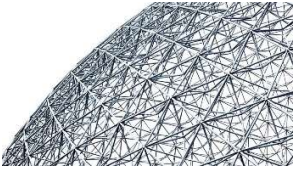


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Sports Tech Media.

### The protection of exclusivity in sport data rights. August 2019

During half-time of a recent match between Hull City and Reading in the English 2<sup>nd</sup> tier football league (the EFL Championship) an individual called, Daniel Mawyer was texting his girlfriend, partly to pass comment on Hull striker Tom Eaves' new haircut. As he did so, he was approached by unmarked stadium security and warned to stop texting, failing which he would be ejected from the ground.

Mr Mawer took to social media to complain. After all, texting your friends and family during a football match is about as commonplace now as a half-time pie.

The (Tweet) thread was shared by TV presenter and ex – Everton, Barcelona, Spurs & England player, Gary Lineker (who declared the situation “nuts”) and was commented upon widely within the football fan community. The EFL and Hull City eventually issued apologies to Mr Mawer and the matter seems to have been resolved amicably.

### **The Comsec 'scout spotting programming'**

Following the incident, the EFL clarified that the approach to Mr Mawer was carried out by representatives of a company called Comsec Investigations. The appointment of Comsec was made by Football DataCo, an entity owned by the Premier League and the EFL, and which licences data rights in connection with those leagues and the Scottish Professional Football League.

Comsec have this season initiated a 'scout spotting programme', which involves the deployment of Comsec representatives at matches throughout the country to prevent infringements by spectators of stadium regulations relating to match data distribution.

This gives rise to various questions. What types of infringements are Comsec seeking to prevent? And under what legal basis and for what reasons? And what does this mean for football fans who might be innocently using their phones to text friends or order a taxi?

## **Courtsiding**

It was explained in various press reports that the 'scout spotting programme' has been introduced by the EFL (and all its member clubs) primarily in order to stamp down on what is known in many sports (and particularly tennis) as 'courtsiding'. This involves the relay by individuals at the stadium of instant match information to betting companies, syndicates or individual punters so that 'in-game' bets can be placed before the live match television broadcast has had the time to reach viewers and/or the official data feed is updated. Courtsiders effectively exploit a delay of seconds so that bets can be placed on in-match events that have already taken place, but before betting platforms have registered that the event has occurred.

The practice of courtsiding obviously works against the commercial interests of many of the country's mainstream betting companies, including those who sponsor the clubs and the leagues. It is unsurprising therefore that the EFL (and the Premier League) and the clubs feel compelled to prevent it.

## **The Genius Sports agreement**

There are, however, other commercial factors involved in the deployment of Comsec's scout spotting programme. In May 2019, Football DataCo concluded a multi-year (and highly lucrative) agreement with the sports data company, Genius Sports. Under this arrangement, Genius were granted – on an exclusive basis – rights to capture and exploit the official data to all Premier League, EFL and Scottish Professional Football League matches. This 'official' data feed comprises an increasingly wide and sophisticated array of match information and statistics, and is distributed by Genius via sub-licence to its hundreds of sports betting operator partners globally, including betting shops and online betting platforms. Those betting partners use Genius's 'official data' for various purposes, including to fix odds and provide data updates to their customers during the course of each match.

The Comsec scout spotting programme has no doubt also been introduced to protect the exclusivity granted to Genius Sports by seeking to prevent rival sports data providers and others (who have not entered into sub-licensing arrangements with Genius) from accessing stadia and producing 'unofficial' match data. This data is normally produced by unauthorised 'football data scouts' who are retained to attend matches and provide live in-game data updates on match action, often by the use of specialist mobile devices. The use of unauthorised data scouts by unofficial sports data providers eliminates the need to license (and pay for) the use of match data from a rival official data provider, in this case Genius Sports.

Although this type of activity is similar to courtsiding (i.e. feeding back live match data on an unofficial or undercover basis), the purpose of the activity is different. This unofficial data is generally for use by betting platforms (and, in turn, their customers) for legitimate betting activity, not by punters looking to gain a timing advantage.

## **Data rights (and wrongs)**

In the EU, certain intellectual property rights (known as database rights) often exist in databases that have been created by sports leagues and rights holders to hold official match information. These rights have been established by Football DataCo through a series of protracted and well-reported High Court, Appeal Court and EU court cases against the sports data provider, Sportradar and others, including the bookmakers, Stan James. Legal action can be taken if, in certain circumstances, third parties extract and/or reutilise contents of that database without authorisation. Potentially, it is not only the unauthorised data provider that will be liable for such unauthorised use of data, but also its customers of the relevant information (e.g. betting operators).

However, no property rights exist in standalone information. Put simply, you cannot claim ownership or exclusive (or indeed any IP) rights in the fact that a goal has been scored, that a penalty has been conceded (or that Hull City's Tom Eaves has a new haircut). As a matter of intellectual property law, any person is entitled to report and publish/transmit those facts, provided the information itself has not been simply extracted from another's database in which database rights exist (i.e. in this case, from a Football DataCo/Genius Sports official data feed), or obtained unlawfully, by covert surveillance of private training sessions for example.

As such, from an IP perspective, there can be no absolute exclusivity of rights in a match data feed. Multiple parties can collate and transmit their own match data (and create their own databases), including by extracting data from matches that are televised or by appointing their own data scouts to attend matches at the stadium and report back to HQ.

## **Ticketing terms**

Knowing the above, many sports governing bodies will put measures in place to prevent data scouts from attending matches for the purpose of creating unofficial data feeds of matches on an unauthorised basis. This obviously helps protect the exclusivity in (and value and integrity of) the official data feed, particularly if a match is not available for live broadcast on TV, as (hypothetically at least) the official data provider will be the only party capturing and supplying data on the match in question.

These measures usually include imposing - as part of the match ticketing conditions - prohibitions on spectators carrying on this type of activity at the stadium. By way of example, under the current EFL Ground Regulations (which apply at all EFL member clubs), spectators are permitted to use their mobile devices, but not to capture, log or communicate match data for commercial purposes (e.g. including courtsiding and unauthorised data scouting). If spectators fail to comply, the regulations state that clubs have a right to eject fans from the stadium.

These EFL ticketing terms have been in place for some time and capture a wide range of potential infringements designed to protect the rights (and commercial interests) of various EFL commercial partners, including prohibitions on the recording and transmission of match footage on social media and those relating to match data referenced above.

Which of course brings us back to Daniel Mawer. His run-in with Comsec Investigations occurred because their security personnel (mistakenly) believed he was in breach of those ticketing terms.

This type of enforcement action (threatened or enacted) is not new in sport. Various well-known rights holders, including the England and Wales Cricket Board and the US Open, have ejected unwanted data scouts in recent years. The appointment of Comsec though may signal a new tougher approach from the EFL to enforce its ticketing terms and protect Genius's rights in particular.

As well as exercising IP rights to protect their positions, some sports governing bodies have taken criminal action, particularly to stamp out courtsiding. In Australia, a conviction for courtsiding can result in a prison sentence of up to 10 years under the Integrity in Sports Act. However, so far as the UK is concerned, the Gambling Commission's position is that courtsiding is not actually an offence under domestic betting legislation.

### **Enforcement challenges**

This incident at Hull City has demonstrated how challenging it can be for sports rights holders to monitor and effectively police infringements of this nature without attracting negative PR or other fallout, particularly if – as in Mr Mawer's case – mistakes are made and celebrity former footballers take up the cause on Twitter. It is notoriously difficult to identify courtsiders and unauthorised data scouts in noisy crowds of thousands, not least given how commonplace it is now for spectators to use mobile phones during matches, including (ironically enough) to place bets.

It can also be challenging to align the interests of, and approach taken by, on the one hand companies such as Comsec (whose only role is to take enforcement action) with, on the other hand, the clubs at whose grounds they are present (whose primary concern is the safety, enjoyment and continuing loyalty of their fans, and not ejecting supporters without obvious justification).

The Premier League, EFL and SPFL will certainly not want to be accused of putting the interests of their commercial partners ahead of those of football fans. However, they do have legitimate interests to protect. The official data feed of any sport has become an important and valuable product, not only for betting companies, but also as a means of enhancing TV broadcast coverage and press reporting. It is also produced at considerable cost.

### **What next?**

It seems that the above (somewhat uneasy) existing status quo will shortly be subject to legal challenge by Sportradar, a competitor of Genius Sports. The Times reported on 1 September 2019 that Sportradar has sent a lengthy letter before action in respect of the appointment of Genius as an exclusive partner of Football DataCo, which includes claims that the appointment infringes UK and EU competition law.

Sportradar's position is that, in effect, arrangements in the UK for data collection and exploitation should be more akin to those currently existing in Germany where multiple sports data providers have entered into agreements with the Bundesliga that enable (in return for a fee) access to stadia to collect and disseminate data on a non-exclusive basis. The argument is that this increases market competition, which ultimately benefits consumers through lower pricing, better products and the elimination of the need for such data providers to deploy unauthorised data scouts at matches.

This is a case which might rumble on for a while. Given the increased and considerable value of live sports data, particularly for use in gambling, the stakes will be high and the fight will be watched closely by a number of sports governing bodies, both domestically and overseas.

In the meantime, hopefully no other genuine football fans will be threatened with ejection for texting their girlfriends at half-time.