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from around the Nation*



August 6, 2008

NBC plans biggest 'media project' of an Olympiad ever

Coverage includes unprecedented 3,600 hours over seven television networks, and runs across Internet, interactive TV and mobile phones

By Vince Horiuchi
The Salt Lake Tribune
Salt Lake Tribune

Article Last Updated: 08/06/2008 01:08:49 AM MDT

NBC is calling it the "most ambitious single media project in history."

The network's coverage of the upcoming 2008 Beijing Summer Olympics beginning Aug. 8 will encompass an unprecedented 3,600 hours over seven television networks. In addition, it runs across the Internet, interactive TV and mobile phones, with more air time than all of the televised Summer Games put together. It's also the first time the Olympics will be entirely broadcast in high-definition.

"Even the smallest lipstick camera - the camera that's embedded in the target at archery that gives you that point of view of the arrow coming directly at the target - is in HD," said David Neal, executive vice president of NBC Olympics.

Fans won't have to wait hours after the events happen to see them either. About 75 percent of the coverage will be live despite a 14-hour difference between Beijing and Salt Lake City. Half of that will be in primetime.

Although television programming normally is delayed one-hour in Utah, KSL general manager Greg James said his station will show the Olympics live here when NBC does.

"Part of the joy of the Olympics is not hearing who won but watching them win," he said. During the day, KSL, the NBC affiliate in Utah, will broadcast daily Olympics coverage in three parts, from 9 a.m. to 5 p.m., from 7 to roughly 11:30 p.m. and midnight to about 1:30 a.m. The 10 p.m. news will be pushed back every night one hour.

Meanwhile, the Games also will be telecast on basic cable channels MSNBC, USA, CNBC, Oxygen, Universal HD and Telemundo (where it will be broadcast in Spanish).

Viewers also will be able to experience the thrill of the Games wherever they are. In a digital initiative that began with the 2002 Winter Games in Salt Lake City, NBC is blowing out the broadcast on NBCOlympics.com and through mobile phones that carry the network's NBC2Go mobile TV service through carriers Verizon and AT&T.

Fans can follow their favorite athletes on the Web site and on their cell phones with stats, profiles and streaming video.

"What's really revolutionary here for us in 2008 is that the viewing experience of the Olympics is really at the fingertips and at the choice of the viewer," said Gary Zenkel, president of NBC Olympics.

Through it all, NBC promises coverage of all 34 Olympic sports, from aquatics to wrestling.

NBC/Universal Chairman of Olympics and Sports Dick Ebersol said during a meeting with television critics last month the network's coverage will focus on amazing stories of athletes, and he promises to deliver "17 days and nights of unscripted drama."

"I think the country is really ready for this," he said. "It isn't exactly a joyful time in America right now - \$4 gas, people who can't afford vacations, wild prices on food and so forth. They're really looking for something to cheer for."

And the network, though covering the Olympics for the U.S., insists it will not predominantly profile American athletes to the detriment of foreign athletes, a criticism the network has faced in past Games.

"Are Americans somewhat more interested in American performers?" Olympics host Bob Costas said. "Of course they are, but we don't insult the intelligence of the audience. They're interested in any good story, wherever it may appear."

Broadcast highlights

About 3,600 hours of the 2008 Beijing Summer Games will be telecast from the Opening Ceremony Aug. 8 to the Closing Ceremony Aug. 24. And three quarters of it will be live.

In between, all 34 sports will be covered by NBC and its sister cable networks, as well as on the Web at NBCOlympics.com, on mobile phones and video on demand in what is being called the biggest telecast of an Olympiad ever.

Highlights of the broadcast include:

- Twenty five of the sports will be broadcast live on NBCOlympics.com and on television, the most of any Olympiad.
- In Utah, however, all primetime television broadcasts will be tape-delayed one hour. The daytime broadcast will be live.
- NBC's coverage will average more than 212 hours per day on TV and the Internet.
- For the first time, the entire Olympics air in high-definition.
- The networks will be televising all 58 men's and women's soccer games and all 76 basketball games.
- Cable channel Telemundo will provide all coverage in Spanish.
- Video streaming through NBCOlympics.com provides picture-in-picture and quad-screen viewing.

On Television

For 17 days, NBC Universal will blast fans with all the video, stats, interviews, and profiles one could ever consume.

Here's a breakdown of the networks that will broadcast competitions:

(Cable channel times are Mountain times for Comcast cable. Times for satellite providers may differ.)

NBC (9 a.m. to 5 p.m., 7 to 11 p.m., 11:30 p.m. to 1 a.m. on weekends; 10 a.m. to 1 p.m., 7 p.m. to about midnight, 12:05 to about 1:30 a.m. on Monday through Friday)

- All gold 32 swimming gold medal finals, four key nights of men's and women's gymnastics, beach volleyball, men's and women's marathons, basketball, water polo, diving, cycling, track and field, rowing and whitewater canoeing.

USA Network (Midnight to 10 a.m.)

- USA men's and women's basketball and soccer, tennis, volleyball, water polo.

MSNBC (3 a.m. to 3 p.m.)

- Softball, soccer, (including opening soccer matches), beach volleyball, wrestling, basketball, volleyball and weightlifting.

CNBC (10 p.m. to 2:30 a.m., 3 p.m. to 6 p.m.)

- Boxing, long-form coverage of softball, tennis, weightlifting, wrestling and badminton.

Oxygen (7 to 9 p.m.)

- Gymnastics, equestrian and tennis.

Telemundo (1 to 5 a.m., 6:30 to 9 a.m., 11 p.m. to midnight)

- Spanish-language coverage of soccer, basketball, gymnastics, diving, volleyball, track and field, swimming and baseball.

Universal HD (24 hours)

- 24-hour high-definition simulcasts of Olympic events as well as repeats of CNBC and MSNBC coverage.

Video On Demand

- Access recaps from Athens, previews of Beijing, Team USA profiles, daily highlights, and feature stories anytime through video on demand services by cable and satellite providers.

Comcast's Video on Demand will offer 60 pre-games shows including "Athens in Review," "Classic Moments," "Beijing 411," "Meet the Athletes" as well as next-day highlights.

Interactive TV

News, medal counts, TV listings, Team USA profiles and more from NBCOlympics.com also will be available through interactive TV applications available through some cable and satellite providers.

MiamiHerald.com 

Posted on Wed, Aug. 06, 2008

`Politics as war is not pretty'

By LEONARD PITTS JR.

I haven't read Robert Novak's column in 10 years.

Back in 1998, he made a comment on CNN -- what it was is not material here -- that I considered beyond the pale. I decided I could henceforth do without his opinions and insights. He impressed me as a distinctly disagreeable man. And that was well before he outed covert CIA agent Valerie Plame.

When the news broke a few days ago that Novak had a brain tumor and would retire, I was not made prostrate by grief. What I felt was that whisper of common mortality, that sense of there-but-for-the-grace-of-God one usually feels when tragedy strikes someone who is known to you, but not too closely. I felt sorry for the man and for his loved ones. It did not occur to me to celebrate their misfortune.

In this, I am evidently different from a number of observers who have infested Internet websites with exultation over the columnist's diagnosis. To be sure, the majority of bloggers and posters -- even those offput by Novak's often brusque conservatism and abrupt personality -- have wished him well. But there has been no shortage of those who were unable to attain that level of grace. One calls Novak's fate evidence of God. Another calls him a scumbag. Still another claims this proves "Republicanism" is a mental illness. LOL, it says.

And then there's the message board of Novak's home paper, The Chicago Sun-Times, where whoever is in charge of deleting offensive content is surely working overtime to keep up with the invective. I managed to snag two of the messages before the censor got hold of them. One expressed the hope that Novak "suffers like the victims of his lies." Another said, "May he rest in pain."

There is nothing new here of course. Similar responses attended the late Tony Snow's battle with the cancer that took his life. And Michael Savage, a barely-housebroken radio personality, played a song by the Dead Kennedys when news broke that Sen. Edward Kennedy had been diagnosed with brain cancer.

The intention, I imagine, is to debase those with whom one has political disagreements. The authors of this sort of abuse evidently don't realize that what they really debase is themselves -- and political discourse as a whole.

Yes, it is fair, even now, to offer a harsh critique of Novak's politics. But there is something fundamentally indecent about celebrating his grave illness. Osama bin Laden, I might understand; he's a mortal enemy. Robert Novak is just a columnist with whom some of us disagree.

But then, the distinction I draw no longer exists in the minds of many, raised as they have been on talk radio diatribes, accustomed as they are to spewing vitriol from the anonymity of the Internet. For them, disagreement is the very mark of a mortal enemy. For them, there is no such thing as the sort of easy bonhomie among opponents that allowed, say, Ronald Reagan and Tip O'Neill to share a drink at the end of a long day spent fighting one another in the political trenches.

It is a sweet picture that might as well be painted in sepia tones, so long ago does it seem. Today, there is no bonhomie. Politics is war. In war, one does not drink with enemies. One does not reason with them or seek common ground. One simply hates them. One simply kills them.

That's the mentality you're seeing here -- politics as war -- and it is not pretty. The thing is, there are truths above politics and one of them is that you do not laugh at the other guy's tragedy. How estranged are you from your own humanity, how deficient was your home training, when you need to be reminded of that?

Friend or foe, there is only one word any of us should feel compelled to offer Robert Novak now: Godspeed.

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NFL unveils new code of conduct for its fans

By Michael McCarthy, USA TODAY

The National Football League unveiled its first "Fan Code of Conduct" for patrons in its stadiums and parking lots on Tuesday.

According to a copy of the code, drunk and "disruptive" fans can be ejected from stadiums or parking lots without refund — and stripped of their season tickets. The same goes for fans who verbally or physically harass other fans, use obscene language or gestures or interfere with the game by throwing objects onto the field. Fans who become drunk or unruly during pregame tailgating will not be allowed into stadiums.

PHOTOS: [Wild fans across the NFL](#)

"We are committed to improving the fan experience in every way we can — from the time fans arrive in the parking lot to when they depart the stadium," league spokesman Brian McCarthy said Tuesday. "We want everyone to be able to come to our stadiums and enjoy the entire day."

The NFL's 32 clubs will be charged with implementing and enforcing the code, McCarthy said. That will give teams the opportunity to add their own rules to the league's code. All NFL clubs are expected to spell out the rules to season ticket-holders and fans through news releases, mailings and stadium-area signs and announcements. Each club will have a front-office employee designated as being in charge of the policy.

The NFL, the USA's most popular pro sports league, attracted 17.3 million fans to regular-season games during the 2007 season, an average per-game attendance of 67,755. Both were league records. The league began looking at a code of behavior after hearing a growing number of fan complaints about their experience at games, Commissioner Roger Goodell said at a league meeting on May 20.

The rules say season ticket holders and others fans are not only responsible for their own behavior but for that of guests or anybody else occupying their seats. "Event patrons and guests who violate these provisions will be subject to ejection without refund and loss of ticket privileges for future games," states the code.

McCarthy said patrons could lose season tickets for the remainder of a given season and be barred from purchasing them again "depending on the severity of their actions." He said clubs will be allowed to decide whether to refund money for unused tickets of fans disciplined under the policy.

Some NFL clubs may end up hiring additional security personnel to enforce the rules, said McCarthy.

But the country's richest, most powerful sports league has its work cut out for it as it communicates the get-tough rules to fans and prepares some of its teams to implement the policy, say stadium security experts.

The NFL and its clubs need to launch public awareness campaigns to educate season-tickets holders, says Lou Marciani, Director of the Center for Spectator Sports Security Management at the University of Southern Mississippi. At the club level, it's "critical" that teams train security guards, ushers and event staff, he says.

"I commend the league for taking a stance to protect the right of paid spectators. The hard part will be implementing it," Marciani says. "I could see them including it in fan guides and season-ticket contracts. As for the process of deciding who's intoxicated and who's not ... good luck."

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Milt Ahlerich, the NFL's senior vice president of security, will direct the program at the league level, says McCarthy. If the league feels some clubs are too lax, it will step in and "provide guidance on areas that may be lacking," McCarthy says.

As the season gets underway, NFL fans might notice more security patrolling parking lots. While Grubman says tailgating is a treasured part of the fan experience, it can also lead to trouble inside the stadium. "Some of the stadium behavior that's too over the top is probably occurring because people had too much to drink in the parking lot," he says.

The new code says season ticket holders and other fans are not only responsible for their own behavior but for that of guests or anybody else occupying their seats.

McCarthy said patrons could lose season tickets for the remainder of a given season and be barred from purchasing them again "depending on the severity of their actions." He said clubs will be allowed to decide whether to refund money for unused tickets to fans disciplined under the policy.

The NFL could be opening itself up to possible legal action from disgruntled fans who run afoul of the new code. But McCarthy says the league and its teams will review these situations on a "case-by-case basis."

READERS: What fan behavior bothers you most in NFL stadiums? What rule should the league implement to address it? Tell us why — or why not — in the comments section below.

Find this article at:

http://www.usatoday.com/sports/football/nfl/2008-08-05-fan-code-of-conduct_N.htm?loc=interstitialskip

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Advertising Age®

How Newspapers Can Turn Problems Into Profit

Steve Rubel on Digital Communications

By [Steve Rubel](#)

Published: August 04, 2008

Newspaper publishers are facing a perfect storm thanks to three megatrends: rising inflation, America's growing green conscience and disruptive technology. To succeed in this era of great change, they need to think about how to make lemonade out of these perceived lemons. Unfortunately, so far, they haven't. Here's my advice.

RISING INFLATION: As gas prices rise sharply, so do distribution costs. To compensate, many newspapers have announced they are significantly increasing their hard-copy newsstand prices. However, that's a 20th-century reaction to what is a complex, 21st-century problem.

What they should be doing instead is using this as an opportunity to put a hard date on when they will abandon print altogether, close down plants and migrate completely to a digital paradigm. They need to have faith that their brands and quality editorial product will encourage readers who haven't already migrated to do so.

GREEN CONSCIOUSNESS: Americans are increasingly becoming very aware of their environmental impact and what they can do to mitigate it. Millions are taking the simple step of cutting print subscriptions in favor of (slowly) going completely digital. Is this a threat to newspapers? Of course, but it's also an opportunity.

Advertising -- particularly outdoor and print -- also creates tremendous waste. Newspapers can take the lead in going green and in the process create new avenues for advertisers to play up their related social-responsibility programs online. It's a win all around.

DISRUPTIVE TECHNOLOGY: Last but not least we have the growing popularity of speedy 3G-enabled smartphones and devices such as Amazon's Kindle e-book reader. Newspapers have invested heavily



Photo: JC Bourcart
Steve Rubel is a marketing strategist and blogger. He is senior VP in Edelman's Me2Revolution practice.

here, creating smartphone apps and pushing content for Kindles. But they don't go far enough.

Newspapers have made it hard for readers to get what they want without jumping through hoops. For example, they syndicate story summaries in their RSS feeds (even to paid subscribers). This forces readers to visit the website for the full content, and when they do, they have to trip over interruptive ads and interstitials.

Make it easy for loyalists to get what they want, when they want it, and they will remain just that -- loyal.

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SUNDAY, JULY 27, 2008

Exodus

Daily newspapers used to be important things. Before television, they were the primary way most sports fans found out who won or lost games, who was in contention, who was on the outs. Even in the TV age, the daily paper was your connection to your team(s), and the only means of reading up on box scores, or standings, or the real mainstay of sports writing, opinion columns. For most of my soon-to-be-forty years, whether you liked it or not, you had to buy the paper if you wanted to know what was going on.

All that started to change, of course, something over a decade ago. The internet unleashed news and sports writing from the grasp of printing press and TV station owners, and put the ability to reach hundreds, thousands, or even millions of other people in the hands of just about anybody with a computer. While the blogging revolution was going on, the web also revealed who the most important employees of a given newspaper really were: not the columnists with lifetime sinecures, not the beat reporters with one eye on the AP wire, but rather the little old ladies downstairs who took the orders for want-ads. While online news and sports sites thrive and grow more profitable by the year, newspapers are in a fiscal nosedive as advertisers and subscribers alike take their attention and business elsewhere.

All of which brings us to 2008, and a fascinating exodus that's occurring just under the radar in the sportswriting world. As print newspapers become less and less relevant (and far less profitable), more and more top talents are jumping off the sinking ship to ply their trades online. In blog parlance, it's called "taking the Boeing," a phrase coined by uber-blogger [Glenn Reynolds](#) when ace political writer Mickey Kaus agreed to bring his hugely-popular [Kausfiles](#) blog under the [Slate.com](#) umbrella (Slate being owned by Microsoft, which shares its home city of Seattle with aircraft behemoth Boeing--it's a stretch as a joke, but it works).

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Around these parts, Neal McCready left the Mobile Press-Register to become the feature writer for [Rivals.com's Ole Miss site](#) around the beginning of 2008. I'd said for years that McCready pretty obviously would be a lot happier if he were covering Mississippi instead of Auburn and Alabama, and by all indications (including an acidic and very funny [kiss-off email](#) that was widely forwarded around), Neal finally agreed. He's clearly having a ball in his new job, and good for him.

That said, I was stunned when Phillip Marshall "took the Boeing," or rather the ~~✶~~ ESPN Shuttle a month or so ago. Marshall has newspaper ink running in his veins; his father Benny was a legendary sports editor at the Birmingham News, and Marshall himself has been a major figure in the Alabama media for most of my own lifetime. He was easily the best sports editor, reporter and writer the Montgomery Advertiser has had in the last 30 years, and in his more recent gig as the Auburn beat writer for the Huntsville Times, he won the state's top award for sports writing in both of the last two years. But Marshall walked away from the Times in June to set up shop in a brand-new ~~Sports Illustrated~~ ESPN-affiliated AU news and blog site, [Auburn Undercover](#) (which I must say has a dumb name, but great content).

The exodus is not limited to Alabama's papers. Fort Worth Star-Telegram living legend Wendell Barnhouse [recently hung up his newspaper spurs](#) to become the Big 12 Conference's online reporter. Under less voluntary circumstances, [Jay Christensen](#) (who wrote the blurb about Barnhouse linked just above), [was recently axed](#) thanks to the floundering LA Times' efforts at cost cutting. Christensen's previously-anonymous blog [The Wizard of Odds](#) was (and is) among the very best college football sites out there, and I'm betting that Jay will go a lot farther online than he would have in the stratified world of big-newspaper sportswriting.

Even when people don't leave their big-media home bases, they're finding more readers by going online. For my money, the best two college football writers in the country are Tony Barnhart of the Atlanta Journal-Constitution and Ivan Maisel of ESPN. [Barnhart's online-only AJC blog](#) is far more timely and interesting than almost anything that gets printed in the actual paper, and Maisel's work scarcely ever sees physical print at all these days; the vast majority of his stuff is online-only at [ESPN.com](#).

All of which makes one wonder how far all this is going to go. The market is proving that small outfits concentrating on a single team or school or sport can do quite well; there are [three full-time all-Auburn](#) news and message board sites running right now (full disclosure, with several friends of mine working in various jobs), and they're all making

money. Sports sites with broader appeal are also doing fine, and all the proof you need of that is [Orson Spencer Mellencamp's](#) recent taking-of-the-Boeing to become [a feature writer with the Sporting News](#).

Readers are leaving newspapers far faster than the better writers. I remember hearing my dad gripe about the state of the Montgomery Advertiser about a decade ago. Gannett had bought out what was up until that point the best paper in the state, and their low salaries and Mickey Mouse editorial template quickly ran off everybody with any smidgen of talent. "What can you do?" he asked me rhetorically. "You have to get a paper, and even this garbage is the best one around here."

Now Dad has an iBook with a wireless hookup, and every newspaper in the world is as close as his end table. He used to get three daily papers while I was growing up; now he gets one, and I'll bet you he won't renew it the next time a bill arrives.

As a lot of people who worked for secure local monopolies pre-web are learning, my dad is hardly unique.

POSTED BY WILL COLLIER AT [7/27/2008](#) 

4 COMMENTS :

 [Gruber Barabonds](#) said...

Isn't Marshall's site ESPN affiliated and not SI?

WDE

10:48 AM

 [Will Collier](#) said...

Quite right, correction made. Thanks.

11:24 AM

 [Andrew](#) said...

As the son of a Boeing employee, I thought I'd just inform you that the joke/metaphor here is now factually incorrect: Boeing moved its corporate HQ to Chicago a couple of years back. Their huge airplane processing facility in Everett's still there, though.

Otherwise, great read.

12:46 AM



Mon August 4, 2008

Castiglione wants to patch things up, starting with '71 game reunion

By Jake Trotter
OU Insider

NORMAN — The last time Nebraska played at Owen Field, atypical bad blood spoiled the night.

Nebraska players accused OU of trying to run up the score; Sooner fans booed a futile Cornhusker field goal as time expired.

A Nebraska lineman popped a jeering OU Ruf/Nek during pregame warmups and was later charged, though found not guilty, of aggravated assault.

And Nebraska coach Bill Callahan hollered, " — hillbillies" as he slogged off the field after a 30-3 beating.

This season, OU athletic director Joe Castiglione is hoping to help put the 2004 game behind the two universities and restore grace and respect to the rivalry.

Castiglione is planning a reunion during this year's OU-Nebraska weekend for all Sooner and Husker players who participated in the 1971 "Game of the Century."

Players from both teams who attend will be honored at halftime.

"After the last game, the type of comments that were made, the things that were said were so foreign to the rivalry," Castiglione said. "I know rivalries have such an intensity to it people want to term the opponent the 'hated rival.' But there is something that has transcended this rivalry, and that has been immense respect for each other. It was demonstrated many times before and many times after the '71 game."

The Game of the Century pitted No. 1 Nebraska against No. 2 OU, or as Sports Illustrated wrote on its cover leading up to the game, "Irresistible Oklahoma Meets Immovable Nebraska."

In a showdown that went back and forth, Nebraska came up on top, 35-31, on the way to a national championship. The Sooners would finish second that year.

"Some people might wonder or be confused why we'd have a reunion around a game the other team won," Castiglione said. "On the scoreboard they did, but most people who attended that game or people who wrote about that game never saw it as Oklahoma losing. Nebraska just finished with the most points. It was a game that was a classic in the purest sense."

Castiglione has already spoken with former Husker coach and current athletic director Tom Osborne, who is helping coordinate the reunion.

Invitations will be going out, and Castiglione is hoping for a strong turnout from the ex-Nebraska players.

"Can you imagine if we have all of the guys there, the Pruitts, the Brahaneyes on one side, then the Johnny Rodgers' and Rich Glovers on the other?" Castiglione asked. "I think the place would come unglued."

Castiglione said that during that weekend, something special is also being planned for the OU quarterback of the '71 game, Jack Mildren, who died earlier this year.

"As a young boy watching that game, I remember Jack Mildren," Castiglione said. "I remember the commentators talking about Jack Mildren and the amazing plays he was making.

"I started thinking, I've never seen a game like this ever."

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Sunday, August 03, 2008

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Jim Brown's Lawsuit Against Video Game Company Puts Fantasy League Ruling to the Test

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Bloomberg News reports that [Jim Brown filed a lawsuit last week against Sony and Electronic Arts](#) alleging that the unauthorized use of the character in the "Madden" football video game, part of the "Real Old School Teams and Players" series -- a muscular, African-American running back wearing the number 32 jersey who is featured in the game's "All Brown's Team" -- violates his right of publicity. There will be two main defenses asserted here, neither of which is very compelling.

The first defense will be that Jim Brown's name and picture are not being used, and therefore his identity is not being exploited. However, it is well-established by case precedent that the identity element necessary for a right of publicity cause of action is met when there is a sufficient link between the particular plaintiff and the defendant's use, in other words, that the defendant is actually referring to the plaintiff. In *Doe v. TCI Cablevision*, the court explained: "To establish that a defendant used a plaintiff's name as a symbol of his identity, the name used by the defendant must be understood by the audience as referring to the plaintiff....In resolving this issue, the fact-finder may consider evidence including the nature and extent of the identifying characteristics used by the defendant, the defendant's intent, the fame of the plaintiff, evidence of actual identification made by third persons, and surveys or other evidence indicating the perceptions of the audience." In Jim Brown's case, the defendants will have a difficult time convincing a court that those playing the video game do not understand that the character in the game is referring to Jim Brown. Here are a few cases that support Brown's case against EA:

- *Carson v. Here's Johnny Portable Toilets, Inc.* -- held the phrases "Here's Johnny" and "The World's Foremost Comedian" were clearly referencing Johnny Carson even though his name wasn't being used.
- *Ali v. Playgirl, Inc.* -- held that the defendant's use of a

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drawing of a black man seated on a stool in the corner of a boxing ring captioned as "Mystery Man" and "the Greatest" sufficiently identified Muhammad Ali even though his name and picture were not being used.

- *Hirsch v. S.C. Johnson & Son, Inc.* -- held that use of the name "Crazylegs" on a shaving gel for women violated the right of publicity of a famous football player named Elroy Hirsch, who had been known by this nickname.
- *Motschenbacher v. R.J. Reynolds Tobacco Co.* -- held that the image of a race car driver in a red racing car with a white pinstripe and number "11" sufficiently identified a professional race car driver whose number "71" race car was always in red and white with the same pinstripe.
- *White v. Samsung Electronics America, Inc.* -- court found that the use of mechanical robots clearly resembling Vanna constituted a violation.

Jim Brown's case is similar to the use of identities of amateur players in video games, which I discussed in a "[Letter to Tim Tebow](#)" back in December.

The second defense most likely to be asserted is that the First Amendment trumps the right of publicity. The defendants will most likely rely on the Eighth Circuit's recent decision in *C.B.C. Distribution and Marketing, Inc. v. Major League Baseball Advanced Media, L.P.*, whereby the court applied a precarious "public domain" standard to hold that the use of names and statistics of professional baseball players by fantasy leagues without authorization is protected by the First Amendment.

Jim Brown's case highlights why the Eighth Circuit's public domain standard simply does not work in evaluating when the First Amendment outweighs a right of publicity claim. Jim Brown is a high profile former professional athlete and public figure. Thus, by definition, he is in the public domain. A public domain standard would essentially eliminate ALL right of publicity causes of action where the defendant uses a high profile person's identity without authorization in every single context, whether that be unauthorized use in fantasy leagues, video games, trading cards or advertisements.

As I advocated in my [Penn State Law Review article](#), the only practical standard to apply in determining whether the First Amendment trumps a right of publicity claim in a given context must focus on whether the primary **use** of the plaintiff's identity by the defendant constitutes an expression protected by the First Amendment (e.g. news reporting, opinions and critiques written in magazine and internet articles, parodies, artistic expressions, etc.). While fantasy league use, video game use, trading card use

[Darren Rovell's SportsBiz Deadspin](#)
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[LII: Sports \(Cornell University\)](#)
[Marquette Sports Law Program](#)
[Mark Alesia's NCAA Study](#)

and use in advertisements serve an ancillary function of informing the public (a legitimate First Amendment concern), the *primary* use in these contexts is simply not to inform the public.

If this case does not settle, it will ultimately test the limits of the Eighth Circuit's decision. And even if it settles, this case highlights the confusing and nonworkable standard adopted by the Eighth Circuit. This lawsuit also raises the question whether video game companies have the right to continue to commercially exploit the identities of amateur athletes without their authorization.

-- Posted by Rick Karcher @ 8/03/2008 08:45:00 AM -- [Comments \(13\)](#) -- [Post a Comment](#)


13 Comments:

In Jim Brown's case, the defendants will have a difficult time convincing a court that those playing the video game do not understand that the character in the game is referring to Jim Brown.

Brown retired decades ago. I seriously wonder how many of the mostly young people who play Madden Football have even heard of him.

 [Peter -- 8/03/2008 10:34 AM](#)

Most players of the game will have no idea who Jim Brown is nor will they care. Jim Brown is an angry human being, angry at the world. He is not from Africa either. As far as testing the 8th Circuit: please, please do! In fact, go ahead and vehemently disagree so that the case can (hopefully) go to the Supreme Court who can then, once and for all, make the decision that in the internet era, professional athletes simply no longer have control over their statistics whatsoever.

 [Anonymous -- 8/03/2008 1:51 PM](#)

I agree in large part. I think that Brown would have a case, but two factors come into play: (1) the public peception of the character as a take-off of Brown -- as noted in the earlier comment; and (2) whether the image is "transformative" as found in the Tiger Woods case. A few courts have adopted this standard as a way to balance the First Amendment with the commercial rights of the person in question.

What troubles me about the Eighth Circuit's ruling in MLBAM is that the court did not set any contours or tests regarding the balancing of the commercial



Posted on Mon, Aug. 04, 2008

Gamecocks cash machine about to take the field

By JASON RYAN AND ANDREW SHAIN
ashain@thestate.com

This is the time of year in Columbia when Xs and Os mix with dollars and cents.

As a business, the USC Gamecock football team is quite successful.

The program's projected revenues this year of more than \$47 million would have made Gamecock football the state's 19th-largest publicly traded company last year, according to calculations by cbj based on USC athletic department budget data.

And in a period lasting a little longer than a typical quarter for a publicly traded company, the team is forecast to post profits of more than \$35 million.

That's more than what S.C.-based restaurant chain Denny's netted all of last year.

And that's good for USC athletes because money made from USC's football program (and to a lesser extent its men's basketball program) helps pay the expenses for the other 17 varsity sports — none of which make money, said John Humphries, budget director for USC's athletic department.

Everyone from track sprinters to golfers to swimmers to soccer goalkeepers are relying on the tickets, parking spots, and colas and hot dogs sold during home games at Williams-Brice Stadium.

They also count on other cash that Gamecock football attracts each year: booster club memberships (needed to buy season football tickets); corporate sponsorships; and media rights.

The handsome profit from the quarterbacks and cornerbacks should cover two-thirds of all nonfootball related athletics spending at USC.

The number do not take into account the estimated \$50 million-plus into the area economy each season

Here's cbj's look behind Columbia's most-popular autumn business:

PROGRAM EXPENSES

The football program is estimated to spend \$12.1 million this year, Humphries said.

Here's the breakdown:

- \$3.3 million for scholarships
- \$2.8 million for salaries of 17 program employees, which includes coaches, secretaries and training staff.

(Note: Just \$275,500 of head coach Steve Spurrier's annual \$1.75 million salary comes from the athletic department. The rest comes from proceeds of USC's agreements with apparel provider Under Armour and broadcast rights holder ISP Sports.)

- \$1.5 million for gameday operations — including security, ticketing, janitorial, equipment rental, doctors and nurses to run aid stations, technicians to run the video scoreboard.
- \$1.2 million to pay fees to three non-Southeastern conference teams to visit Columbia. (See box for details.)
- \$836,000 for travel to games.
- \$678,000 for football equipment and supplies.
- \$615,000 for a donation to the USC's general scholarship fund from proceeds of the Georgia game.
- \$275,000 for recruiting
- \$150,000 for game officials.
- \$700,000 for miscellaneous expenses that includes telecommunications, tickets for families of players for away games and travel for team personnel to conferences and speaking engagements.

GAMEDAY REVENUES

Still, the revenues from the Saturdays (and a Thursday night) at Williams-Brice alone easily offset those costs.

The seven home games from the Aug. 28 match-up with N.C. State to the Nov. 8 contest against Arkansas are projected to earn:

- \$18.5 million in ticket sales after taxes and fees. (Note: This figure also includes \$250,000 from Clemson to play this year's game at Death Valley.)
- \$2.2 million for seating premiums for club level suites.
- \$1.4 million in fees for parking around the stadium, on the State Fairgrounds and at ETV and National Guard Armory.
- \$760,000 in concession sales.

From gamedays alone, Gamecock football generates \$22.9 million in revenue.

After expenses, the garnet gang is in the black with a profit of \$10.8 million.

That's more than enough to buy a Sandy's hot dog with chili for every South Carolinian.

Looked at another way: Each home game this year is forecast to generate a profit of \$1.5 million.

ADDITIONAL REVENUE

That's not all. Time to tack on revenue for football from a variety of sources, some of which are bolstered by USC's other varsity squads:

- \$12.9 million from the Gamecock Club booster organization. (The football program generates 88 percent of the club's \$14.7 million in total funding, Humphries said.)
- \$7.3 million from the SEC's revenue sharing, in which money made from television deals, bowl games and conference championships is divvied up among conference members. (Football makes up 68 percent of the \$10.7 million total USC receives.)
- \$3 million from ISP Sports for multimedia rights, which includes radio, stadium signs and program ads. (Football accounts for nearly 70 percent of the total \$4.4 million agreement.)
- \$1.2 million from corporate sponsor and sports apparel maker Under Armour in a deal made with the school for the football program.
- \$75,000 from Barnes & Noble to run a store at Williams-Brice to sell Gamecock gear.

That's nearly another \$24.5 million generated by the linebackers and receivers.

THE FINAL SCORE....

So this season, Gamecock football

... will generate revenues of \$47.4 million

... while spending about \$12.1 million

... for a profit of \$35.3 million.

That's a winning score by any business measure.

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In modern sports coverage, it's all fair game

'STRAY-ROD' just a sign of things to come as athlete-celebrity line blurs

By Ethan J. Skolnick

NBCSports.com contributor

updated 12:26 a.m. CT, Mon., Aug. 4, 2008

Grand slams. Hail Mary touchdowns. Buzzer-beaters. Game-winning goals.

You would think that sports provides enough excitement on the field or court or ice to satiate even the most demanding consumer.

Luis Gonzalez is no longer sure.

"The playing part gets boring for people," said the 19-year major league veteran, who now plays for the Florida Marlins. "And they want to know what is going on in athletes' personal lives."

In this modern media age, with its increasing saturation and declining standards, the curious won't have to surf long to find it. Check out the major independent sports blogs, and you might stumble across a backside bikini shot of tennis star Ana Ivanovic, Arizona Cardinals quarterback Matt Leinart holding up a beer funnel for Arizona coeds, the \$1 million pool of Washington Wizards guard Gilbert Arenas, or the latest gossip related to the relationship of New Orleans Saints running back Reggie Bush and reality star Kim Kardashian. Even the sportscasters, such as Chris Berman and Erin Andrews, aren't exempt from the scrutiny.

"I don't think anybody's lives are private or personal anymore," Gonzalez said. "Once you step into the public street, everything is wide open."

Alex Rodriguez sure learned that, though he may not have truly learned his lesson.

On May 30, 2007, a blaring headline appeared in the New York Post, next to a photo of the married Yankees third baseman entering a Toronto gentleman's club with a mysterious blonde.

"STRAY-ROD."

As soon as that hit New York newsstands, the Yankees third baseman wasn't alone in facing accusations of straying. Rather, many media observers — and observers of the media — argued that the newspaper had strayed from the unwritten rules of covering prominent athletes. In a later story by the New York Observer, Post sports editor Greg Gallo said that it was the metro department's decision to run the embarrassing image, which had been provided by a freelance paparazzi photographer. (And a Post spokeswoman said the newspaper was "proud to have broken" the story). That story became national news, with more photos published of Rodriguez with the woman.

So it was no longer a surprise when Rodriguez's marriage became a major media spectacle again this year, as his wife Cynthia filed for divorce amid rumors that Rodriguez had become involved with the pop star Madonna.

The Post and its tabloid rival, The New York Daily News, have covered athletes' personal issues before and since. But Sandy Padwe, an associate professor at the Columbia University Graduate School of Journalism, cited a difference in the relatively recent coverage of Michael Strahan, Jason Kidd, Paul Lo Duca and others, as compared to that of Rodriguez:

Generally, those stories were driven by court cases, and specifically by dogged court reporters probing public

records.

The "STRAY-ROD" story really started with a snapshot.

It hasn't seemed to have bothered Rodriguez much. He continues to hit.

So it might have had a more meaningful effect on sports coverage than Rodriguez's plate coverage.

Was STRAY-ROD a sign of what's to come?

"All the eras have been different," Padwe said. "Now you have gone almost full-circle on this kind of stuff. And I don't see it changing. Because what few standards are left are just diminishing and diminishing week by week it seems, so how will it ever come back? Unless there is a total sea change in the way that publications begin to look at things. That's certainly not going to happen for years and years now."

Padwe notes that in the eras of Joe DiMaggio and Babe Ruth, sports reporters ignored what they saw or heard about players' personal lives. That trend extended late into the century. Padwe recalls that, when he left the Philadelphia Inquirer for New York Newsday, he started by taking a three-week trip with the Yankees because his New York apartment wasn't ready.

"I met the charter at LaGuardia Airport," Padwe said. "I get there, and a reporter, very well-known and respected, says to me, 'We don't write about sex with this team.' As if that's what I did in Philadelphia. Here he was lecturing me, and that was 1972. The theory was, nothing off the field. Because if somebody started writing about what happened off the field, then the reporters had to work harder."

Padwe doesn't believe in look-away, any more than he believes in tell-all, journalism. And he believes that Rodriguez might have set himself up for such scrutiny, not only due to his salary, but due to transparent attempts to craft an image as a completely virtuous character.

"The leagues and teams still sell their product and their players, even in colleges, almost as paragons of virtue," Padwe said. "A-Rod, he has written a children's book, and I remember he got a hell of a lot of publicity for that in New York. He has a PR machine. Here's a player out here, who is not only the highest-paid so there's a lot of interest, but if he is portraying himself as family man and writing children's book, and then gets caught up in Toronto with the stripper — that then becomes fair game. You can't have it both ways."

Another factor has contributed to the circus around Rodriguez:

Where he plays.

Jay Feely spent two seasons kicking for the New York Giants before joining the Miami Dolphins.

"In New York, everything's magnified," Feely said. "There's more reporters, there's so many more newspapers, everybody has to get a story, it's so cutthroat. So they do look for any kind of edge to create a story that somebody else doesn't have."

How strong is the microscope?

"When you miss a kick in New York, you end up on Saturday Night Live," said Feely, who was portrayed by comedian Dane Cook on the long-time late night NBC show after missing three times in Seattle in 2006.

And when you are caught on camera with a mysterious miss, you could end up on the cover of a tabloid.

Not every prominent sports journalist is comfortable with that trend.

"Maybe I'm a dinosaur, because I don't subscribe to the theory that once a celebrity, everything is open game as far as being an athlete," long-time Newsday columnist Shaun Powell said. "If it doesn't affect performance, and doesn't affect win-losses, then it's none of my business."

Not surprisingly, athletes appreciate that philosophy.

"When the the media gets in people's personal lives they're taking it too far," New England Patriots running back Laurence Maroney said.

"None of it is fair game," Maroney's teammate, linebacker Adalius Thomas said.

"It's what it is: personal," Thomas said. "You're taking something away from the game into something that doesn't affect the game. When it doesn't affect the game, that's when it's overboard."

Thus, Thomas makes an exception for an injury suffered at home.

What about an athlete's personal life affecting his mental state at work?

"Well, how about reporters that are going through divorces," Thomas said. "It doesn't affect their mental state or how they write?"

Personal issues can affect something dear for athletes. It can affect their earning potential. Former NFL cornerback Robert Bailey, now the president of the marketing division for Rosenhaus Sports, said he advises the agency's 100-plus clients to avoid being caught in any compromising position. The wrong photo could mean the loss of millions in endorsements and corporate sponsorships. The explosion in media outlets and internet sites has created incredible opportunities, but also risks.

"This has become a part of NFL business, a part of major sports," Bailey said. "You have to really conduct yourself appropriately. Basically, it's going to get to the point where if you walk outside your door, you're game."

Bailey has warned players that if they're at a party, a photo from that party can be uploaded to a Web site, such as one of the many independent sports blogs, within 15 minutes.

"That's how party people promote who is at the party tonight," Bailey said. "You can be having a fun time with friends, and a picture says 1,000 words. Which words are they going to pull? They can pull good ones or bad ones. You can be leaning into someone, and it could say, '(The athlete) looks like he is ready to punch this guy.' But, in reality, you were just getting ready to shake his hand. Twenty years ago, when did a picture cost you so much money?"

So second-year New York Giants receiver Steve Smith already has become more wary, especially after noticing the unflattering attention that former USC teammates Leinart and Bush have received: "You don't want to have a drink in your hand or anything like that. It sends the wrong message. It just looks bad. It sucks you can't even do everything you want, but I suppose it makes you a better person."

Careful?

"You always are," said Thomas, the Patriots' star. "You can always come back and add something, but you can't go back and take something away. So many guys do so many good things, but nobody wants to write about it. They'll write about it here and there if a big name person does something nice in the community. But what about the guy that nobody really knows? He's still in the NFL, he's paying his dues but nobody's writing about him giving out turkeys? But if that guy gets a speeding ticket or a DUI? They'll put that on the front page."

Few current players have tried to avoid the public eye — without ever truly escaping it — like Dolphins running back Ricky Williams. His contention? "Whatever happens on the field is fair game." Everything else? No, "unless it directly affects what occurs on the field."

"But I think a lot of times stuff happens off the field and it has no relation to on the field until the media gets a hold of it, and then it becomes a distraction," said Williams, who is trying to resurrect his NFL career after multiple drug-related suspensions.

Although "aware" of the current climate, Williams tries not to dwell.

"If you focus on it too much, it's hard to live your life," Williams said. "You just have to find that balance. If you are going to break the unwritten rules, just try to do it in your private time, try not to do it when people can see."

Actors and politicians have long tried to live by those rules.

If they were always successful, many people — gossip writers, paparazzi photographers, supermarket tabloid tycoons — would be out of business.

"In politics, when you are talking about leading our coverage, your character matters tremendously," Feely said. "So I think when you look at personal lives, I think that has an implication as to what they'll do when they're leading in office."

Athletes?

"I don't think their personal life necessarily impacts how they perform," Feely said. "If A-Rod is having an affair, that's not necessarily going to have an impact on what he does on the ballfield. So I do think there should be some line. And a reporter's job is to talk about that sport, not necessarily what is going on off the field. But I also think it's a blessing to be an athlete, and with that blessing comes a responsibility to be a role model. When you choose to do something that reflects poorly on yourself, and that gets reported, then you have to understand that."

Ethan J. Skolnick is a sports columnist for the South Florida Sun-Sentinel.

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Slate

PRESS BOX

What's Really Killing Newspapers

They're no longer the best providers of social currency.

By Jack Shafer

Updated Friday, Aug. 1, 2008, at 6:34 PM ET

The last thing the unwell newspaper industry needs is another diagnosis of what ails it—so here goes!

Not that long ago, the daily newspaper was an indispensable coiner of *social currency*, and it gave its readers piles of the stuff in each edition. The phrase, which comes from sociology, is often used to describe the information we acquire and then trade—or give away—to start, maintain, and nurture relationships with our fellow humans.

Take, for instance, the voluminous results of newspaper sports pages. Terrific for sports fans, of course, but the sports pages have been used to grease sales calls, break ice on first dates, and fuel water-cooler bonding for a century. Even folks who don't care for sports skimmed the sports pages for a little something about the games and athletes so they could engage in essential small-talk.

For as long as anybody can remember, the newspaper has been the primary info-hub through which people interacted. Oh, people might have talked to the shoe-shine man or their broker about what they heard on the radio or saw on television, but nothing could beat the newspaper as a source for socially lubricating conversation. How many times have you heard a conversation start, "Didja see that article ..."?

By sniffing the bits of social currency an acquaintance had withdrawn from the pages of his daily and was trying to cash—say, a quip about that picture of an egg frying on a city street the paper published; or a comment about a movie review or comic strip; or an opinion about local government based on a piece by a political columnist—the sniffer could learn reams about his social contact.

A recent Associated Press study, "A New Model of News" ([PDF](#)), speaks directly to the social currency concept. The news can "be used in a variety of interpersonal situations—to look smart, connect with friends and family and even move up the socio-economic ladder" and "maintain relationships."

Whether by design or chance, the social currency found in a newspaper has a relatively short shelf life. If you don't think so, try bringing up a pivotal play from a week-old baseball game over coffee or invoke a weather story from two days ago. Newspapers thrived, in part, because reading just one edition provided only a few cents' worth of social currency. Compounding your earnings requires



that you read the damn thing nearly every day. Ignore a couple of issues, and you get left behind.

Of course, newspapers have never been mere dispensers of social currency. You can read them and not discuss them and still prosper. When I first started to read the *New York Times* closely—1981, if you must know—it was less to suck up pure information than it was to figure out what the ruling class was reading, so I could do a better job as a junior editor on a political magazine. But to read a newspaper and then keep your trap shut is to miss the point: Newspapers are designed to be read and argued over. You've got to spend social currency to make social currency.

Which returns us to our pallid and sickly subject: the newspaper industry. Other institutions do far better jobs at issuing social currency these days. What is Facebook but the Federal Reserve Bank of social currency? And it's all social currency you can use! Like cocktail chatter, a Facebook posting—be it a link, a list, a photo, or travel plans—conveys the message, *I am here. Listen to me.* A well-executed Facebook presence, like a superb pontification at the bar or a great phone-in to sports talk radio, demonstrates one's status within one's existing social network. If skillfully wielded, a Facebook page can increase a person's status by attracting "cooler" or more influential friends. These days, you can't raise your status more than a bump by carrying the *Wall Street Journal* under your arm.

If one of the great attractions of the newspaper was that it brought people together to rub noses, how can it compete for readers' time with sites like Facebook, which can also give you a real-world news dump if that's what you crave? Thanks to the Web, no interest need be esoteric any longer. Right now there isn't a Facebook group about one of my favorite topics, "meth mouth," but there is sure to be one a couple of minutes after I post this piece, with meth heads, dentists, and social workers networking through it.

The social networking that takes place via instant messaging, microblogging, or e-mail further steals from newspapers the mindshare they once owned. You no longer need to rely on a paper for the social currency that a weather report, movie listings, classified ads, shopping bargains, sports info, stock listings, television listings, gossip, or entertainment news provide. As [falling circulation](#) indicates, fewer do. And the newspaper isn't the only media hub suffering in the new era. Radio, which once served a similar social role with its menu of music, news, and talk, is [plummeting](#).

What's the cure for the newspaper's malady? As if I knew! Just count this as my small contribution to Adrian Monck's [finding](#) that the decline of newspapers has nothing to do with journalism and everything to do with the changing world.

Maybe I could be the Jonas Salk of newspapers! I'll think about curing the industry over my vacation this week and report back if I think of anything clever. Or, show me how 21st century you are by smearing something on the [Slate Facebook group wall](#). Send your ideas to slate.pressbox@gmail.com. (E-mail may be quoted by name in "The Fray," *Slate's* readers' forum, in a future article, or elsewhere unless the writer stipulates otherwise. Permanent disclosure: *Slate* is owned by the Washington Post Co.)

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