

## **NBA v. Motorola**

105 F.3d 841 (2d Cir. 1997)

Authored by James Ware

Motorola and Sports Team Analysis and Tracking System (“STATS”), marketed and sold a SportsTrax pager, which remotely receives information about National Basketball Association (“NBA”) games. The NBA sued Motorola and STATS based on a state law copyright misappropriation claim. The United States Court of Appeals for the Second Circuit (“Court”) dismissed the NBA’s claim holding that federal copyright law preempted the claim.

The Court determined that federal copyright law preempted the NBA’s misappropriation claim because the claim met the criteria of preemption as defined in Section 301 of the Copyright Act. Federal copyright law will preempt a state law claim if they are interrelated in two ways.

First, the work has to meet the “subject matter requirement” by falling within the definitions of sections 102 and 103 of the Federal Copyright Act. The Court held that factual information from an NBA game meets the subject matter requirement even though the information itself is not copyrightable. The Court stated that in 1976, Congress amended section 101, the definitions section, of the Copyright Act to extend copyright protection to the simultaneously-recorded transmission of live sporting events but not to the underlying game. As a result, the Court rejected the NBA’s partial preemption doctrine defense, where they claimed that since the subject matter pertained to the underlying game, it was not within the general subject matter of federal copyright law. The partial preemption doctrine, the Court noted, allows states to vest exclusive rights in material which Congress intended to be in the public domain. Therefore, the factual information generated by NBA games is within the subject matter of federal copyright law but not copyrightable.

Secondly, federal copyright law will preempt a state law claim if the work meets the “general scope requirement”, which is defined by section 106 of the Copyright Act. A claim will not meet the general scope requirement if the state law claim requires a proof of an “extra element” in addition to or in place of violation of one of the exclusive right of a copyright owner. The Court held that the NBA’s misappropriation claim met the general scope requirement because Motorola and STATS did not engage in a narrow “hot news” misappropriation. Generally, “hot news” is factual information whose economic value is time sensitive. The Court stated that Motorola and STATS used their own resources to collect the data and were not benefiting from the NBA’s efforts. Further, SportsTrax does not compete with the NBA’s main product – producing basketball games with live attendance and licensing broadcasts of those games. Therefore, the Court concluded that the NBA’s Misappropriation claim met the general scope requirement of federal copyright law.

The Court also affirmed the dismissal of the NBA’s false advertising claim. The NBA argued that since STATS reporters collected their information from televisions and radio broadcasts, a press release that stated the information was directly from the arena was literally false. The Court stated that the statement’s inaccuracy did not influence consumers whose interest in obtaining updated game scores on pagers is served only by SportsTrax.

After this case, fewer “hot news” misappropriation claims will survive Section 301

preemption. Further, sports organizations will not enjoy a monopoly on the transmission of factual information about their games through the Internet, pagers, cellular phones, and other portable devices. Companies, whose products are dependent on statistical information about sporting events, for example fantasy leagues, will be able to market and sell their products without fear of copyright infringement. However, the court's holding in this case does not affect a sports organization's ability to control and license broadcasts of their events through portable media.

The court's ruling allows defendants to market and sell the SportsTrax pager because the NBA does not have exclusive rights to factual information generated by its games.