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**BEIJING INTELLECTUAL PROPERTY COURT**

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**BEIJING, PEOPLE'S REPUBLIC OF CHINA  
2018**

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**P NETWORK COMPANY  
(Petitioner)**

**v.**

**S NETWORK COMPANY  
(Respondent)**

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**WRITTEN BRIEF FOR THE RESPONDENT**

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**2018 BFSU-WANHUIDA IP MOOT COURT**

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## **SUMMARY OF PLEADINGS**

### **CLAIM I**

S Network Company (hereinafter referred to as “S Company”) is entitled to the copyright of Super League programs through legitimate authorization from Chinese Football Association (hereinafter referred to as “CFA”). Super League programs are works created by a process analogous to cinematographic works (hereinafter referred to as “works analogous”) under the *Copyright Law of the People's Republic of China* (2010) (hereinafter referred to as “*the Copyright Law*”). P Network Company (hereinafter referred to as “P Company”) infringes S Company’s broadcasting right by rebroadcasting the Super League programs. This court shall decree P Company to stop further violating S Company’s broadcasting right and to compensate for the economic losses.

### **CLAIM II**

Even if P Company does not constitute copyright infringement, it constitutes unfair competition. As a competing business operator against S Company, P Company’s unauthorized broadcasting grabbed economic benefits, diverted website traffic, violated the principle of good faith, and severely injured economic interests of S Company. This court shall decree P Company to stop destructing competition order and to assume the liability under the *Anti-Unfair Competition Law of the People’s Republic of China* (1993) (hereinafter referred to as “*the Anti-Unfair Competition Law*”). To sum up, S Company sincerely requests this court to dismiss the appeal and sustain the judgment of the trial court.

## PLEADINGS

### **I. S COMPANY IS AN APPROPRIATE SUBJECT OF THE CASE**

According to the analysis below, we come up with the conclusion that S Company is an appropriate subject of the case: (1) CFA is the original owner of the copyrights of the sports events programs; and (2) S Company's authorization from China Super League Company is legitimate and valid; and (3) S Company is entitled to the relevant copyrights of the sports events programs.

#### **A. CFA is the original owner of the copyrights of the sports events programs**

In accordance with the FIFA Constitution, China Football Association Charter and authorization procedures, CFA is the governing body of Chinese football movement and the original owner of all rights arising from the various football events, including copyrights.<sup>1</sup> Furthermore, as the investor and organizer of the sports events, CFA is the "producer" under Article 15 of the *Copyright Law*,<sup>2</sup> while C TV station shall enjoy the right of authorship. In the case of *CCTV International Network Co., Ltd. v. China City Vision TV Network Co., Ltd.* concerning copyright infringement and unfair competition disputes, the court held that FIFA is the original owner of the copyrights of the sports events programs according to the FIFA Constitution.<sup>3</sup> Thus, CFA is the copyright owner of the sports events programs.

#### **B. S Company's authorization from Super League Company is legitimate and valid**

As it is stipulated under Article 10 (17), copyright owners may authorize others' exercising of the rights provided in Article 10 (5) to (17) and receive remuneration in accordance with contracts or the relevant provisions in this Law.<sup>4</sup>

In March 2006, CFA authorized Super League Company with exclusive copyrights of China Football Association Super League in 10 years.<sup>5</sup> Consequently, the authorization was still legitimate and valid when Super League Company signed an agreement with S Company in March 2012,<sup>6</sup> which stipulated that S Company enjoys the exclusive rights to broadcast the Super League's videos in S Network from March 1, 2012 to March 1, 2014. In addition, the competitive portal websites S Network shall not be in any form to conduct live or video broadcast of the Super League's tournaments.<sup>7</sup> In December 2012, Super League Company specified that S Company enjoys the rights of exclusive rebroadcasting, communicating all the Super League's

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<sup>1</sup> *Problem ¶2* [‘P.¶’].

<sup>2</sup> *The Copyright Law* (2010), Article 15.

<sup>3</sup> *CCTV International Network Co., Ltd. v. China City Vision TV Network Co., Ltd.*, Futian District People's Court of Shenzhen, Guangdong Province, No 174 (2015).

<sup>4</sup> *The Copyright Law* (2010), Article 10.

<sup>5</sup> P. ¶3.

<sup>6</sup> P. ¶4.

<sup>7</sup> P. ¶4.

videos, and the right to take all legal means to prevent third parties from infringement and obtain compensation.<sup>8</sup>

### **C. S Company is entitled to the copyrights of the sports events programs**

P Network is the portal website of P Company. In August 2013, P Company labelled and provided videos of the Super League.<sup>9</sup> The act of rebroadcast by P Company falls within the scope of the exclusive rights of S Company. Thus, S Company is entitled to take legal actions to prevent P Company from rebroadcasting the Super League's live video.

Based on the analysis above, under legitimate and valid authorization from Super League Company, S Company is an appropriate subject of the case.

## **II. SPORTS EVENTS PROGRAMS ARE WORKS ANALOGOUS UNDER THE COPYRIGHT LAW**

According to *Regulations for the Implementation of the Copyright Law* (2013)<sup>10</sup> (hereinafter referred to as “*the Regulations*”) and *the Interpretation of the Copyright Law*<sup>11</sup> (hereinafter referred to as “*the Interpretation*”), cinematographic works and works analogous satisfy three elements: first, they shall be in the literary, artistic or scientific domain [A]; second, they shall have originality [B]; third, they shall satisfy the requirement of “producing on materials” [C]. Due to the satisfaction of the three elements, sports events programs shall be protected as works analogous, instead of video recordings [D].

### **A. Sports events programs are in the literary, artistic or scientific domain**

The expression “literary, artistic or scientific domain” derives from the definition of “literary and artistic works” in *Berne Convention for the Protection of literary and artistic works* (hereinafter referred to as “*Berne Convention*”), which stipulates that “literary and artistic works shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression”.<sup>12</sup> From such definition, we can infer that the “literary and artistic works” has a broad meaning in *Berne Convention*.

There is no dispute that sports events are not works in the literary, artistic or scientific domain, but “if the video of sports event contains the elements of a work created in a manner similar to cinematographic production, it shall be protected under the *Copyright Law*.”<sup>13</sup> The sports events programs are the result of the selection and arrangement of

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<sup>8</sup> P. ¶4.

<sup>9</sup> P. ¶6.

<sup>10</sup> *The Regulations* (2013), Article 2, 4(11).

<sup>11</sup> Hu Kangsheng et al, *Interpretation of the Copyright Law*, Beijing Normal University Press.

<sup>12</sup> *Berne Convention* (1971), Article 2 paragraph 2.

<sup>13</sup> Beijing High People's Court, *Guidelines for the Trial of Copyright Infringement Cases*, Article 2.13.

shooting images which are story-like and artistically appreciated. Accordingly, sports events programs shall constitute works under the *Copyright Law*, which means it can be in the “literary, artistic or scientific domain”.

## **B. Sports events programs meet the requirement of originality**

According to the official interpretation of *Berne Convention*, the originality of works analogous lies in the selection and arrangement of a series of images.<sup>14</sup> In accordance with the *Interpretation*, the originality of works derives from the individual and creative choice, thinking, and working of the authors.<sup>15</sup> In conclusion, to a work analogous, the originality lies in that: (1) there is enough room for the producer to select and arrange images; (2) the producer creates the programs by independent and intelligent efforts.

a) There is enough room for the producer to select and arrange images

Firstly, there is enough room for a producer to make an original sports events program. During a sports event, tens of fixed or unfixed recording equipment shoot at the same time. Experienced producers are responsible to select and arrange the shooting images in a logical and aesthetic way. With different ways of selection, arrangements and cuts, such as long/close shots, replays, playbacks of the slow motion and the connection of shots by montage, different versions of sports events programs will be produced.

Secondly, the production manual of sports events programs and the reasonable anticipation of the audiences can not restrict the originality of a sport events program. Although the production manual sets the standard of a sports events program, it may restrict how to set the cameras, but not the selection and arrangement of the massive shooting images. Under the same production manual, different producers would still produce different versions of programs of the same sports events. So as the reasonable anticipation of audiences. A producer can present the same sports event in a program by thousands of ways and techniques as mentioned before.

b) The producer creates the programs by independent and intelligent efforts

Firstly, the producer independently creates the sports events programs in a narrative way without copying others' programs. Nowadays, “motion and emotion” are the cores of producing sports events programs.<sup>16</sup> Recording the sports events mechanically without producer’s aesthetic arrangement would fail to live up to the standard of “emotion”. This requires the producer to show the particular beauty and wonderful emotional experiences of sports events. The sports events programs can be appreciated by the audience before TV, even the feelings of them would be different from those at the scene. Such expression of selection and arrangement is made by the producer and

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<sup>14</sup> Sam Ricketson, Jane C.Ginsburg, *International Copyright and Neighbouring Rights---The Berne Convention and Beyond* (Second Condition) (2014), China Renmin University Press, at 348.

<sup>15</sup> *The Interpretation*, Article 3.

<sup>16</sup> Yang bin, Ren Jinzhou et al, *Standard Guidelines for Public Signal Production of Sports Events* (2007), Communication University of China Press.

is a reflection of its original ideas, an expression of experience and aesthetic value, and an independent creation of intelligence.

Secondly, the shooting technique and produce process of a sports events program is similar with that of a cinematographic work. From the definition of a cinematographic work,<sup>17</sup> we can infer that the originality of cinematographic works and works analogous is reflected in the original connection of such images. Usually, such unique connection of shots is called montage.<sup>18</sup> When making a sports events program, the producer would also use the techniques such as long/close shots, replays, playbacks of the slow motion and the connection of shooting images by montage. Besides, the produce of commentary, subtitle, background music and the expression of story narrative is similar with that of cinematographic works.

In conclusion, the sports events programs are original due to the selection and arrangement of the shooting images, and the production manual of sports events programs and the reasonable anticipation of the audiences cannot restrict the originality of a sport events program.

### **C. The programs satisfy the requirement of “producing on materials”**

First of all, there is no dispute regarding the matter that the programs can be reproduced in tangible forms provided as a work requirement in Article 2 of the *Copyright Law*,<sup>19</sup> because it can be objectively perceived by the use of machines or devices, such as computers, projectors or electronic equipments.

What matters in this case is whether the programs are “produced on certain materials” of Article 4 (11) of *the Regulations*.<sup>20</sup> A dispute is that whether this requirement means fixation and whether the programs meet the requirement. According to the analysis below, we would demonstrate that (1) fixation is not a requirement of copyright protection for works analogous with law hermeneutics, and (2) even if this court held that fixation is necessary for works analogous to be copyrighted, the programs involved meet the requirement.

a) Fixation is not a requirement of being copyrighted for works analogous

In the light of legal interpretation of Article 4(11) of *the Regulations*,<sup>21</sup> cinematographic works and works analogous shall be recorded on any kind of mediums in tangible or intangible forms, the conclusion that only fixed images can enjoy copyright protection cannot establish.

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<sup>17</sup> *The Regulations* (2013), Article 4 (11).

<sup>18</sup> Louis Giannetti, *Understanding Movies (11e)* (1997), translated by Fu lan, Ding Haijia, Zhang Koulin et al., China Film Press.

<sup>19</sup> *The Copyright Law* (2010), Article 2.

<sup>20</sup> *The Regulations* (2013), Article 4 (11).

<sup>21</sup> *The Regulations* (2013), Article 4 (11).

i) Semantic interpretation of Article 4 (11) does not show the meaning of fixation

Article 4 (11) of *the Regulations* stipulates that “‘cinematographic works and works created by a process analogous to cinematography’ means works which are recorded on some material ...”. The word “material” literally means “a substance that things can be made from” in Oxford English Dictionary. And “substance” is identified as “a type of solid, liquid or gas that has particular qualities” in the dictionary. Therefore, from the literal interpretation, “material” contains tangible and intangible substance, such as “solid” and “gas”. In this regard, electronic signals in electron are “material”.

ii) Systematical interpretation of Article 4 (11) does not show the meaning of fixation

To maintain the consistency of language, legislators will usually take similar expressions for the same conception. *The Regulations* and *Regulations on Computer Software Protection* (2002) are both issued by the State Council of the People’s Republic of China. Article 4 of *Regulations on Computer Software Protection*<sup>22</sup> explicitly stipulates that any protected software shall be “fixed on tangible medium”. However, Article 4(11) of *the Regulations* issued after 2001, uses a neutral expression of “material”. For this reason, a high possibility stands that the State Council does not mean to set up the requirement of fixation for cinematographic works and works analogous.

iii) Interpretation of legislative purpose of Article 4(11) does not show the meaning of fixation

When it comes to the authentic meaning of Article 4(11) of *the Regulations*,<sup>23</sup> S Company refers to *Berne Convention*. Under Article 2(1) of *Berne Convention*,<sup>24</sup> the reason why works analogous are copyrightable is that they “are assimilated works expressed by a process analogous to cinematography”. That’s to say, it is the effects, sound and visual of works analogous that *Berne Convention* aims to protect, with less concern for how they are produced.<sup>25</sup> Thus, *Berne Convention* does not require that works analogous shall be fixed on any tangible mediums. Although Article 2(2) of *Berne Convention*<sup>26</sup> stipulates that the countries of the Union can prescribe a fixation requirement for any specified categories of works, copyright law in China does not require such for works analogous. In the case of *Guangzhou Star Information Technology Co. Ltd. v. Shanghai Zhuangyou Information Technology Co. Ltd.*<sup>27</sup> concerning copyright ownership and infringement disputes, the Shanghai Intellectual Property Court held that the element of fixation is not within the consideration of identifying cinematographic works, while more concentration should be given to how

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<sup>22</sup> *Regulations on Software Protection* (2002), Article 4.

<sup>23</sup> *The Regulations* (2013), Article 4 (11).

<sup>24</sup> *Berne Convention* (1971), Article 2 (1).

<sup>25</sup> *Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971)*, at 2.6 (f).

<sup>26</sup> *Berne Convention* (1971), Article 2 (2).

<sup>27</sup> *Guangzhou Star Information Technology Co. Ltd. v. Shanghai Zhuangyou Information Technology Co. Ltd.*, Intellectual Property Court of Shanghai, No 190 (2016).

those pictures are expressed.

Based on the analysis above, sports events programs do not have fixation requirement to become copyrightable.

- b) Even if fixation is necessary for works analogous to be copyrighted, sports events programs involved meet the requirement

Sport events programs are real-time recordings. These related images of the programs embodied in electronic signals are recorded on a hard disk almost simultaneously when they are produced. Such conclusion is evidenced by slow-motion footage. Image playback is commonly used in producing live sports events programs. Only when these images have been stored on servers can the editors have the chance to select the most impressive pictures. Hence, sports events programs involved meet the requirement of fixation.

#### **D. Sports events programs are not video recordings**

It is disputed whether the *Copyright Law* has a high level of originality, if it does, the programs are video recordings, instead of works analogous. According to *the Interpretation*, works analogous and video recordings are different, since: (1) video recordings refer to uncreative and mechanical shootings; (2) neighboring rights aim to protect work distributors but not the expression of low originality.

Firstly, video recordings are not protected for the expression of low originality. *The Interpretation* provides that, “video recordings features routine and mechanical shootings of preexisting materials, such as live performance, teaching seminars and so on”.<sup>28</sup> Moreover, Article 3(5) of *the Copyright Law* (1990) was amended from “cinematographic, television and video graphic works”<sup>29</sup> to “cinematographic works and works created in a way similar to cinematography”<sup>30</sup> in 2001, because duplicate recordings shall not be protected as copyright works.<sup>31</sup> Therefore, uncreative recordings enjoy neighboring rights and original expressions enjoy copyrights.

Secondly, copyrights and neighboring rights are different in legislative intention. Copyrights aim to protect the profits of authors, but neighboring rights pursue the interests of work distributors.<sup>32</sup> Neighboring rights are to protect the labor and investment.

Additionally, the requirement of “high” originality is not practicable. The standard is too vague to apply in real cases and may cause chaos in legal application, because it’s beyond the judicial power to estimate the aesthetic value of a work. Moreover, it is

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<sup>28</sup> *The Interpretation*, Section III.

<sup>29</sup> *Copyright Law* (1990), Article 3 (5).

<sup>30</sup> *Copyright Law* (2001 Amendment), Article 3 (6).

<sup>31</sup> *The Interpretation*, Article 3 (6).

<sup>32</sup> *The Interpretation*, Section IV.

against the legislative intent of the *Copyright Law*, which aims to encourage creation and promote the progress of socialist culture and sciences.<sup>33</sup>

Combined with the originality analysis,<sup>34</sup> the sports events programs are not merely duplicate recordings, thus different from videos recordings. With tens of cameras and thousands of pictures shot, the producers exert their independent and creative intelligence in making the programs. Therefore, the sports events programs shall be protected as a copyright work, instead of a video recording.

### **III. P COMPANY INFRINGES S COMPANY'S RIGHT OF BROADCASTING**

#### **A. P Company is responsible for the rebroadcasting behaviour**

P Company has subjective wrongfulness since it deliberately ignored the business practice of rebroadcasting authorization and intentionally cooperated with L Company to rebroadcast the programs.

Since 1994, authorization has been a business practice in the online rebroadcasting industry.<sup>35</sup> Under the Chapter, any rebroadcasting of the sports events program shall be authorized by CFA.<sup>36</sup> Therefore, P Company is well aware that its competitor S Company enjoys exclusive copyrights of the programs in portal websites area, and its cooperator L Company can only rebroadcast on its own networks. Moreover, P Company was supposed to acquire authorization from CFA, but it avoids doing so by cooperation with L Company. In this regard, P Company is not merely providing engine searching service but disseminating the program to the public on its own website. Therefore, P Company's argument of "pure network service" in the first trial cannot stand.

In the case *Shanghai Juli Media Technology Co. Ltd. v. Beijing Dou Wang Technology Co. Ltd.*,<sup>37</sup> Chaoyang District People's Court of Beijing also held that the defendant is not just a web service behavior, but the collaboration with Heyi Company to provide teleplay for the public infringes plaintiff's right of communication through information network.

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<sup>33</sup> *The Copyright Law* (2010), Article 1.

<sup>34</sup> See III.A (b).

<sup>35</sup> *Research on Rights of Broadcasting Sports Events Program in Media Era*, published by General Administration of Sport of China, at 45.

<sup>36</sup> Chinese Football Association Charter (2016), Article 53.

<sup>37</sup> *Shanghai Juli Media Technology Co. Ltd. v. Beijing Dou Wang Technology Co. Ltd.*, Chaoyang District People's Court of Beijing, No 16363 (2013).

## **B. P Company and L Company's internet rebroadcasting is controlled by S Company's right of broadcasting**

According to Article 10(11) of the *Copyright Law*,<sup>38</sup> the right of broadcasting governs wire communication of a broadcasted work to the public. Under this condition, two elements are required: (1) the work should be broadcasted by wireless in the very beginning of a transmission; (2) the work must be wired.

There is no dispute regarding that the programs involved are wireless-broadcasted works, because the programs were broadcasted by C TV station.<sup>39</sup> Therefore, the following analysis will focus on the issue that internet rebroadcasting shall be categorized as wire communication.

With systematical interpretation, S Company may safely draw the conclusion that the right of broadcasting under the *Copyright Law* controls internet rebroadcasting. First, according to Article 10(12) of the *Copyright Law*, the right of communication through information network is to make a work available to the public by wire or by wireless means.<sup>40</sup> Obviously, "wire" covers internet transmission in the literal sense. Thus, for the uniformity of the language, "wire" of rebroadcasting also involves internet means. Second, according to Article 8 of the *World Intellectual Property Organization Copyright Treaty* (in force 9 June 2006),<sup>41</sup> authors of works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, internet included. China, as a contracting party, is responsible to comply with this treaty. Only the right of rebroadcasting in the *Copyright Law* could embrace internet rebroadcasting. This expansive interpretation of "wire" in Article 11bis of *Berne Convention*<sup>42</sup> is reasonable and will cause no prejudice to *Berne Convention*, as it accords with technology development.

The same opinion is adopted by the First Intermediate People's Court of Beijing that internet rebroadcasting of CCTV Spring Festival Gala infringes the right of broadcasting.<sup>43</sup> Beijing Xicheng district people's court held the same in the case of *CCTV international network Co. Ltd. v. Maishi network media technology Co. Ltd.*<sup>44</sup> It is further supported by a similar case of *Ningbo Chenggong Multimedia Communication Co. Ltd. v. Shanghai Yinzhi Network Technology Co. Ltd. and Beijing Souhu Internet Information Service Co. Ltd.*<sup>45</sup> concerning copyright infringement.

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<sup>38</sup> The *Copyright Law* (2010), Article 10 (11).

<sup>39</sup> P. ¶7.

<sup>40</sup> The *Copyright Law* (2010), Article 10 (12).

<sup>41</sup> *World Intellectual Property Organization Copyright Treaty*, Article 8.

<sup>42</sup> *Berne Convention*, Article 11bis.

<sup>43</sup> *CCTV international network Co. Ltd. v. Baidu.com, Inc.*, Beijing First Intermediate People's Court, No.3142 (2013).

<sup>44</sup> *CCTV international network Co. Ltd. v. Maishi network media technology Co. Ltd.*, Beijing Xicheng District People's Court, No.16143 (2012).

<sup>45</sup> *Ningbo Chenggong Multimedia Communication Co. Ltd. v. Shanghai Yinzhi Network Technology Co. Ltd. and Beijing Souhu Internet Information Service Co. Ltd.*, Haidian District People's Court of

Based on the analysis above, P Company's internet rebroadcasting falls within the scope of S Company's right of broadcasting.

### **C. P Company and L Company's unauthorized rebroadcasting infringes S Company's copyright**

a) P Company and L Company's broadcasting is unauthorized

In accordance with Article 24 (1), Article 22 (concerning "fair use") and Article 23 (concerning "statutory license") of the *Copyright Law*,<sup>46</sup> legitimate exploitation of works shall satisfy either of the two conditions: (1) permitted by copyright owners; (2) authorized by law. P Company and L Company failed to fulfill both conditions.

First of all, L Company is not authorized to cooperate with other parties to communicate the programs online. According to the license agreement, L Company and L Network under its operation received the 2013-2014 Season's Communication rights of the Super League, but the rights are limited in its own network, L Network and on PC client-sites.<sup>47</sup> However, L Company and P Company corporately rebroadcasted the programs on a co-established website.<sup>48</sup> For this reason, L Company exceeds the scope of copyright authorization.

Moreover, P Company does not receive any copyright authorization.<sup>49</sup> According to the agreement between Dong'ao Sports Management Company (hereinafter referred to as "Dong'ao Company") and Super League Company, Dong'ao Company only enjoys the rights of communicating through television distribution and non-portal network.<sup>50</sup> Consequently, L Company cannot authorize P Company with any communicating rights. Moreover, P Network didn't obtain any authorization documents from others.<sup>51</sup> Additionally, such rebroadcasting is not a case of "fair use" or "statutory license".

In conclusion, L Company and P Company's rebroadcasting is unauthorized and thus illegal.

b) P Company and L Company constitute joint infringement

According to Article 8 of *Tort Law of the People's Republic of China* (hereinafter referred to as "*Tort Liability Law*"),<sup>52</sup> joint liability requires: (1) doers share common willfulness; (2) doers jointly commits the tort; (3) doers causes harm to another person.

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Beijing, No 1314 (2015) .

<sup>46</sup> *The Copyright Law* (2010), Article 24 (1), 22 and 23.

<sup>47</sup> P. ¶.

<sup>48</sup> P. ¶14.

<sup>49</sup> P. ¶.

<sup>50</sup> P. ¶.

<sup>51</sup> P. ¶.

<sup>52</sup> *Tort Liability Law* (2010), Article 8.

With joint intent, P Company and L Company collaborated on live network rebroadcast, grabbed the economic benefits of S Company and diverted the user's attention and website traffic. Therefore, P Company and L Company constitutes joint infringement.

#### **D. P Company shall bear civil liabilities for copyright infringement**

According to Article 48 (1) of *the Copyright Law*,<sup>53</sup> infringers shall bear civil liabilities. And under Article 13 of *Tort Liability Law*,<sup>54</sup> the victim of torts is entitled to require some or all of the tortfeasors to assume the joint liability.

Therefore, S Company is entitled to request P Company to assume the entire tort liability. S Company hereby submits that, P Company shall cease its infringement, compensate for damages and eliminate the bad effects for the adverse consequences.

#### **IV. EVEN IF P COMPANY DOES NOT CONSTITUTE COPYRIGHT INFRINGEMENT, ITS ACT CONSTITUTES UNFAIR COMPETITION**

Under Article 2 of *Anti-Unfair Competition Law*, business operators should follow the principles of voluntariness, equality, fairness, and good faith, and abide by laws and business ethics. And the unfair competition refers to disrupting the order of market competition and injures the legitimate rights and interests of other business operators or consumers.<sup>55</sup>

Accordingly, S Company will make further analysis from four aspects: P Company and S Company are the competing business operators; P Company violates the principle of good faith and business ethics; P Company's act injures the interests of S Company, and destructs the competition order. Therefore, P Company's act constitutes unfair competition and should assume relevant liability under the *Anti-Unfair Competition Law*.

#### **A. P Company and S Company are the competing business operators**

P Company is the owner of the portal website P Network - a legal person engaged in provision of video service for website users.<sup>56</sup> P Company obtains economic benefits by providing advertisements and attracting website traffic, falling within the scope of "business operator" under the *Anti-Unfair Competition Law*. The same conclusion can be drawn to S Company. They are both website service providers of sports events programs, and they profit mainly by website traffic in their own websites. Thus, P Company has the competitive relationship with S Company, and it is an appropriate subject under the *Anti-Unfair Competition Law*.

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<sup>53</sup> *The Copyright Law* (2010), Article 48.

<sup>54</sup> *Tort Liability Law* (2010), Article 13.

<sup>55</sup> *The Anti-Unfair Competition Law* (1993), Article 2.

<sup>56</sup> P. ¶.

## **B. P Company violates the principle of good faith and business ethics**

According to the FIFA Constitution and China Football Association Charter, CFA is the original owner of the rights arising from the various football events under its jurisdiction.<sup>57</sup> Without any legal authorization to communicate the programs through Internet, P Company still rebroadcasted the programs in the prominent position of P Network,<sup>58</sup> which reveals the bad faith of P Company. By diverting the user's attention and website traffic, P Company grabbed the economic benefits of S Company, which violates the principle of good faith and the business ethics in sports industry.

## **C. P Company's act injures the interests of S Company, and destructs the competition order**

P Company's act of rebroadcasting causes great financial losses to S Company: On the one hand, S Company was authorized by CFA to provide related sports events programs in its portal website with significant cost. But P Company rebroadcasted the programs without any authorization or payments. On the other hand, P Network received economic benefits by grabbing the website traffic of S Company. In other words, P Network diverted the user's attention and grabs the website traffic of S Network. Therefore, P Company injures the legitimate rights and interests of S Company, and results in destruction of competition order.

## **D. P Company shall assume liability under the Anti-Unfair Competition Law**

According to Article 17 of the *Anti-Unfair Competition Law*, any business operator who violates the provisions of this Law and causes damage to others shall assume civil liability.<sup>59</sup> Various judicial practices support the view that rebroadcasting sports events program without authorization constitutes unfair competition. In the case *CCTV International Network Co., Ltd v. Beijing I Love Chat Network Technology Co., Ltd*,<sup>60</sup> the court considered that Beijing I Love Chat Network Technology Company violated Article 2 of the *Anti-Unfair Competition Law* (1993).<sup>61</sup> And it is further evidenced by case *CCTV International Network Co., Ltd v. Huaxia Chengshi TV Network Co., Ltd*.<sup>62</sup> The court held that Huaxia City TV Network Company constituted unfair competition by rebroadcasting live sports events programs without permission from CCTV International Network Company.

In conclusion, even if P Company does not constitute copyright infringement, its unauthorized rebroadcasting constitutes unfair competition and shall assume civil liabilities.

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<sup>57</sup> P. ¶1, 2.

<sup>58</sup> P. ¶6.

<sup>59</sup> *The Anti-Unfair Competition Law* (1993), Article 17.

<sup>60</sup> *CCTV International Network Co., Ltd v. Beijing I Love Chat Network Technology Co., Ltd.*, Beijing First Intermediate People's Court, No. 3199 (2014).

<sup>61</sup> *The Anti-Unfair Competition Law* (1993), Article 2.

<sup>62</sup> *CCTV International Network Co., Ltd. v. Huaxia Chengshi TV Network Co., Ltd.*, Futian District People's Court of Shenzhen, Guangdong Province, No. 174 (2015).