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Randy Maniloff: Pittsburgh's special role in baseball broadcast history — as a pirate

RANDY MANILOFF
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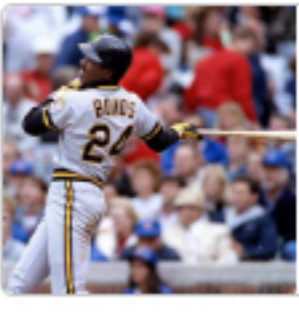


Nearly a century ago, General Mills paid a substantial amount for the exclusive rights to broadcast Pittsburgh Pirates games. The company made a deal with radio stations KDKA and WWSM to transmit the play-by-play on their airwaves.

Another local radio station, KQV, wanted to do the same — and figured out a way to do it for free. The result was a court case that helped establish what you can see now.

KQV hatched a plan to place observers at locations where they could see over the high fences of Forbes Field to secure the news of the games. The team balked. When the station said it didn't plan to stop, the team sought an injunction.

In 1938, a Pennsylvania federal court, in *Pittsburgh Athletic Company v. KQV Broadcasting Co.*, declared the station's practice to be a violation of the Pirates' property rights and unfair competition and put an end to it.



Gene Collier
Gene Therapy: How many homers did Barry Bonds hit? Too many.

The court rejected the station's arguments that it wasn't trespassing and received no compensation from its broadcasts. As the judge saw it, they were "undoubtedly designed to aid in obtaining advertising business."

The court observed that the Pirates, by paying its players and having acquired, at great expense, a baseball stadium, have "a legitimate right to capitalize on the news value of their games by selling exclusive broadcast rights."

The court found guidance for its decision from a U.S. Supreme Court case that prohibited a news service from copying and selling the news of early editions of Associated Press newspapers. News, the court concluded, had commercial value to the AP.

This was not the same, the high court said, as a purchaser of a single newspaper gratuitously spreading knowledge of its contents for a legitimate purpose and not unreasonably interfering with the newspaper's commercial rights.

The public's once insatiable appetite

The World Series got underway last night. Recent rule changes to speed up baseball games have been popular. But the public is a long way from the insatiable appetite it once had for the sport.

Like KQV, some newspapers and radio stations, went to great lengths to satisfy it. Courts decided if they were caught stealing.



David Mills
David Mills: Great baseball you probably don't know about

In 1953 and 1954, Martin Fass listened to radio and television broadcasts of New York Giants baseball games. Using a teletype, he simultaneously transmitted the play-by-play to radio stations, which then used the information to make recreated broadcasts of the games.

But the Giants, for a substantial fee, had granted Liggett & Myers Tobacco Company the right to sponsor and arrange broadcasts of its games. The team filed suit and a New York trial court, in *National Exhibition Company v. Fass (1955)*, ended Fass's scheme and ordered him to repay \$1,432.50 that he had received by conversion of the Giants' property rights.

The Gillette Safety Razor Company paid \$100,000 for the exclusive radio broadcast rights to the 1941 World Series between the New York Yankees and Brooklyn Dodgers. Gillette retained a broadcasting company to transmit the games throughout the United States, Canada, Hawaii and Cuba.

New York radio station WOR picked up the broadcast over an antenna on its building and transmitted it to its own listeners. A New York court, in *Mutual Broadcasting System, Inc. v. Muzak Corp. (1941)*, issued an injunction to prohibit the practice.

The court rejected WOR's argument that there was no violation of Gillette's rights as all it did was give the public the exact broadcast "without any elimination, addition or alteration."

The obstructive playograph

Each October, from 1911 to 1913, the New York Herald and Evening Telegram operated an "automatic baseball playograph" on the side of its building on Broadway. The large device, using information provided by telegraph, reproduced each play of World Series games. It was wildly popular, with between 30,000 and 40,000 people watching and the need for 80 to 90 police officers to handle the crowd.

Access to Shaw's Jewelry Store, located across the street, was impeded. People who stopped to look into its windows were told by police to keep moving. Shaw's sued the newspaper and a judge awarded the store \$729.59 in damages.

A New York appeals court, in *Shaw's Jewelry Shop v. New York Herald Co. (1915)*, upheld the award. While noting that it must proceed cautiously in interfering with an owner's use of his property for legitimate business, the rights of other property owners must also be considered. New York's highest court affirmed.

Talking on the telephone

At issue in *National Exhibition Company v. Teleflash, Inc. (1936)* was the defendant's right to disseminate the accounts of baseball games over telephone wires to listeners at various locations.

The New York federal court, distinguishing the case from transmitting commodity prices or disseminating news, took a narrow view of the team's proprietary interest. It concluded that all it owned was the game and not the exclusive right of its description.

"[W]hat the defendants conveyed to their listeners, through the voices of themselves or their representatives," the court concluded, "was the creation of their own faculties; they told what they had seen."

In another era, fans said take me out to the ballgame — any way you can.

Randy Maniloff is an attorney at White and Williams, LLP, in Philadelphia and an adjunct professor at the Temple University Beasley School of Law. His previous article was "For the courts, getting hit by a fly ball (or a player) is just part of the game."

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