

Emerging Sports — A Decathlon Of Legal And Business Issues

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While you may never have heard of rugby sevens or drone racing, these and many other emerging sports generate tens of billions of dollars annually. Growing an emerging sport can mean taking advantage of myriad opportunities but can often feel like a grueling parkour course. In addition to issues related to revenue generation, like ticket sales and sponsorship arrangements, emerging sports regularly face challenges around leadership and organizational structures, intellectual property protection and managing television and broadcast rights, among others. And much like parkour, how an emerging sport navigates the contours of its landscape can dictate its success.



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Emerging Sports: Defined and Described

So what are emerging sports? Generally, they are top-level (and sometimes relatively newly created) sports that lack mass exposure (for the moment at least) and the monetization of major sports leagues or events. Like their predecessors, however, emerging sports are seeking commercial success, increased public recognition and growing participation nationally and internationally.

A prime example is rugby sevens, the fastest growing sport in the United States. Between 2008 and 2013, when youth participation in tackle football fell by more than 20 percent, youth rugby grew by nearly 82 percent, according to the Sports and Fitness Industry Association. The same organization notes that the number of rugby players in the United States doubled during that time, reaching almost 1.2 million, with the biggest jump being 6- to 12-year-olds playing rookie or touch rugby. Sevens represented the sport in this summer's Rio Olympics, a first since traditional 15-versus-15 rugby was included in the 1924 Paris games. Leaders in the sport want to ride the Olympic exposure to reach parents who fear the concussions and related consequences of American football.

Other, more well-known emerging sports include snowboarding, surfing and skateboarding, but there are so many more less-well-known sports. Some emerging sports look like traditional sports. Futsal, widely popular in Asia and South America, is a version of soccer with five players per team, played on a smaller, usually indoor, pitch. The formation Professional Futsal League, the premier futsal league in the U.S. was recently announced. The PFL's inaugural season is set to kick off in 2017, and with Dallas Mavericks owner Mark Cuban as the principal investor, television exposure can't be far behind. Other emerging sports bear little or no resemblance to traditional sports. Drone racing, which involves pilots maneuvering high-tech flying objects through complicated courses using virtual reality viewers, is

expected to pull in more than \$2 billion in advertising revenue by 2020 through the Drone Racing League, another startup league.

Legal and Business Issues: Breaking Through

As emerging sports grow, they generally must meet four key challenges on the road to becoming established: creating sound corporate and legal structures, protecting and exploiting intellectual property and social media, managing television and broadcast distribution, and generating revenue. In addition, the overlay to achieving success is doing so in a way that is consistent with the pre-existing culture of the sport; for many emerging sports, their fans and sponsors, authenticity matters.

Corporate and Legal Structure

Emerging sports are often in need of organizational and legal guidance around structure, including potential forms of ownership and the establishment of a governing body. Various business models exist — each with their own advantages and disadvantages — and there is no one right structure that guarantees success. For example, leagues can follow a single-entity model like Major League Soccer, or be franchise-based, like the four more established professional sports (Major League Baseball, the NFL, the NBA and the NHL). The factors to be considered include the investment structure in the venture, tax issues and the need for a centralized infrastructure to operate the league and make media distribution deals. The most beneficial structure needs to make sense for all stakeholders — including owners, investors, sponsors and players — not only during the early days, but also as the sport grows.

Along with setting the overall corporate structure, emerging sports may have to take such basic steps as formalizing a rule book, and deciding whether to have a commissioner and the extent of a commissioner's authority.

Intellectual Property and Social Media

Whether in the context of registering a domain name, creating a licensing agreement or negotiating broadcast relationships, protecting — and monetizing — intellectual property is key to the growth of an emerging sport. For instance, in the development of a trademark, emerging sports need to think both offensively and defensively. Will adoption of a league, team or event name infringe someone else's rights? Can that name be enforced against others? Is the league team or event logo distinctive enough to function as an effective marketing tool?

In addition to trademark considerations, emerging sports must also consider copyright issues related to a variety of materials — logos, printed publications, slogans, photographs and video, among others. While not strictly necessary, copyright registration is fairly inexpensive — and is required to bring suit for copyright infringement in federal court and, as long as the items are registered before the infringement occurs, to collect enhanced damages.

Similarly, effective use of social media can be instrumental in gaining and engaging fans. Many emerging sports boast a relatively young demographic, making Snapchat, Twitter, Instagram, Facebook and other social media outlets especially important in generating fan interest and growing the sport.

Television and Broadcast Distribution

Distribution, whether by broadcast or cable television, or digital platforms, is also crucial to the success

of most emerging sports. Increasingly, sports properties other than the major sports leagues and high-profile events such as the Olympics or World Cup are having difficulty selling their television rights, either at all or for a significant rights fee. This marketplace reality has caused many emerging sports to reconsider their television and digital strategies and the ways they can monetize those rights.

For example, instead of being paid a rights fee for content, an emerging sport might opt for a time buy, joint venture, or even an over-the-top digital strategy. In a time buy, the sport, tour or league buys time on broadcast or cable channel, produces the broadcast itself, sells advertising and keeps the revenue. In a typical joint venture, the media distributor and sport, tour or league jointly produce the broadcast, and sell the advertising and sponsorships. They agree on recoupment of expenses of each party before sharing revenues. This arrangement is ideal for some emerging sports because they share risk while retaining equity ownership and shares in profits.

The World Surf League has been a leader in relying on streaming of its contests. The strategy has proven successful because it owns and produces its events and has been able to develop a devoted audience that is attractive to advertisers and sponsors.

Generating Revenue

Emerging sports frequently involve an entrepreneurial vision and are often underfunded, at least to start. Emerging sports must therefore focus on a basic issue: What is the best way to generate revenue?

Some emerging sports may generate revenue primarily from gate receipts, while others may not charge admission at all; their cash flow may come entirely from sponsorships. Each solution comes with its own challenges.

Many emerging sports also struggle to attract sponsors in their breakthrough years, when they can't demonstrate enough of a following to attract significant dollars. Ultimately, if the organizational structure is sound and fans catch the fever, sponsorships likely will follow. For example, both snowboarding's Burton Global Open Series and the HSBC Rugby Sevens World Series tour stop in Las Vegas depend on sponsorship and advertising money.

Sponsorship-based revenue models might also have drawbacks. The World Surf League is heavily supported by a global series of "opens" funded by major sponsors. While these events bring in vital revenue, the WSL balances the revenue against maintaining the authenticity of the sport.

In fact, it's not unusual in emerging sports to find tension created by the influx of fans, money, events and structure as they slam into an athletic ethos that does not prioritize those traditional elements of success. Some snowboarders, for example, refuse to participate in Olympic snowboarding competitions because they consider it to be a sell-out of snowboarding's ethos.

Risk Management

The need for a comprehensive foundation of risk management at every stage of development grows exponentially as emerging sports become more popular and events become both more frequent and better attended. Snowboarding now features half-pipe competitions where the boarders soar 20 feet above the pipe, with spectators, standing on a snowy mountainside, just a few feet away. With surfing, weather issues affect the size of swells and whether a competition can even take place as scheduled. These structures require different types of insurance coverage and spectator safety measures. For

events that face similar weather or other disruptions, any risk management program should include proper disclosures and limitation of liability clauses on event tickets.

Approaching the Peak

For emerging sports, the path to revenue and success is not linear (much like that parkour course). Yet each element along the way is vital and requires careful consideration. The right business structure, protecting intellectual property, considering the ways to take advantage of TV/broadcast media and nailing down the best revenue generating models will all smooth the way to raising new sports to greater heights. Catching the wave of powerful potential in emerging sports is profitable business that is worth the ride.

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