engines of growth, putting the traditional dominance of gate revenues under pressure. There will need to be much more focus on developing sophisticated measurement techniques to demonstrate the returns on this investment.

Dynamics of sport and entertainment have always overlapped; the two are now closer than ever before. At root, people buy tickets to sports events and pay-TV services carrying exclusive sports content expecting to be entertained. If they are not, they will vote with their feet and their wallets – and will soon be followed by media partners and sponsors seeking other opportunities. In many cases, sporting entertainment and commercial success are now seen as two sides of the same coin. Sport and entertainment events are increasingly being staged together, as a way to enhance the overall experience and extend the length of events – and therefore the time that supporters and viewers stay.

During the 2010 World Cup in South Africa n South Africa, interestingly, the corresponding marks, such as South Africa 2010 and World Cup 2010, were allowed to proceed to registration by the Registrar of Trade Marks without any objection from any

third party, notwithstanding the decisions which had been reached by the European tribunals. South African trade mark law and the European laws are very similar on the question of the non-registrability of descriptive marks and it would have made sense that the South African marks would have suffered the same fate, or at least that they would have been the subject of objections. European counterparts. As it happens, the 2010 FIFA World Cup came and went without a single challenge to these marks, despite the fact that they were relied upon for purposes of the enforcement of FIFA's rights in their marks.

The Merchandise Marks Act, 1941, contains a provision, in Section 15, which allows for the Minister of Trade and Industries to prohibit the use of certain marks. FIFA relied on this provision and made application to the Minister of Trade and Industry for the prohibition of a wide range of World Cup marks. The minister duly issued a notice prohibiting certain of the marks for which protection had been sought, but the protection was made subject to such convoluted and stringent conditions that no efforts were made to enforce any rights under that notice. The minister's attitude in this regard was strange since on previous occasions marks such as the Olympic Symbol and designations of other sports events have been granted protection virtually unconditionally. It is possible that the minister thought FIFA was overreaching itself in the degree of comprehensiveness of the protection that it was seeking for its marks, particularly given the wide range of trade mark registrations which had simultaneously been sought.

## **2.3 Sports as a source of income**

### **2.3.1 Athletics in Jamaica**

There is no doubt that the most popular athletes and teams benefit from the assignment of IP rights in a way that guarantees significant wealth acquisition to them. According to Mr. Delano Franklyn, Attorney-at-Law Kingston, Jamaica sport is no longer just a commodity for enjoyment is also manifested in the earning and spending power taking place in Jamaica. From his study the following statistics are evident:

- The cost of the transfer of footballer Bibi Gardner some years ago from his local club to a club in the English Premier League was £1m – a sizeable amount for a small developing country.
- In 2007 components of all sport contributed approximately US\$225m or 2.6% of the country's GDP.
- The annual spend on sport in Jamaica is over US \$ 933 million This is inclusive of the over US \$260 million allocated to sport by CHASE (Culture, Health, Arts, Sports and Education) through the Sport Development Foundation; another US \$200million by the Government and over US \$180m by the private sector.
- In 2008, three Jamaican cricketers who played in 20/20 cricket matches in Antigua and Barbados were paid US\$1m each.

### **2.3.2 Rugby**

Rugby union is played in over 100 countries across the world. The recent inclusion of 7-a-side rugby as an Olympic sport promises to fuel further interest in it. The traditional rugby powerhouses in the northern hemisphere are England, France, Ireland, Italy, Scotland and Wales (collectively known as the Six Nations), and in the southern hemisphere, Australia, New Zealand and South Africa. Popular demand for the sport and, therefore, its commercial value are greatest in these countries.

In addition to regulating and protecting the integrity of the sport, rugby union's governing bodies (or unions) organize and stage international matches, tours and tournaments involving their respective national teams. They sell the rights to these events (principally broadcasting and sponsorship rights) to generate commercial revenue.

The prime objective of the unions, however, is to act as custodians of the sport, so that it expands and develops at all levels. Any revenue generated over and above the staging costs is re-invested in the sport, both to improve it at the professional level and to provide facilities and coaching opportunities at the community level. Such investment at the grass roots enables amateur players to enjoy the health, recreational and social benefits of the game and facilitates the identification and development of new talent to join the professional elite. The professional game then drives the popularity of the sport and generates additional revenue for further investment.

This “virtuous circle” enables the unions to generate consumer benefits, employment opportunities and tax revenues at the professional end of the sport, and public policy benefits at the community level, in terms of better health and greater social inclusion and racial and gender equality.

### **2.3.English Premier League**

The English Premier League, which is a private company wholly owned by its member clubs, is the highest organized level of professional football (soccer) in England. In the league, 20 clubs compete for the championship playing each other twice during the course of the season.

Compared to the other big European soccer leagues (“Big-Five”) the Barclays Premier League is the biggest in terms of revenue.

Rapid economic growth in sports-related activities has seen many football clubs especially European Football clubs being transformed into companies listed in stock exchange . Take for instance, Real Madrid and Manchester United football clubs which have been corporate bodies with elaborate commercial structures.

Media coverage of football events play an important role in the development of the media rights, markets and general development of various rights that exist in football. Media rights for very popular sports such as football have become subject of



highly competitive bidding wars between various channels resulting in unprecedented price increases for the benefit of sport federations and clubs. According to world governing body Fifa it took in 1.2 billion pounds in television and new media broadcast rights in 2006.

According to a study by Deloitte (2013) total revenue of the Premier League was at almost 3 billion Euros in the 2011/12 season. In that season the German Bundesliga generated revenues of around 1.9 billion Euros, the second highest among the top soccer-leagues in Europe.

The games of the Premier League were attended by almost 36 thousand fans on average in the 2012/13 season. The total aggregate attendance at games of the Premier League was at more than 13 million fans.

### **2.3.5 Sports And Media Coverage**

Media coverage of sporting events play an important role in the development of the media rights and general development of various rights that exist in the field. Media rights for very popular sports such as football have become subject of highly competitive bidding wars between various channels resulting in unprecedented price increases for the benefit of sport federations and clubs. In Kenya for example there have been turf wars between Multichoice and Zuku who are the major players in the pay TV sector.

According to Gary Rathbone (Rathbone, 2012) high quality TV coverage can make African sport more competitive as entertainment among TV viewers on our continent and less reliant on broadcasts of high-priced international events. Taken together, the delivery of high quality, extensive coverage of a sport can attract significantly higher levels of sponsorship and private sector support which in turn benefits the athletes.

A related issue to intellectual property and coverage is personality rights also known as the right of publicity. As sports have developed into a global business, so too has the significance of athletes' image rights. Similar to straight support of the games themselves, retailers and businesses often seek to link their products and images with celebrities. More and more often, professional sports associations have aimed to control the image rights of their team members. Without a contractual relationship between a team and its members, however, jurisdictions handle personality rights differently. Generally, it is agreed that they fall under the auspices of privacy rights.

In other jurisdictions, domestic implementation of Article 10bis of the Paris Convention for the Protection of Industrial Property is used to battle unfair competition and may come into play in a similar role as would stand-alone personality rights.

#### **2.3.6 Sports and social media.**

A further area of convergence between sport and entertainment is the rising use of social media. Social networking continues to create opportunities and challenges for traditional broadcasters – and also for sportspeople who appear increasingly prone to overstepping the boundaries of what they should say on sites such as Twitter. Partly as a result of this open personal interaction, social media allows fans to get closer to athletes and sports personalities, and provides sponsors with an opportunity for two way communication, thus enabling them both to embed their brand, and also to understand and manage how fans perceive the brand.

Mark Casey and Dr.Martyn (2008) observe that it is almost impossible these days to have a conversation that doesn't touch on the world of social media. Our world in Africa has now passed the “tipping point” where cheaper bandwidth, combined with cheaper and increasingly versatile mobile devices have been inextricably linked to a universe of highly-functional and user-friendly platforms. We have been catapulted into a new digital dimension. It's a bit like in “Alice in Wonderland”.

The high and growing amount of traffic generated from mobile phones in Africa highlights an important trend going forward: namely, that throughout Africa there is a vast interest and uptake in social media platforms. For example, Facebook has become the most visited website on the continent, with African users of the world's largest social networking site standing at an estimated 44.9 million people.

As people have become used to voting for their favorite acts on television programmes, sports fans increasingly want to be involved in their chosen sports via social media sites. It is a common trend in Kenya for viewers to tweet, facebook and interact on social media during live sport events.

The English lower-league football club Stockport County recently gave its fans the opportunity to vote on its summer signings, and many owners of sports media rights look to enhance the value of their rights through presences on Twitter and Facebook

### **2.3.7 Sports and Image Rights**

Since birth the holder of the image rights is the individual whose image is reproduced. It is different for independent, self-employed athletes such as tennis and golf players. They do not depend on an employer but only sign commercial contracts. Disputes in the use of rights.

The Club and the Player have to agree how the Player's image rights are exploited, if applicable. As a recommendation and principle the individual player may exploit his rights by himself (if not conflicting with clubs sponsors/partners) whilst the Club may exploit the Player's image rights as part of a group and/or the whole squad.”

When athletes are called up by the national team, the respective federations hold the collective athletes image rights and can make contracts with companies sponsoring the national team. Such enterprises may not be the same as the sponsors of the club or even the individual athlete's sponsors. Participation by athletes in different sporting events leads to numerous disputes as a result of the overlap in the use of the image rights.

In Kenya a seminar on Intellectual Property and Sports in Kenya co-organized by the Kenya Industrial Office KIPi and the Kenya Copyright Office KECOBO held in Nairobi. During the two-day seminar, several distinguished speakers from academia, legal practice and sports engaged us in a variety of interesting topics including: marketing, merchandising and licensing agreements and building successful sponsorship programmes, media and broadcasting rights, signal piracy, digital content and social media, sports contracts and key clauses to look out for, administration and enforcement of IP rights in sports and finally building an effective IP rights strategy in sports.

According to Daily Nation (2012) a Kenyan footballer Dennis Oliech claimed his image rights had been violated and quit the national team, Harambee Stars. A photograph of Dennis Oliech, McDonald Mariga and Bob Mugalia all national team players celebrating after Harambee Stars scored their winning goal against Angola in a 2012 Africa Cup of Nations qualifier at Nyayo National Stadium. The photo was altered slightly then used by East Africa Breweries Ltd (EABL), the current sponsor of Harambee Stars, in advertisements throughout Kenya including several road-side billboards. The three

players demanded to be paid by EABL for using their images to run promotions for the team. The sponsor declined and relied on the KES 110 million sponsorship deal with the Harambee Stars Management Board. Clause 9 of the agreement stated that the sponsor shall have the right “to use the images of members of the Harambee Stars team for promotional and advertising activities”

It was not in dispute that EABL had a group agreement with the entire Harambee Stars Team in respect of image rights in the present case, is EABL right to argue that the three players pictured represent the entire team so as to preclude EABL from entering into separate agreements for image rights with each of the three players? The players argued that EABL should have been required to seek their consent individually before using their image. In the absence of such consent being sought is EABL in breach of their image rights?

The downside however is that there is no single source of law that recognizes image rights. The closest recognition is in the Copyright Act which defines artistic works to include photographs and recognizes a photographer or a third party as the copyright owner.

Leftwich (2007) defines predatory states in which political elites who take large amounts of surplus which may have been of benefit to more people and they convert it to their own use in a way which slows down economic progress. The powerful elite in control of

economic power in the sporting industry plunder in disregard of the welfare of the citizenry.

In such a paradigm, questions are left as to how national policies can thrive when institutions are being used to enrich politicians at the expense of their subjects. Those in power can abuse power in a bid to enrich themselves and end up exploiting the athletes..

In this regard, athlete's empowerment policies such as the sports Act and have to be in tandem with other national policies to succeed as opposed to being an abstract and practically irrelevant document created for political expediency.

### **Conclusion.**

Hosting any sporting event that garners international attention, is a rare opportunity for businesses to underwrite an important international effort that has a wide range of benefits including profits to that business from its association with the event.

The extent to which sponsors can rely on the exclusivity of their rights in funding the Games will have an impact on future sponsorships and the viability of future Games.

There is a wide range of intellectual property in international sporting events. All the above factors taken together indicate that protecting and enforcing intellectual property

in sports is an essential and substantial component of ensuring that international sporting events remain a viable financial reality.

This chapter provided the theoretical framework for the study. Literature that was reviewed explained the theories available about IP and Sports and its implication on the study.

Through research and through international and regional laws, recommendations are set for governments and sports Organizations to adopt progressive policies for addressing sporting issues in accordance with how participants are viewed in the society.



## **CHAPTER THREE**

### **THE RESEARCH METHODOLOGY**

#### **3.1 Introduction.**

This chapter describes the methodological approach adopted in this study. It explains the context of the research setting in the Kenya where sports people and athletes are located. The survey will seek to obtain their perspectives on sport and Intellectual property, how sports in Kenya can benefit from exclusivity agreements. We will also look at the problems arising from image rights and branding a largely qualitative approach will be adopted.

In this section, methods of data collection, the research experience and the methods of data analysis are summarized. This primary data will be collected in Chapter four with information from secondary sources such as reports and newspaper articles.

#### **3.2 Research Design and Delimitation.**

The study was grounded in both qualitative and quantitative approaches, with a bias for qualitative approach. Data Collection took place in Nairobi and Eldoret, Kenya where most of the Athletes are based.

Focus discussion groups, unstructured interviews were conducted as they allowed for further probing to capture more of the subjects' opinions and viewpoints. The researcher

was therefore confined to those who were directly involved with sports associations, athletes and broadcasters.

The timing of the research comes on the backdrop of the 2013 World Championships in Athletics the fourteenth edition of the international athletics competition and was held in Moscow, Russia, from 10–18 August 2013, before the Rugby world Cup to be held in England in 2015 and the Soccer World cup in Brazil 2014. This was likely to be a time when most athletes were thinking about their chances of a podium finish and the benefits that can accrue from these events. My survey, interview questions and the topics of my focus group discussions came at a relevant time.

### **3.2.1 Quantitative and Qualitative Approaches**

Quantitative research consists of those studies in which the data concerned can be analyzed in terms of numbers. Research can also be qualitative, that is, it can describe events, persons and so forth scientifically without the use of numerical data. Quantitative research is based more directly on its original plans and its results are more readily analyzed and interpreted. Qualitative research is more open and responsive to its subject. Both types of research are valid and useful. They are not mutually exclusive. It is possible for a single investigation to use both methods. In this research both qualitative and quantitative research designs were used.

### **3.2.2 The Qualitative Aspect**

According to Casley and Kumar (2006), qualitative research design results in information which can best be described in words, they go further to explain that qualitative data is empirical, meaning that it relies on the practical and concrete experiences described by the subjects under study. The qualitative approach was used for collection and analysis of information in order to assess the impact IP in sports had in the Kenyan setting.

The rationale behind using qualitative research design lies in its ability to elicit practical and concrete experiences as articulated and described by the respondents under study. The justification for using it in this study lies in the quest to establish how sports had impacted on the lives of the participants in Kenya.

Denzin and Lincoln, ( 2000), cites (Becker 1998) who describes the qualitative researcher as a maker of quilts who uses the aesthetic and material tools of his or her own craft, deploying whatever strategies, methods and empirical materials at hand. Qualitative research by nature seeks to secure an in-depth understanding of the phenomena being studied and uses multiple methods to achieve this. This research used questionnaires, unstructured interviews and focus groups.

The combination of multiple methods, empirical practices and perspectives are best understood as a strategy that enriches the depth to any enquiry. For Stake, (2010)

qualitative research is interpretive, experiential, situational, and personalistic and emphasizes personal experience.

In assessing the level and extent of use of IP in sports it was necessary to use this approach as it allowed for insiders' view of the issues under investigation to be accurately captured and affirmed.

Hussey (2007) describes qualitative research as an approach bringing meaning to things in their natural environment based on empirical evidence; it is the strength of the evidence that increases the knowledge of all phenomena that can be experienced in the real or imaginary world. The researcher used this method because it allowed for conversation and observation in natural settings as opposed to a controlled artificial setting.

### **3.2.3 Population**

A population refers to a discrete group of units of analysis or whatever groups the researcher wishes to make inference about. According to Polit and Hungler (1991) define population as a totality of all the subjects that conform to a set of specification. In this study the population was sports people in Kenya both male and females of all races, educational status, socio-economic.

Status. Sports associations and broadcasters will also be part of the population. For data collection the researcher targeted athletes and sports persons (between the ages of 18-35) from Kenya.

The athletes were purposively sampled with the researcher taking careful consideration of their field so as to gain a diversity of perspectives through interaction with different field of sports.

Respondents were purposively selected on the criteria that they are above 18 and legible to take part in any kind of sports. The sample was chosen on the assumption that they were young people already acquiring skills that would enable them to directly benefit from the Sports.

### **3.3 Sampling**

According to Schofield (2006), a sample is a set of elements selected in some way from a population and its aim in research is to save time and effort as well as obtained unbiased and consistent estimates of the population status in terms of what is being researched.

Participants for the research will be identified identified through the use of snowball and purposive sampling methods. In the selection of the sample, the researcher aims to select

information rich sources that could help the researcher conduct an in depth study on the impact IP in sports.

In this method of sampling according to Korb (2012), the researcher uses his judgment to select participants that are representative of the population. This study considered factors that might influence the population. The sample for this study was made up of a total of 60 individuals

### **3.3.1 Data Collection**

The researcher used face-to-face interviews with individual participants and also held focus group discussions. During interviews, notes were taken in order to capture all important issues arising during the interviews.

The use of interviews immensely facilitated the collection of primary data that was essential for this study. Open-ended interview guides were used to solicit more ideas and study the attitudes and behaviors of the participants. The interview took an average time of one hour each and the focus group discussions two hours.

## **3.4 Interviews**

Structured and unstructured interviews: Selection of key informants was based mostly on knowledge of the research area. Minichiello (2000) defines unstructured interviews as interviews in which neither the question nor the answer categories are predetermined. They rely on social interaction between the researcher and informant to extract information.

The researcher assured the participants that the thesis was purely an academic exercise which would be of use to other researchers and possibly future generations.

### **3.5 Focus Group Discussions**

With a rise in postmodern thought, qualitative research methodologies such as focus groups have become more popular (Kitzinger & Barbour, 2009). Qualitative researchers believe that there is no “truth” or “reality” and that reality is socially constructed.

Qualitative research is inductive and therefore requires interaction. According to (Heppner, Kivlighan, & Wampold, 2004) in qualitative research, participants are fully informed and included in the analyses.

A focus group is a carefully planned and moderated informal discussion where one person’s ideas bounce off another’s, creating a chain reaction of informative dialogue).

A focus group discussion is best carried out in a comfortable environment with the

purpose of eliciting a wide range of views and opinions from participants who share a common experience relative to the issues under discussion.

The researcher carried out focus group discussions with 3 groups of respondents. The researcher acted as a moderator of the discussion using the interview guiding questions as a guide for the discussion. Through these focus groups, the researcher was able to gain an in-depth view of participant's perceptions on the issues at hand.

### **3.6 Secondary Data Sources**

To make a detailed and comprehensive assessment of the topic, the researcher reviewed secondary data, newspaper articles and other publication on Intellectual Property and Sports.

### **3.7 Data Analysis And Interpretation**

The research analysis section presents the findings and discusses them at the same time to avoid repetition. The data collected from the field was analyzed and the information obtained categorized according to the interview questions which the responses sought to answer.



Analyzing the interview transcripts enabled the researcher to identify patterns and images that are emerging from the data and this helped to improve the quality of questions interviews that were yet to be held.

### **3.8 Research Ethics**

The researcher guaranteed the protection of participant's privacy and confidentiality. Upon identifying a respondent to helping the research, the researcher immediately made known to them their rights as respondents. Upon introduction of the topic and stating what the researcher expected from the respondents, the researcher highlighted that the respondent was free to choose whether to answer all questions or some of the questions. The respondents were not required to write their names on the questionnaire and were also informed that taking part in the research will entirely be a matter of choice.

## **CHAPTER FOUR**

### **DATA PRESENTATION AND ANALYSIS**

#### **4.1 Introduction**

In the preceding chapter, the researcher described how data was collected from the field in order to assess the role of Intellectual property in sports. This chapter aims to present and analyze the information that was obtained from the interviews, questionnaires, discussions and observations. Information gathered from the research provided an insight into the interaction between IPRs and sports. Information gathered from the research provided answers to questions on how intellectual property is key and part and parcel of the sporting industry.

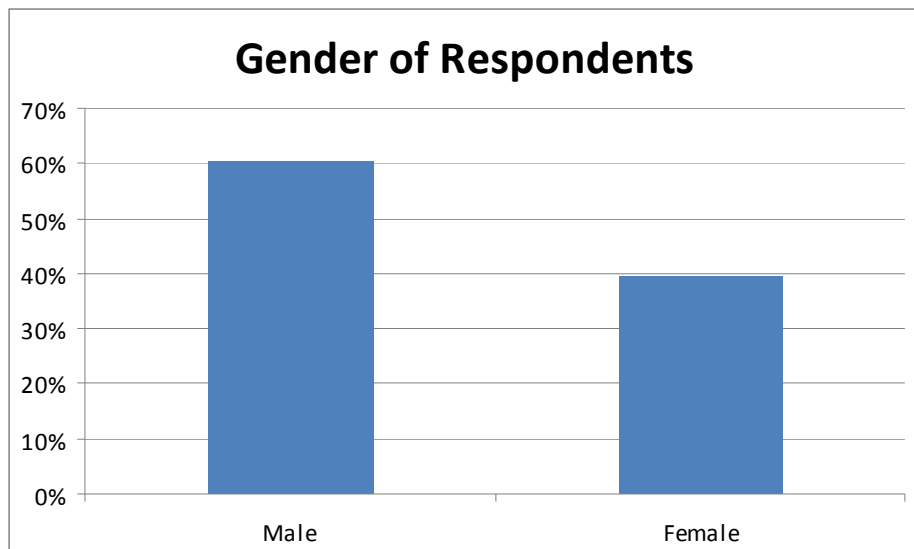
There are a few definite conclusions that can be drawn from the research findings on the topic of Intellectual Property and sports.

#### **4.2 General Information**

This section presents the findings on the general information and characteristics of the respondents.

##### **4.2.1 Respondents Gender**

The study found that 60% of the respondents were male while the remaining 40% were females. This shows that majority of the respondents in the survey were male. The results are summarized and presented in Figure 1.

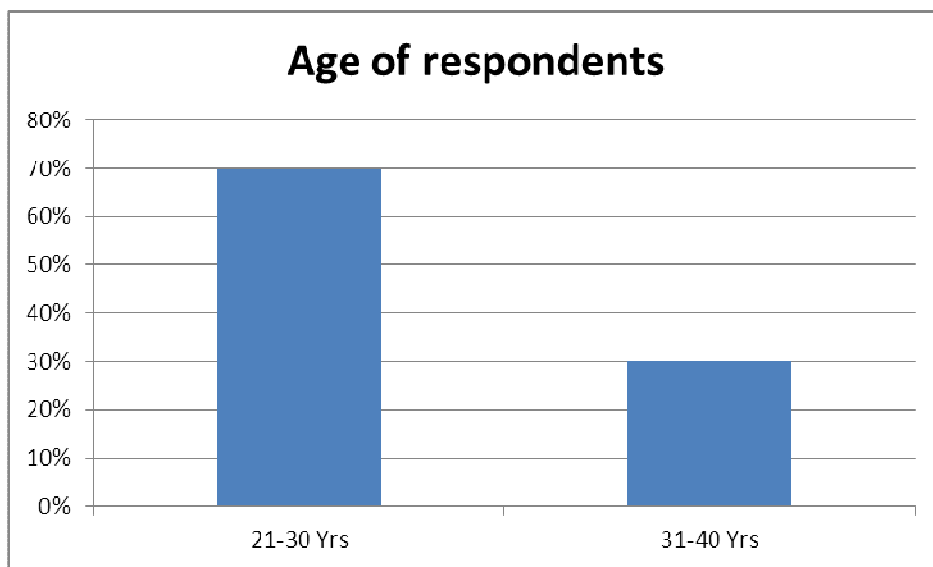


**Figure 1: Distribution of Respondents According to Gender**

The sex of the respondents was sought after to give an insight on whether the findings can be generalized across both genders. The findings show that most of the respondents were male and thus the findings may have a gender bias. The large proportion of male may be due to the fact that the nature of the sports industry may be risky and needs aggressive character and thus fewer women are involved. However due to the nature of information sought out, the researcher felt that the issue of gender bias did not arise during the course of the study.

#### **4.2.2 Respondents Age**

The study revealed that 70% of the respondents were aged between 21 and 30 years while the remaining 30% were aged between 31 and 40 years. These results are summarized and presented in Figure 2. The results imply that majority of the respondents were aged below 31 years of age.



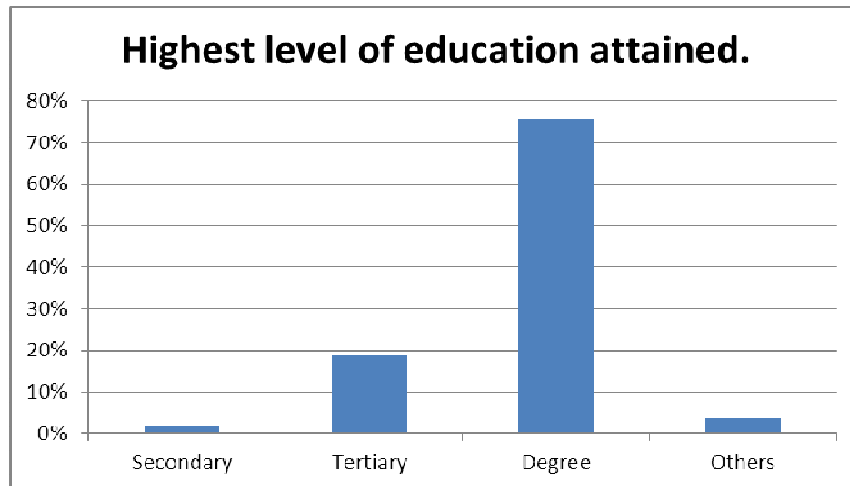
**Figure 2: Distribution of respondents according to age**

These findings point to the fact that most of the respondents are in an age bracket (21-30) which is informed on most issues concerning the area of study and thus the researcher was confident that these were the right people to involve in the study.

#### **4.2.3 Respondents level of Education**

In terms of the respondents' level of education, the study found that 75% had a degree level of education, 19% had tertiary education, 2% had secondary education and 4% had other forms of education including post graduate degrees. These results are summarized

and presented in Figure 3. The results imply that majority of the respondents had at least an undergraduate degree.



**Figure 3: Distribution of respondents according to highest levels of education**

The educational background points to the fact that most of the respondents are properly educated and thus easily understood the issues raised in the questionnaire concerning the area of study. Given the level of education the respondents also clearly understood the ethics of research and thus were expected to give honest and informative responses which would lead to credibility of the final research findings and report.

#### **4.2.4 Respondents Work Experience**

The study further revealed that 2% of the respondents had an experience of less than 2 years in the organizations, 23% had an experience of between 2 and 3 years, the bulk of

68% had an experience of between 3 and 5 years, 4% had an experience of between 6 and 10 years and the remaining 4% had an experience of over 11 years. This shows that most of the respondents had less than 5 years of experience in the organization. These results are summarized and presented in Figure 4.



**Figure 4: Distribution of respondents according to experience**

These findings show that most of the respondents had not been in the job for long. These may be explained by factors such as high mobility due to transfers, or promotions among other factors. The work experience is however substantial to give credence to the research findings as the respondents were well versed with the current goings on in the area of study thus were bound to give most recent information.

#### **4.3 Knowledge and Attitude About IP and Sports**

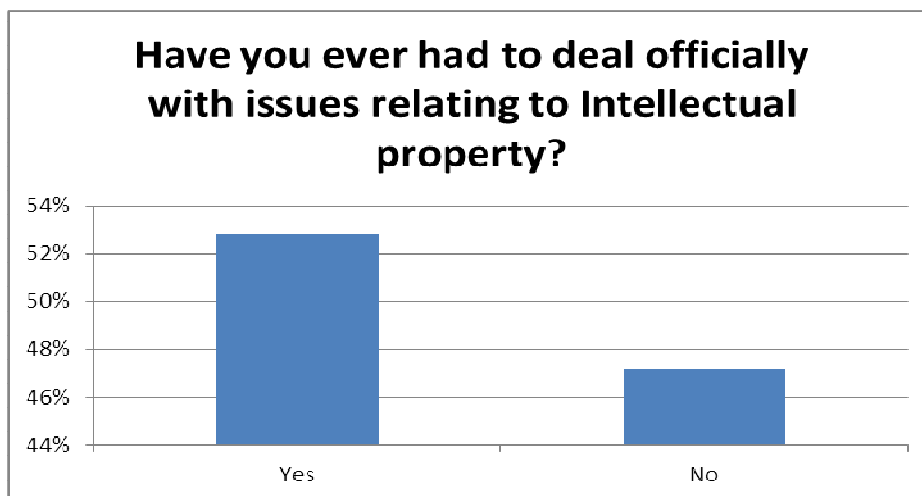
In this section the respondents were provided with statements regarding their knowledge and appreciation of Intellectual property and its impact on sports. They were requested to rate them according to the given parameters. The responses are discussed below.

#### **4.3.1 Intellectual Property (IP)**

The respondents were asked to explain the state of their understanding of IP. According to the respondents, the term intellectual property seems to be understood as a legal concept. Most respondents however seem to understand the idea that it relates to creativity of the mind and that there are rights involved. The respondents from the sports associations outlined how intellectual property is part of their associations and how it is enforced. According to the respondents Intellectual property is treated as a complex concept that requires a lot of interaction between the IP owners and the state agencies.

#### **4.3.2 Dealing with Issues Relating to IP**

The respondents were required to state if they have ever dealt officially with issues relating to Intellectual property. According to the responses, majority of them at 53% had dealt with IP related issues while 47% reported to have not as shown on Figure 5.



**Figure 5: Distribution of having dealt with IP Related Issues**

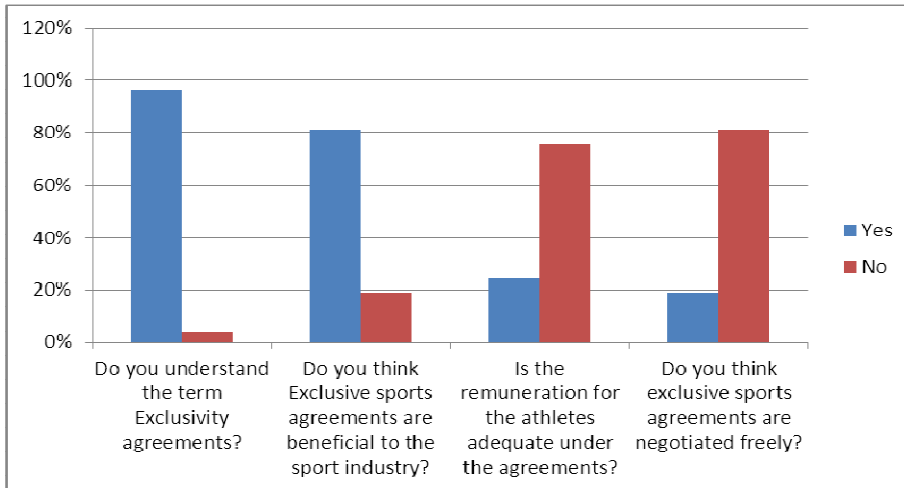
This can be associated also with the low levels of education and further worsened by the fact that most athletes come from a low class socio-economic background. What came out clearly was that there is no single source of law that recognizes image rights. Majority reported to have dealt with several cases relating to IP.

#### **4.4 Exclusivity Agreements**

The study was also interested in establishing the knowledge of exclusivity agreements among the respondents. This was divided into four subsections as shown on Figure 6. From the responses, the study found that 96% said it they understood what exclusivity agreements were while 4% said they do not. The respondents also revealed that 81% find exclusive sports agreements are beneficial to the sport industry while 19% do not. It was also established that 25% find the remuneration for the athletes adequate under the



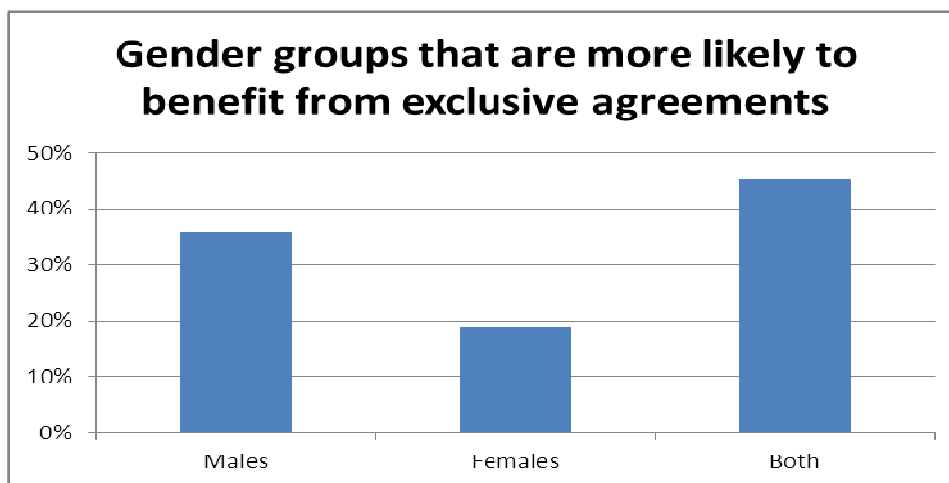
agreements while 75% thought the contrary. Finally 19% felt that exclusive sports agreements are negotiated freely while 81% felt that this was not the case.



**Figure 6: Knowledge of Exclusivity Agreements**

#### **4.4.1 Gender groups more likely to benefit from exclusive Agreements**

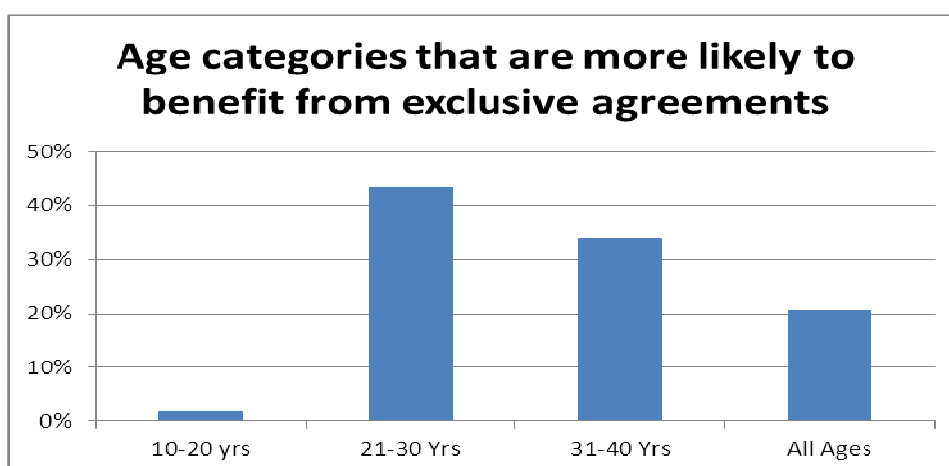
The study went further to seek responses on the categories of people that are more likely to benefit from exclusive agreements. With the gender category 36% felt that males are more likely to benefit, 19% felt that females are more likely to benefit while 45% felt that both gender stand to benefit as shown on Figure 7.



**Figure 7: Gender groups more likely to benefit from exclusive Agreements**

#### **4.4.2 Age groups more likely to benefit from exclusive Agreements**

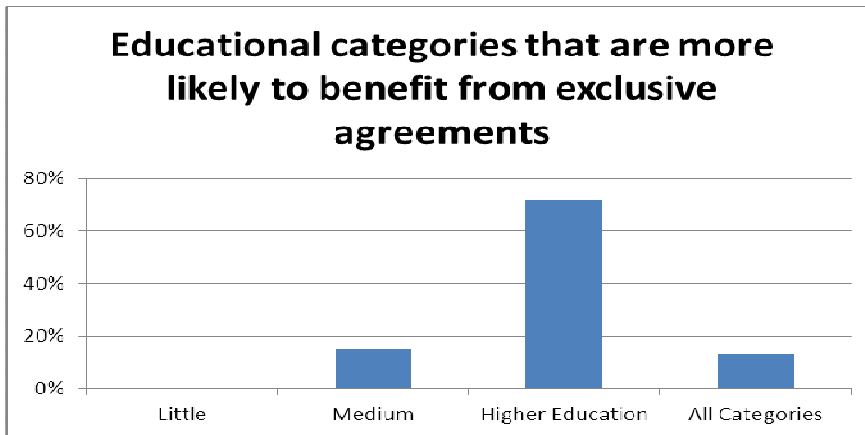
The responses also show that in terms of age, those between 21-30Years were most likely to benefit while those below 20 years were the least likely to benefit as shown in Figure 8.



**Figure 8: Age groups more likely to benefit from exclusive Agreements**

#### 4.4.3 Education Categories more likely to benefit from exclusive Agreements

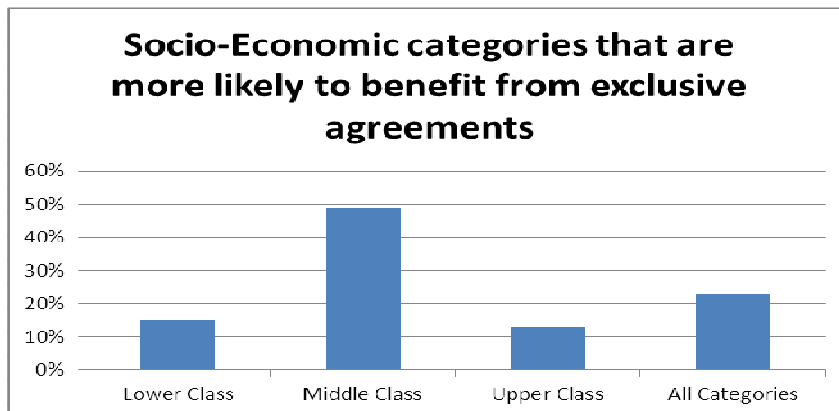
In terms of the educational categories that are more likely to benefit from exclusive agreements, those with higher education were identified as the most likely while those with little education could not benefit at all as shown on Figure 9.



**Figure 9: Education Categories more likely to benefit from exclusive Agreements**

#### 4.4.3 Socio-Economic Categories more likely to benefit from exclusive Agreements

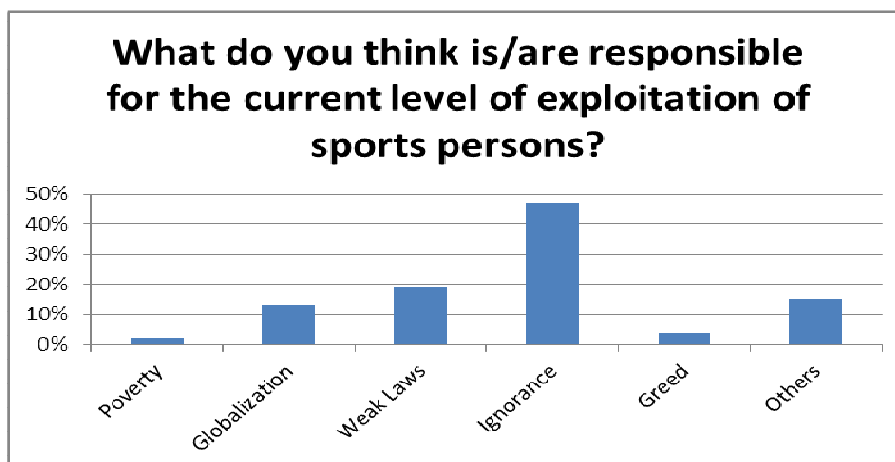
There were also responses on the Socio-Economic categories that are more likely to benefit from exclusive agreements. It was interesting to note that the middle class were identified as most likely to benefit while the upper class were the least likely.



**Figure 10: Socio-Economic Categories more likely to benefit from exclusive Agreements**

#### **4.5 Responsibility for the current level of exploitation of sports persons**

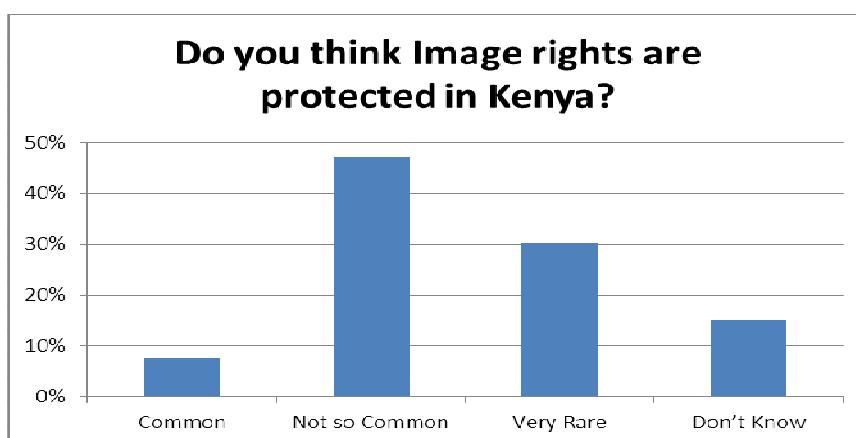
The study also sought to establish from the respondents the responsibility for the current level of exploitation of sports persons. The results as summarized and presented in Figure 11 indicate that 47% of the respondents said that it was due to ignorance, 19% said it is due to weak laws, 13% said it was due to globalization, 4% said it was as a result of greed, 2% cited poverty while 15% said it was due to other causes.



**Figure 11: Responsibility for the current level of exploitation of sports persons**

#### **4.6 Image Rights**

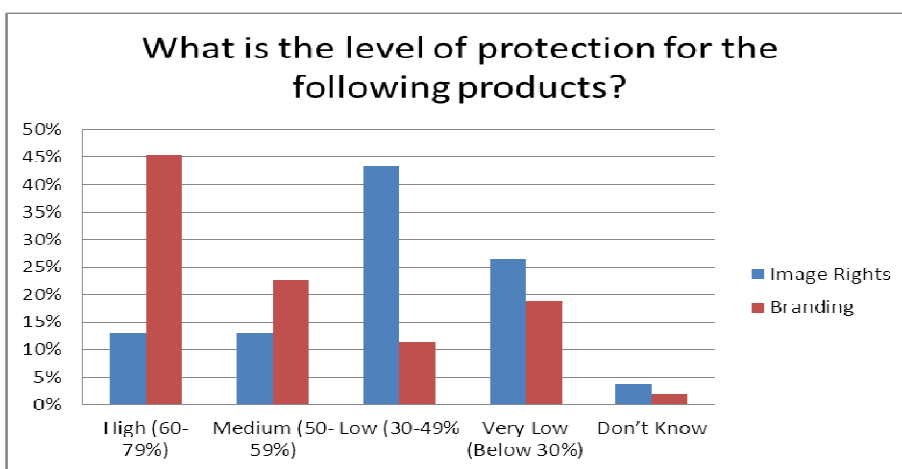
The study also sought to establish from the respondents the extent to which image rights are protected in Kenya. The results summarized and presented in Figure 12 indicate that 47% of the respondents said that image rights are not so common in Kenya, 30% said they are very rare, 8% said they are common while 15% said they don't know.



**Figure 12: Are Image Rights Protected in Kenya?**

#### 4.6.1 Level of Protection of Image Rights and Branding in Kenya

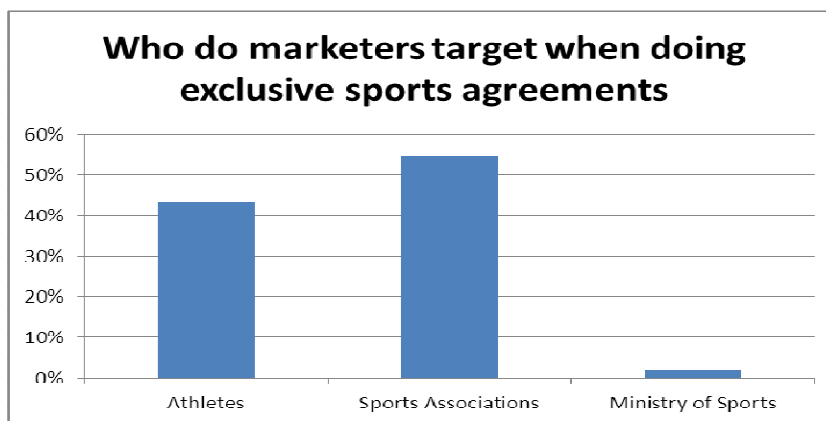
There was also a need to establish the level of protection of IP products namely image rights and branding. From Figure 13, we find that branding had a higher level of protection than image rights.



**Figure 13: Level of Protection of Image Rights and Branding in Kenya**

#### 4.6.2 What Marketers Target in Exclusive Sports Agreements

There was also the requirement to investigate what marketers target when doing exclusive sports agreements. From Figure 14, there was evidence that they mainly target sports associations at 55%, athletes at 43% and the least at Ministry of Sports at 2%



**Figure 14: What Marketers Target in Exclusive Sports Agreements**

## **4.7 Impact of Copyright Piracy**

### **4.7.1 How the Lack of Protection Affects Stakeholders**

The respondents were asked to state how lack of protection could affect various categories of stakeholders in the sector. Among the athletes, the study found that there was very low motivation, exploitation and misuse. There are others who also indicated that there was extortion, low earnings and even lost opportunities. Within the marketers, the study found that they felt left out and thus incur huge losses through loss of revenue. There was also indication that they felt shut out thus impacting on jobs. They did mention fraud and confusion having infiltrated the sector thus leading to low audience. The agents were impacted due to corrupt tendencies, the issues of trade unions airing their voices and therefore leading to irrelevancies and redundancy. They thus felt that

the venture is no longer profitable. According to the respondents at KECOBO, in terms of the protection there exists no direct and laid down protection mechanism for image rights of the athletes. Though the Government declared the importance of intellectual property in the new constitutional dispensation.

The ministry of sports states that underpinning this policy there is a need for achieving certain policy Objectives. These objectives include promoting athletes; ensuring that adequate resources are directed towards protection of sportsmen and Promoting the branding and marketing of our athletes.

#### **4.7.2 How Intellectual Property Protection Could Affect the Government/Nation**

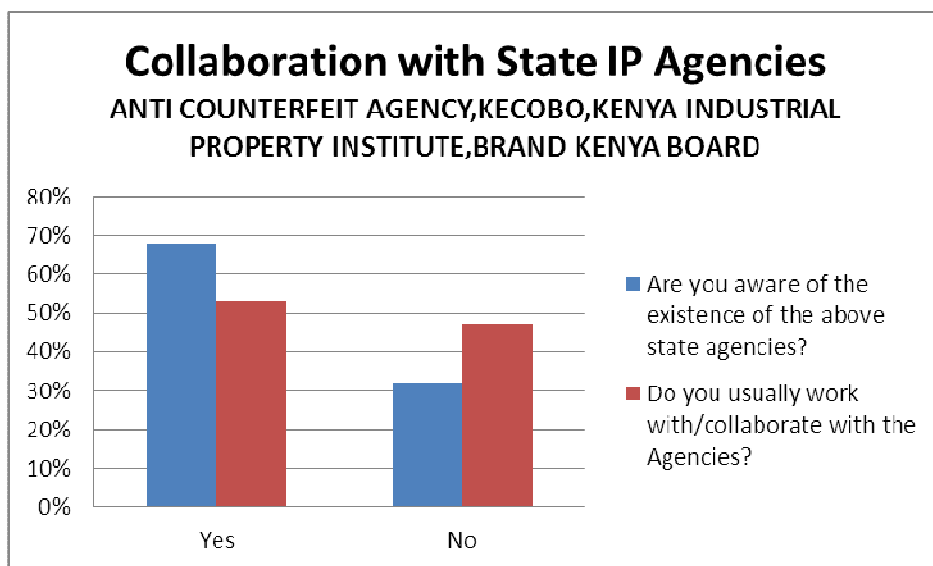
The respondents were required to explain how IP protection could affect the Government/Nation. The study found that revenue would be affected in various ways. These are increase in revenue, improvement in revenue generation and enhancement of efficiency. There could also be limitation on revenue generation and growth. On account of investment, the respondents felt that they would increase. These would also be followed the response that there would be more awareness created. These are cited as ways that IP protection could affect the government/nation. Investments also have the potential to create more jobs thus affecting government revenue positively. On image, the respondents felt that it would affect government revenue by improving it. Others felt that the image would be tainted while others thought it could be built thus affect the



government/nation positively. On culture, the respondents felt that it would be safeguarded. They also stated that there would be learning and other benefits. They thus felt strongly that IP could affect the government revenue/nation.

#### **4.8 IP Agencies: Anti-Counterfeit Agency, KECOBO, Kenya Industrial Property Institute, Brand Kenya Board**

There was also the question of awareness of existence of state agencies. 68% of the respondents reported to be aware of existence of state agencies involved in IP protection and enforcement. The remaining 32% mentioned that they have never dealt with the state agencies. They were also required to state whether they usually work and collaborate with the agencies where 53% reported that they usually work and collaborate with the agencies. The other 47% stated that they don't work and collaborate with the state agencies on IP matters.



**Figure 15: Collaboration with IP Agencies**

#### **4.8.1 Effectiveness of Agencies in Intellectual Property Protection**

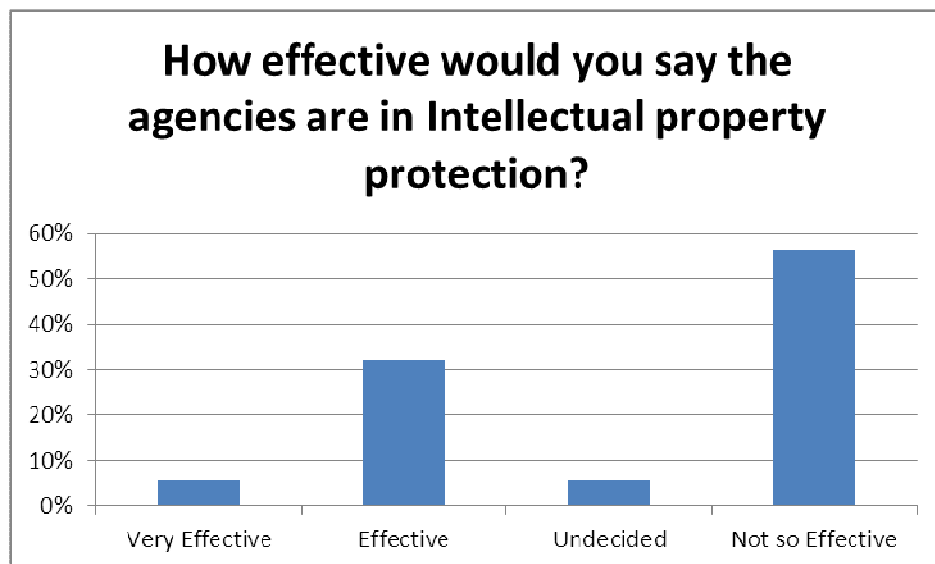
The study sought to establish the effectiveness of agencies involved in intellectual property protection. From the respondents, 57% felt that the agencies were not so effective. Another 32% felt that the agencies were effective. Those who felt that the agencies were very effective and undecided were 6% per category. From the interviews and discussions held with respondents it emerged that various stakeholders and players were involved in the administration and protection of Intellectual and they all had various roles to play.

During time of research, January-April 2014, the Agencies that were responsible for the protection of IPRs were identified as:

- Kenya Industrial Property Institute

- Kenya Copyright Board
- Anti-Counterfeit Agency
- Ministry of Youth and Sports

Findings from the study indicated that to effectively protect IPRs and ensure athletes benefit fully from their images and branding the above government agencies need to work closely with the sports associations responsible for the day to day running of the industry.



**Figure 16: Effectiveness of Agencies in IP Protection**

## SUMMARY

During the focus group discussions, athletes (whilst aware of the existence of the protection available as revealed by the survey) pointed out how they had little idea of

how they could benefit from intellectual property having not faced such issues. Many dismissed the benefits from IPRs as being inaccessible to them. During the discussions athletes explained how making monetary gains from image rights and branding were mere wishful thinking on their part and beyond their reach hence they did not make any attempts towards actualizing it. The manager at KRU stated that another reason for the low level of benefits to the athletes was due to what he referred to as “Event sponsorships” which solely focuses on pushing the sponsors brand and full mileage from the event as opposed to team sponsorship. A perfect scenario was the Bamburi Super series, which is a franchise based regional tournament that runs over 8 weeks. The players who are the main focus in the tournament do not get the direct monetary benefit that they should but instead more focus is on the sponsor’s brand.

A parallel can be drawn here with the Kenya Airways sponsorship of the Kenya 7’s team that pays players allowances and salaries and by extension compensates them for the use of their images. Focus group discussions revealed that many athletes perceived intellectual property as being irrelevant for them and removed from their reality. In all these cases, the athletes do not get an in-depth understanding of IP and thus would never benefit from it.

The lack of athletes participation in negotiating the exclusivity and branding rights agreements meant they remained exploited as they cannot access the platform upon which they could be empowered.

### **4.3 Focus Group Discussions**

From the survey carried out, the researcher was able to identify athletes who claimed to have heard about the Protection of image rights and IPRs generally.

The participation of athletes in these focus group discussions would inform the research more meaningfully than in a case where participants had no knowledge on any of the issues to be discussed because participation entails the active, informed and voluntary involvement.

### **4.4 Athletes Remain Vulnerable To Exploitation.**

In the discussions held at KRU, FKF respondents were reluctant to share their stories but were encouraged by their peers to share their experiences. During the discussion, one of the participants revealed that whilst he was negotiating for an endorsement deal, he was asked by one of the agents a fee of \$US5000. In this case he did not have the money and offered to pay the fee after he had received the deal but the agent insisted that the money be paid first.

The indication here is that whilst the policy framework is sound and comprehensive, it is individuals involved in the administration sports who use this opportunity to enrich themselves. According to Edward Rombo athletes remain a vulnerable group due to ignorance and greed/profitability among the administrators and agents.

The Respondents revealed that there are some influential personalities who manipulated image rights agreements and exclusivity agreements in favor of others. According to the respondent, this, (amongst other reasons) may explain why some athletes had received endorsement deals whilst some had not.

In addition to this it was observed that the particular athlete's image and media liking also contributed a lot to whether they were likely to reap the maximum benefits from their rights. In essence this means that the level and extent to which an athlete goes in packaging themselves by far determines their marketability. During the research interview, the Athletics Kenya manager pointed out that some athletes were marketing themselves more than others and this could partly explain the disparities in fund revenues earned.

#### **4.5 Interpretation of Findings**

Several issues and themes were established from the survey, interviews and focus group discussions that were held by the researcher. The analysis will discuss these findings headed under the objectives that the study sought to achieve and these are:

##### **4.5.1 .The Role of Intellectual Property in Sport**

As revealed through the interview with the KIPi and KECOBO respondents, the full potential of IP in sport can be realized through empowerment the athletes and protection of their IPRs. Effectively, this meant that a proper framework through which promotion and protection would be achieved needed to be put in place. However, during the focus group discussions held at KRU and AK it was evident that the athletes felt alienated from the process and had no knowledge on the design of the framework or how it worked. They were reduced to mere recipients of sponsorship monies and not participants in the negotiations.

Some of the athletes that were interviewed revealed that they did not bother commercializing their image and branding rights because they were not happy with the way in which the process was carried out. They criticized how information of the sponsorships agreements and image rights deals were not disseminated widely and how it was all political and being given to athletes with political contacts. They also expressed displeasure at the lack of transparency within the sports associations. The respondents felt that policies remained largely on paper and that one would first have to join an agency if they were to ever hope to access corporate world and the branding deals.

#### **4.5.2 Ways in which Kenya can benefit from Exclusivity Television Agreements.**

Exclusivity agreements are the way to go if the sport is to reap the full benefits from the corporate world and sponsorships. However a lot of care and all inclusive discussions are necessary .Most of the respondents observed that they are not freely negotiated and do not benefit the sportsmen. What is required is an open and transparent discourse on the details and extent to which athletes will benefit.

According to the respondents Kenya has everything we need to achieve greatness in football right here on our continent – financial resources, football talent, and passionate fans. Television can drive the growth and development of sport in Africa and particularly.

Sport provides a unique link to viewers’ right across the continent. European and World sport is already at the heart of an increasingly competitive African and particularly Kenyan Television market.

Using the KPL model as a case study it was noted that the sports broadcaster invested in the leagues as well as acquiring rights. Over and above the rights fee paid to the KPL, Super Sport invested in two purpose-built modern OB facilities especially for Kenya and East Africa. From 2011, Super Sport has produced between 80 and 100 live matches during a season.



The sponsorship has translated into considerable success including dramatic increase in fans at stadiums, proper management of clubs and decent wages for players has made league more competitive. In terms of figures the Advertising Value Equivalent (AVE) of the KPL in 2013 was valued at US\$ 120 million – nearly double that of the nearest Kenyan corporate enterprise. With the Super sport agreement there is a major increase of sponsorship money into the league. By any standard of measurement, the KPL is now a truly professional league which in turn benefits the sport and by extent directly benefits the athletes.

Respondents at KRU and AK intimated that a lot was required to be done in terms of sensitization and education of the stakeholders particularly the athletes who they noted were ignorant.

Gary Rathbone of Zuku Sports observed already shown that broadcasters can play an important role in the promotion and development of a professional leagues .With extensive television coverage the profile of a sport, its teams and its players will be raised among a new generation of fans. According to the respondents high quality television coverage can make Kenyan sport more competitive as entertainment among television viewers on our continent and less reliant on broadcasts of high-priced international events.

The next step is to have direct involvement by broadcasters and sponsors – they need to recognize the opportunity sport offers. Government should play an enabling role without direct interference. The biggest challenges are lack of infrastructure & political interference – sports administrators must become more demanding.

#### **4.5.3 Problems In Image And Branding Rights In Sport**

Publicity rights of the sportsperson play an important role in the brand creation of individual athletes and teams.

According to Edward Rombo mere association of the name of a team or a team player, could offer unprecedented mileage to the person or entity using such name or logo. It is a loss to the team, team owner, the player and an unwarranted gain for the entity associating such name or logo for their own commercial benefits, without taking any permission, or paying any license fee or royalty.

Respondents observed that protection of image rights was not so common especially in Kenya. A perfect example was the fight between the national team soccer players and the sponsor EABL over a billboard that had their images. Thus having a clear line of demarcation between the sportsmen's individual personality rights and his image as a part of the team is very important.

Respondents also noted that the sporting industry in Kenya has not fully taken advantage of character merchandising which has become a huge revenue earning business. In such situations, it is essential for sports associations to be involved in merchandising to protect the image rights of the sportsman individually. The sports association may have a right over his likeness or an image as a team member dressed in the team jersey but one cannot use his image just because the player is a part of some particular sports club. This according to respondents especially the athletes required their consent as there was commercialization involved.

The respondents further observed that most sports clubs, athletes and individuals have not ventured into exploitation of their intellectual property and are into different business such as merchandising. The Kenya Rugby Union for example has not protected any of its well known marks and loses out on a lot of revenue. The protection of the various species of IP would be in various forms like registrations, agreements with proper terms and conditions etc. It is advisable for proprietors to not only have business knowledge but also understand the legal intricacies surrounding it.

#### **4.5.4 Challenges In Commercialization Of Sport And How To Solve Them.**

An awareness of the historical, social, economic, and political issues that often under-lie sports are very important. Restrictive laws -responses may be temporarily effective, but they will not eliminate the underlying tensions and conflicts that often hinder the full

exploitation of opportunities available. Policies dealing with exploitation oppressive forms of inequality, economic problems are needed. As noted earlier dealing with exploitation of sportsmen and sporting events also requires an awareness of these factors on a national level.

For example, current and past sponsorships wars create tensions that will precipitate sport-related exploitation under particular conditions. In addition monitoring and close supervision can be maintained by establishing visible and meaningful connections between teams and the corporate sector. However, this does not mean that teams merely need better public relations. There must be actual connections between the teams in particular players and the outside world in which they exist. Effective forms of interaction are helpful, and team owners and supporters must be visible supporters of the brands and the sponsors programs.

The goal of these strategies is to create anti-exploitative norms among the stakeholders within the sporting industry. Shaping norms can be difficult, but it's a more effective strategy than, keeping away from the corporate industry and signing or getting into deals that do not benefit the clubs and sportsmen in general. Of course, some of these tactics can be effective, but they destroy an important aspect of sport development which is commercial in nature. Therefore, they should be last resorts or temporary measures.

#### **4.6 Conclusion**

The researcher employed the use of a largely qualitative research design and also a quantitative research method which allowed the researcher to analyze the content of responses in terms of numbers. Both research methods were used to collect data giving a detailed picture of what was emerging during the study. The major findings from the research revealed that sportsmen are having difficulties protecting their IPRs. Athletes were aware of the existence of a protection. Their participation and involvement is what was limited. There are various factors to account for this and these run from the ignorance, greed and weak law enforcement and lack of empowerment. In light of the information gathered from the interviews and discussions held, recommendations were made on how the IPR protection regime could be fine-tuned so as to provide for an efficient participatory and multi-sectoral framework.

## **CHAPTER FIVE**

### **SUMMARY, RECOMMENDATION AND CONCLUSIONS**

#### **5.1 Introduction**

This Chapter gives a summary of the research, its major findings and the recommendations that emerged. It is envisaged that the conclusions arrived at will contribute to already existing literature and influence policy.

#### **5.2 Summary of Research**

The study sought to assess the role of intellectual property in sports. It also set out to establish various ways in which Kenya can benefit from exclusivity agreements in sports. It also set out to examine Assess major problems in image and branding rights in sport. To unravel the experiences, perceptions and perspectives of stakeholders, 3 focus group discussions were held altogether involving national team players, club players, coaches and administrators. The information from these actors was corroborated with findings from key informants such as Kenya Rugby Union, Athletics Kenya, Supersport, Zuku Sports and the Ministry of youth and Sports. Given that the research employed both quantitative and qualitative research design, a survey was carried out, verification and collaborative interviews were administered. To ensure that issues related to IP and sports are adequately revealed, the major method of enquiry was the unstructured interview which allowed for the researcher to be flexible and also created relaxed

environment for the interviewees. For the key informants, formal interviews were conducted.

### **5.3 Conclusions and Emerging Issues**

The Kenyan case confirms that the existence of good laws and formulation of policies alone are not adequate to ensure that the IPRs in sports are empowered and protected. The research revealed how those athletes who were fairly well placed economically and politically within the system were able to benefit more from their IPRs. The research exposed the limitations of the IP regime relating to sports and policy in providing an enabling environment for the industry to reap maximum benefits. There is incoherence between policy and practice. The sportspersons are unable to derive protection from the existing regime. As a result, the athletes are largely unaware of their rights.

Sponsorships that come in through exclusivity agreements are being given out directly to sports associations only hence they would be direct beneficiaries-sportspersons have been largely neglected by sponsors. The athletes remain poor and exploited ending up frustrated and disgruntled. Sports administrators involved in administration of the sport have strategically locked out athletes in negotiations that would involve their image rights and endorsement deals. The government through the ministry and sports has not done enough to secure the IPRs of all the athletes.

The IP regime has so far fallen short of addressing adequately the image and branding rights within sports.

#### **5.4 Recommendations**

Kenya is fortunate to be able to be a significant player in international sports. This has opened increased financial possibilities for the athletes as well as the country. For the Kenyan economy to benefit there is the need for a paradigmatic and cultural shift in how we see sport.

Those who are involved in sport must begin to harness their love and dedication of the sport by seeking to see how best the country can grow sport as a business in order to help Kenya realize its economic, social and cultural potential.

The first step to succeeding is for sports administrators to get their houses in order – transparency, fairness and competence must be at the heart of their mission. Government should play an enabling role without direct interference. As noted earlier there is no single source of law that recognizes image rights. The Government has to be far more proactive in driving sport as a commercial entity. The closest recognition is in the Copyright Act which defines artistic works to include photographs and recognizes a photographer or a third party) as the copyright owner. There is therefore need to enact specific legislation tackling image and personality rights.



It is critical for policy-makers to recognize the importance of Sports and support its efforts to protect and exploit the commercial value of the industry. This is for the good of the consumer who wants to watch a quality product, and for the many millions of people who want to play, coach, and otherwise benefit from the massive investment in sports.

There is a great need to strengthen the multi-sectoral partnership by setting clear and defined roles for all the actors involved in the administering of IPRs in the sports industry. There is need to start by training the basics of Intellectual Property so that they learn and develop a relationship with both sponsors, marketers and the corporate world.

Exclusivity agreements can succeed in making African and Kenyan sportsmen rich and economically sound through television with the long term benefits for the sport, sports fans, media and sponsors being massive. There is need however to have an all-inclusive and well negotiated approach to benefit all stakeholders. Changes in restrictions on which industries are allowed to undertake sponsorships can have a dramatic effect on the profile of the sports sponsorship community. As sponsorship becomes more important both for the sponsor and the sports body, there is need for accurate measurement.

There is need to motivate the athletes and this can be done by providing regular updates on sponsorships and accountability, ensure effective monitoring and improve on management from all sectors involved.

All marketing efforts should raise the need to strike the right balance between entertainment and sport, and between drawing in crowds and maintaining the credibility and quality of the sport on offer.

As noted in the study sponsorship represents the largest component of the sports in Kenya and it is a particularly important revenue source. Sports organizations and athletes must court sponsors and find a way of keeping them. Accountability and proper reporting is key in ensuring this happens.

There is also need for more sustained Information sharing .Regarding the mismanagement and greed among sports administrators ,agents and sponsors the media must confront corruption, greed and mismanagement head-on without fear or favor. In light of the above conclusions, the research recommends that the process of legislation begins immediately and be distributed widely to enlighten and empower the athletes.

## **5.6 Conclusion**

This chapter served as a summary of the research study and also provided recommendations as well as suggestions for further research.

The main points put forward in this chapter as taken from preceding chapters allowed for an assessment of the role of intellectual property in sports with Kenya as the case study.

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*Elizabeth March, WIPO Magazine Editorial Staff, Communications and Public Outreach Division*

## **Appendix A: Questionnaire**

### **SECTION A: BACKGROUND INFORMATION**

STATE	
Category	
City/Town	
Street/Ward/Area	
Interviewer's code	
Date of Interview	
Time interview started	
Time interview ended	

### **INTRODUCTION/OPENING STATEMENT**

Greetings sir/madam

My name is George Mbaye I am a student undertaking research on the topic intellectual property and sports. The purpose of this survey is to better understand the extent of awareness by sports persons and personnel working in sports organizations. I would like to hear your views about the state of awareness of Sport in Intellectual property. Your response will assist us in making appropriate recommendations for the steps to take in raising awareness .Your **answers** will be treated in **strict confidence**. Individual responses will not be made available to any authority and names of individuals will not be mentioned in relation to specific answers in the report. Your honest response will be appreciated.

Respondent's consent sought and obtained?      Yes      ☐      No      ☐

<b>SECTION B: SOCIO-DEMOGRAPHIC INFORMATION</b>			
1	Sex of respondent	Male..... 1 Female ..... 2	
2	Age of respondent	15 – 20 ..... 1 21 – 30 ..... 2 31 – 40 ..... 3	

		41 – 50 ..... 4	
		51 and above..... 5	
3	Highest level of education attained.	No formal education ..... 1	
		Primary ..... 2	
		Secondary ..... 3	
		Post-secondary (non-degree)..... 4	
		Post-secondary (degree) ..... 5	
		Other (specify)..... 6	
4	How long have you been doing this work?	Less than one year ..... 1	
		1 – 2 years ..... 2	
		3 – 5 years ..... 3	
		6 – 10 years ..... 4	
		11 or more years ..... 5	
<b>SECTION C: KNOWLEDGE AND ATTITUDE ABOUT IP AND SPORTS</b>			
5	How would you explain the term “Intellectual Property”?		
	.....		



	<p>.....</p>		
6	Have you ever had to deal officially with issues relating to Intellectual property?	Yes..... 1 No ..... 2	
7	If “Yes”, about how many cases have you ever dealt with?	<p>.....</p>	
<b>SECTION D: EXLUSIVITY AGREEMENTS</b>			
8	Do you understand the term Exclusivity agreements?	Yes..... No .....	
9	Do you think Exclusive sports agreements are beneficial to the sport industry?	Yes..... No .....	



		<b>Educational Categories</b>  Little/low educ (Pry/No formal educ) ... 1  Medium (secondary) ..... 2  High educ (post-secondary) .. ..... 3  All categories..... 4  <b>Socio-Economic Categories</b>  Lower class..... 1  Middle class..... 2  Upper class ..... 3  All categories..... 4	
11	Do you think exclusive sports agreements are negotiated freely?	<b>Yes</b> .....  <b>No</b> .....	
12	What do you think is/are responsible for the current level of exploitation of sports	Poverty ..... 1  Economic recession..... 2	

	persons?	Globalization ..... 3  Weak law enforcement..... 4  Ignorance/ ..... 5  Greed/Profitability..... 6  Scarcity of originals ..... 7  Other reasons (specify)..... 8						
<b>SECTION E: IMAGE RIGHTS</b>								
13	Do you think Image rights are protected in Kenya?	Very common ..... 1  Common ..... 2  Not so common ..... 3  Very rare..... 4  Don't Know ..... 5						
14	What is the level of protection for the following products?	Very High (80-100%)	High (60-79%)	Medium (50-59%)	Low (30-49%)	Very Low (Below w	Don't Know	

						30%)		
	Image rights							
	Branding							

15	Who do marketers target when doing exclusive sports agreements		
	Athletes		V19_1=
	Sports associations		V19_2=
	Ministry of sports		V19_3=
SECTION G: IMPACT OF COPYRIGHT PIRACY			
16	How do you think lack of protection could affect the following categories of stakeholders?		

	<b>Athletes</b>
	<hr/>
	<hr/>
	<b>Marketers</b>
	<hr/>
	<hr/>
	<b>Agents</b>
	<hr/>

	<p>.....</p> <p>.....</p> <p><b>Others (please specify)</b></p> <p>.....</p>
17	<p>How do you think Intellectual property protection could affect the government/nation in the following areas?</p> <p><b>Revenue</b></p> <p>.....</p> <p>.....</p>

	<p><b>Investment</b></p> <p>.....</p> <p>.....</p> <p><b>Image</b></p> <p>.....</p> <p>.....</p> <p><b>Culture</b></p> <p>.....</p>
--	---



	<p>.....</p> <p><b>Others (please specify)</b></p> <p>.....</p>		
<p><b>IP AGENCIES:ANTI COUNTERFEIT AGENCY,KECOBO,KENYA INDUSTRIAL PROPERTY INSTITUTE,BRAND KENYA BOARD</b></p>			
	Are you aware of the existence of the above state agencies?	Yes..... No .....	
18	If “Yes”, please explain the functions/activities of the Agency?		
19	Do you usually work with/collaborate with the Agencies?	Yes..... No .....	

20	If “Yes”, please explain how?		
21	How effective would you say the agencies are in Intellectual property protection?	Very effective ..... Effective ..... Undecided..... Not so effective ..... Not effective at all .....	
22	What do you think should be done for more effective IP protection in sports?  .....  .....  .....		

## **Appendix B: Guide to Focus Group**

- How intellectual property has helped sports
- Comments on protection of IPR's in sports and its implementation
- How can the sportspersons benefit?
- Have we done enough to encourage Brand Marketing
- Any positive changes that property Intellectual can bring in the sporting  
Industry?
- What are the perceived hindrances to full exploitation of the economic value of  
sports?