

A Criticism of the SSA Commercial Rights Policy

Rick Sheppe
February 8, 2005

Summary

The SSA Commercial Rights Policy, while serving the purpose for which it was intended, may have unintended consequences:

- it may discourage creative people who are engaged in commercial activities but are not principally motivated by profit; and
- it may act as a disincentive to contest organizers who must accept responsibility for monitoring commercial activities at SSA-sanctioned events.

This criticism is intended to be constructive. The motivation for writing it is given in the footnote.¹ Recommendations to address the situation are given at the end.

Background

The SSA Commercial Rights Policy (CRP) is available upon request from the Hobbs office.

SSA has also published, in a combination of memos, web pages, and contest sanction kits, various statements about how the CRP is to be applied. These documents, taken as a whole, will be referenced, in this document, as “the Commentary.”

The CRP and the Commentary are directed toward potential contest organizers and anyone who is engaged or planning to engage in commercial activity at an SSA-sanctioned event.

Discussion

The CRP is 420 words long, but it can be summarized by this excerpt:

The rights hereby reserved include, without limitation, the right to exploit any commercial activity in respect of such contests, events and meetings (“SSA Events”).

The rest of the CRP contains examples which, in fact, aren’t necessary, since the excerpt says it all: the CRP is comprehensive.

The Commentary contains a statement that the CRP will not be applied to contest organizers themselves, and an invitation to the organizers to apply for permission for a commercial activity to be exempted from the terms of the Policy.

The extremely condensed summary of the CRP and its application is therefore:

1. SSA claims all imaginable commercial rights; and
2. SSA is willing to discuss exemptions.

The purpose of the CRP is to enumerate the rights claimed by SSA, to protect those rights, and to reserve the right to exploit them in the event of major commercial activity which may take place

in connection with an SSA-sanctioned event. Such activities would include, for example, Hollywood movies, TV shows or commercials, and formal linkages to other events of public interest.

While meeting its intended purpose, the CRP has side-effects – consequences which are presumed to be unintended.

The CRP may be discouraging to some of the people who are motivated to enhance the contest experience for the participants or spectators, or by a desire to promote the sport in general. Quite often, these people attempt to recover their costs while creating, for example:

- A video documentary used to promote the sport¹
- A computer program to display scores
- Other technology, such as glider tracking
- An official contest-approved internet access point for participants
- Contest reports posted on a website that also has banner ads
- A local emblem or logo, designed by a volunteer, used on shirts, hats, or wine labels and sold by a third party.

SSA should not be in the business of discouraging these activities, and the statement that SSA probably would have granted permission for them does not address the reality that the CRP may be intimidating to the people considering the activities in the first place. The fact that these actual violations of the CRP have not raised the opprobrium of SSA is evidence that the net cast by the CRP is too broad.

A second unintended consequence of the CRP is the effect it has on contest organizers. Apparently, organizers of SSA-sanctioned contests are expected to monitor all commercial activity taking place in the vicinity of the contest, and to apply for exemptions for the hot dog vendors and portable toilet providers whose participation includes displaying the SSA logo. This is a clear disincentive to putting on a contest.

An anticipated counterargument to this criticism relies on the fact that the Commentary includes language which invites affected parties to seek “permission to use or exploit any of the commercial rights reserved to the SSA...,” i.e. exemptions.

First of all, this invitation appears in the Commentary, not in the CRP. Not everyone reads the Commentary.

Secondly, the invitation does not give any instructions, other than “contact us.” It leaves unanswered these questions:

- Will the contact person at SSA be available during the contest?
- Must the request for exemption be in writing?
- Must the granting of exemption be in writing?
- Must the contest organizer be the spokesperson of the commercial interest?

If the intent of the invitation to contact SSA is to make the CRP seem friendlier, then it falls short of its goal.

Conclusion

The SSA Commercial Rights Policy has both intended and unintended consequences. Since the policy has not actually ever been invoked, the intended consequences have yet to be realized. However, the unintended consequences, which are detrimental, can already be felt. It is reasonable to conclude that the CRP, up to this point, has done more harm than good.

Recommendations

SSA should either modify the CRP or add language to the Commentary which will have the effect of nullifying the unintended consequences.

The legal perspective and skills required to rewrite the CRP are beyond this author. Therefore, recommendations in this section will be restricted to the topic of supplementing the Commentary.

The Commentary should:

1. give specific examples of activities which are technically commercial, but of so little commercial impact that they are exempted from the CRP;
2. cite specific forms and procedures for seeking exemption from the CRP, both before and during an SSA-sanctioned event;
3. include a statement that SSA encourages creativity, art, craft, experimentation, and innovation that may improve contests or promote the sport of soaring, and does not oppose the recovery of costs or the making of a modest profit from such endeavors; and
4. include a statement that reduces the burden of contest organizers to an “awareness of the CRP.”

In support of this, SSA should:

5. create the forms and procedures for processing requests for exemptions; and
6. formally attach the new friendlier commentary to the CRP, thereby making it a part of the policy.

¹ In a private communication with the author, Juan Mandelbaum stated that he was not aware of the SSA Commercial Rights Policy when he made the documentary video *A Fine Week of Soaring*, and that an awareness of the Policy would have been a strong disincentive to undertake the project. This statement is the only direct evidence that the Commercial Rights Policy is having unintended consequences, and was the original motivation for writing this paper.