1 How Sports Fans Are Exploited

A Sports Fans' Manifesto

(with apologies to Thomas Jefferson)

When in the Course of Human Events, it becomes necessary for the millions of dedicated sports fans, who have given over countless hours of their lives and countless millions of their hard-earned dollars in support of the teams and the sports they love, to dissolve the political relationship of virtually total discretion given to those who own and control professional sports teams and clubs, and to assume, as have consumers of almost all other important goods and services, a greater equality of power, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to this demand for reform.

We hold these Truths to be both self-evident and demonstrated by the course of human history, that among the various Pursuits of Happiness that Governments are instituted among us to secure, is the ability to participate in and view sporting contests; and that whenever any form of government or civil society becomes destructive of these ends, it is the Right of the People to insist upon sufficient new forms of government or private regulation based on such Principles, and organizing their Powers in such Form as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that the rules and customs of sports leagues long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn that sports fans are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to systematically exploit sports fans in the exercise of the absolute Despotism that leagues possess, it is the Right of *the People, it is their Duty, to throw off these rules, customs, and structures of selfish, self-interested governance, and to provide new Guards for their future Security. Such has been the patient Sufferance of sports fans, and such is now the Necessity which constrains them to alter their former tolerance of these Systems of sports governance. The History of the present dominant sports leagues in the major commercial sporting countries throughout the World is a History of repeated Injuries and Usurpations, all having in direct Object the Establishment of an absolute Tyranny over sports fans. To prove this, and acknowledging that the owners who control each league have not of necessity engaged in each and every aspect of the conduct described below, let these Facts be submitted to a candid World.*

THE OWNERS have refused to implement rules and policies, the most wholesome and necessary for the Public Good.

THEY have forbidden their administrators to implement policies of immediate and pressing importance, unless demonstrated to satisfy a minority of self-interested member clubs.

THEY have maintained their tyrannical Power, by systematically crushing alternative leagues or competition organizers, through predatory practices and lucrative mergers.

THEY have adopted policies to ensure their own place in premier competitions, notwithstanding persistent incompetence of club management and insufficient quality of on-field performance, by limiting the entry into the competition to a chosen few.

THEY have systematically and deliberately suppressed entry into the premier competitions in each sport, with the Object and Design of creating an unmet demand among local communities, so that aforesaid Owners may demand and receive exploitive stadium deals from local taxpayers, with heartless disregard for the recurrent fiscal crises facing cities and counties.

THEY have failed to respond adequately to the changing reality of American demographics, wherein almost two in five Americans live elsewhere from their place of origin, by restricting the ability of mobile Americans to follow their home team through live, out-of-market broadcasts, requiring fans to subscribe to expensive premium television packages, and, even then, limiting *fans by inefficient blackout rules, thereby placing said Owners' short-run selfish interests over the general Public Good.*

THEY act collectively to shield themselves from competition from more efficient club operators, by guaranteeing teams perpetual membership in the premier competition without regard to the quality of the team, by denying entry opportunities to superior club Operators, and by sheltering clubs from competition within assigned geographic Territories, even from clubs in lower-tier competitions that might compete for fans' patronage.

THEY restrain competition among themselves for players, not for the purpose of ensuring that athletes play for the club that most values their services, nor for the purpose of ensuring that the overall allocation of players to clubs maximizes fan appeal, but rather for the selfish Purpose of holding down Owner costs—which are unlikely to be passed on to consumers—and to provide Owners with "cost certainty," thereby insulating themselves from the ordinary pressure that any business faces when it makes mistakes to invest more Resources to improve an inferior product.

Therefore, sports fans of the United States, appealing to the Supreme Judge of the World for the Rectitude of our Intentions, do, in the Name, and by Authority of the good People of these United States, solemnly Publish and Declare, That sports leagues are, and of Right ought to be, public trusts to be operated by Owners and league administrators for the benefit of the Public, and that if those who control our sporting institutions will not Act to reform their institutions, then government should mandate such reform. Then for the support of this Declaration, with a firm Reliance on the Protection of divine Providence, we mutually pledge to one another our Lives, our Fortunes, and our sacred Honor.

The Book, in a Nutshell

In modern and plainer English, we hope in this book to persuade you that sports fans have been and remain exploited by sports league owners, and that two significant but well-tested reforms would result in sporting competitions being organized and contested in a manner better designed to maximize their appeal to sports fans. In this chapter, we explain how the best model for consumer protection is generally the forces of competition in the marketplace, and why the structure of leagues and the loyalty of fans for their favorite teams significantly insulate owners from market forces, exposing sports fans to exploitive opportunities. We note how sports leagues, in some ways, are worse for consumers of sports than monopolies are for consumers of other goods and services, because club owners operate less efficiently than a single-firm monopolist like Standard Oil or Microsoft.

Because of our preference for free markets and skepticism about the ability of politicians or not-for-profit bureaucrats to be responsive to sports fans, we argue for a twofold remedy to the abuse of power by current sports team owners: (1) sports leagues should be restructured to vest control in a for-profit commercial enterprise that is separate and distinct from the owners of clubs participating in the competition, and (2) participation in each sport's major league should be based on merit, demonstrated best by performance in the prior season.

In this chapter, we'll identify a variety of ways in which consumers are hurt by the absence of an independent competition organizer and the presence of a clear conflict between the interests of the league as a whole and the interests of specific owners. In Chapter Two we expand upon why we diagnose the problem as arising from the twin ills of limited entry and the conflict of interest between club owners and the best advantage of the sport. In Chapter Three, we address the American obsession with competitive balance as a critical goal for a sports league, and why our proposals would not prevent leagues from achieving a desired degree of balance. Our shield against claims that our proposal is attractive only in the ivory towers of academia is laid out in Chapters Four and Five, where we readily acknowledge borrowing our ideas from NASCAR and international soccer. In Chapter Four, we show how NASCAR organizes the stock car racing competition that has recently been America's fastest-growing sport, and why NASCAR's independence from the racing teams that participate in the competition has been critical to its success. In Chapter Five, we show how many of the problems facing American sports fans are not shared by their counterparts globally because of the entry-by-merit system used by almost all soccer leagues throughout the rest of the world. Chapter Six provides a more detailed explanation of how our proposal would work, and responds to the skeptics' perennial question—if this is such a good idea why hasn't someone already tried it? Chapter Seven offers some compromise proposals if our central ideas are considered too radical for the first decade of the twenty-first century, and Chapter Eight discusses why our reforms are superior to other kinds of government intervention. Finally, Chapter Nine concludes with a summary of our argument and some imaginary scenarios for how our proposals might actually see fruition.

Sports and the Public Trust

As consumers, most of us want to be able to purchase high-quality goods and services at reasonable prices. This is, indeed, an important aspect of the "pursuit of happiness" recognized as one of our inalienable rights. By and large, our consumer-oriented society has succeeded in this goal. We've learned by experience that—with some important exceptions—consumers are better off with free markets, our English ancestors having overturned a system based on tradition and aristocratic control (the feudal system) and our American ancestors having rejected the central planning of Lenin. Especially for goods and services that are not essential to our daily lives (in today's affluent society, most of us purchase far more than we absolutely need), even if we have a favorite brand or service provider, if it gets too pricey, or quality suffers, or the seller fails to add new features offered by others, we will simply switch our patronage to a new seller. Realizing this, firms have a strong incentive to maintain low prices, high quality, and innovations responsive to consumer demand. In the words of a prominent judge and former law professor, a firm facing competition from other rivals "is unlikely to adopt policies that disserve its consumers; it cannot afford to. And if it blunders and does adopt such a policy, market retribution will be swift."[1]

Market retribution will not be swift for most sports fans. The very nature of being a fan means that rival teams are not close substitutes, and therefore the majority of committed fans face little choice but to follow their team, regardless of the quality of the team on the field.[2] Sports fans will pay higher prices. They will vote for tax subsidies for their favorite team's stadium. If quality suffers, fans suffer, but they rarely switch to another club or sport. When leagues or clubs fail to offer fan-friendly innovations, loyal fans continue to patronize their favorite team in sufficient numbers that the clubs' owners face little pressure to compete. In a world where most fans enjoy their team through the medium of television, it might be argued that the substitution possibilities are far greater than in the past when consumers were largely tied to their city. This can certainly make a difference when it comes to the recruitment of new fans, and it is likely that a significant fraction of new fans, mostly adolescents, are attracted to the most successful team of the moment. However, this mechanism works only slowly and imperfectly to undermine the monopoly power of the incumbent teams. Meanwhile, the economic rents extracted from loyal fans by the sale of monopoly rights to broadcasters make the "do nothing" strategy of many franchise owners more profitable than ever.

The relationship between a sports fan and a team owner or a league is not the same as that between a telephone company and its customers, or between the buyer of computer software and its supplier. In these cases, economic regulation may or may not be necessary to control the exercise of monopoly power on the part of the seller. In recent times, legislators and courts have gone to great lengths to ensure that such regulation is implemented with the lightest possible touch, trusting the natural relationship between a business and its customers to bring about a suitable economic solution. As long as the customer is king, one might say, nothing too much can go wrong. But in sports, no one *wants* market retribution to be swift. We hope that Los Angelenos and others who grew up as Dodger fans with Vin Scully's Hall of Fame broadcasts will remain loyal despite management travails that have impeded recent performance. We honor members of Red Sox Nation who lived and died with years of ineptitude, which some believe was supernaturally imposed. With sports, the customer is not buying something that depends largely on the current behavior of the owner, but is rather buying into a tradition, which in some cases has been established for over a century. The "trust" that fans place in their favorite teams is what makes sports the special entertainment and civil institution that it is. In this sense, the current owners are more than suppliers of a good or service produced for today; they form part of a chain between the past and the future. It is this relationship that the fans value. Should the current owners destroy the relationship by unwarranted reforms or gross exploitation of their position, there is little the fans can do to recover it in the future.

What is the effect of this trust that fans place in their favorite teams and sports? In 1602, long before economists developed fancy models to demonstrate common sense, an English court declared that monopolies were contrary to the public interest because they raise price, reduce output, and lower quality. (The court invalidated a "patent" granting a monopoly to one of Queen Elizabeth's cronies to produce playing cards, finding that because the grant was contrary to the public interest, Her Majesty must have been "deceived in her grant."[3]) As we demonstrate further on, this principle applies in spades (so to speak) to the sports industry. Many fans can get their desired sports entertainment—tickets to games, games on television, souvenir apparel, and merchandise—but only at higher prices. To maintain the scarcity of goods and services that allows for higher prices, leagues reduce output; in some cases through television blackouts but primarily through fewer franchises playing high-quality professional sports. Fans in major metropolitan areas might well support more teams; fans in smaller cities don't have high-quality professional teams at all.

The Inefficient Monopolists

Moreover, some of our previous work suggests a significant additional harm caused by monopoly sports leagues that is often overlooked: because club owners can't agree on how to divide the spoils of leaguewide initiatives, which involve a sharing of profits among the clubs who control the league competition, clubs will forego new and desirable business opportunities that fans are willing to pay for.[4] Thus, even when fans are willing to pay monopoly prices for prized sporting entertainment, sometimes they just can't get it.

We initially arrived at this insight into professional sports when both of us were consulted by the British government as part of a challenge to the 1992 collective sale of all television broadcast rights for English Premier League soccer games to Rupert Murdoch's Sky Sports satellite network. Murdoch acquired the rights to broadcast 60 of the league's 380 games during the season; the rest were not to be televised. Restrictive broadcast schemes often serve as a device to increase sellers' profits. In the United States, the NCAA restricted the number of broadcast college football games even more harshly; when the U.S. Supreme Court found the practice illegal in 1984, the number of televised games tripled while the rights fees per game fell from almost $1 million to $250,000.[5] However, in the British soccer case it turned out that Murdoch was willing to pay even more money for the right to show more games (pure profit, at no cost to the league), but that the league rejected this offer. The best explanation we developed was that the clubs couldn't agree on how to divide the spoils. Manchester United, for example, might have demanded a disproportionate share of the extra money, as they were likely to be appearing in many of the extra games. Leicester City, whose team might not be featured in too many televised matches, would be happy to split the money equally but unwilling to give Manchester United an even greater financial advantage.

This story plays out on this side of the Atlantic as well, most notably with regard to franchise relocation. The citizens of Washington, D.C., have been willing and able for years to pay whatever it takes to support a new baseball team. Only after the Montreal Expos could find no other home, however, did baseball officials overcome the huge obstacles caused by the objection of the Baltimore Orioles owner to such a move (and even then, the deal featuring "side payments" to the Orioles in terms of cash and rights to a jointly run regional sports network is enormously complex).[6] To most observers, it has been obvious that Washington should have a franchise, and no surprise that in their first season the Washington Nationals drew nearly 33,000 fans per game, compared to only just over 9,000 that the team drew as the Montreal Expos in their final season.[7] Even allowing for a honeymoon effect, few would argue that Montreal is more of a baseball city than D.C. Over the first two seasons the Nationals have attracted as many paying fans (almost five million) as the Expos did in their last six seasons, all at significantly higher ticket prices.[8] The fact that Orioles owner Peter Angelos was able to stand in the way of such an obvious move for so long is a testament to Major League Baseball's inefficient decision-making process.

There are also strong parallels with the story of Oakland Raiders owner Al Davis and the missing NFL franchise in Los Angeles. Davis fought the NFL for years for the right to relocate his Raiders to L.A., which he finally did in 1984, only to return to Oakland in 1995. It made sense for Davis to leave L.A. and pick up further stadium subsidies from another city ($225 million from Oakland, in point of fact) even if the league as a whole lost potential TV income. Harvard law professor Paul Weiler blames the NFL's TV revenue-sharing agreement for L.A.'s neglect. While a team in L.A. would significantly increase the value of the national TV broadcast contract, the team in L.A. would only receive one thirtieth of the benefit, since all TV income is divided equally.[9] Few doubt that there is strong potential for a team in the second-largest U.S. broadcast market—indeed, just-retired Commissioner Paul Tagliabue had declared that putting a franchise there was a priority—and in all probability football will come back to L.A. one day.[10] But from the league's point of view, every season missed is a revenue opportunity missed; from the fans' point of view, another season of unmet demand.

Can Intervention in the "Free Market" Be Justified?

We recognize that our proposed reforms would significantly restructure American professional sports. However, providing a remedy to the twin blows of monopoly exploitation and inefficiency inflicted on fans by club-run leagues justifies, in our view, significant reform. It is worth emphasizing that our call for government intervention if sports owners do not voluntarily reform their ways does not reflect a novel interference with "rights" of business leaders in a free market environment. The monopoly power currently wielded by sports leagues is not the result of "superior skill, foresight, and industry" that our antitrust laws recognize as legitimate for a business with monopoly power.[11] Rather, each league has obtained and maintained its monopoly power through unfair and illegitimate means, of the sort that courts have condemned in other industries.[12]

Major League Baseball came into being as a result of a 1903 "Peace Agreement" that ended competition between the American League and the National League. Of course, if Anheuser-Busch and Miller Brewing sought a "peace agreement" to end competition in beer sales, they couldn't possibly invoke the "free market" to justify their arrangement. Next, the combined leagues faced a threat from a new entrant, the Federal League, which sought to compete by the innovative construction of new ballparks for each of their teams. (The original tenant of Wrigley Field was the Chicago Whales of the Federal League.) This league was crushed, first by predatory tactics (such as blacklisting players signing with the new league and paying salaries that were only profitable if the new league went out of business) and then by payoffs (two owners were allowed to buy the Chicago Cubs and St. Louis Browns, while most others received huge cash settlements).[13] This conduct was not that different from that which led the Supreme Court to break up Standard Oil.[14] The last real threat was posed in 1959 by baseball innovator Branch Rickey, who proposed to fill the vacuum in New York City left by the departure of the Giants and the Dodgers by adding a new team in New York and teams in seven other areas not served by baseball. The American and National Leagues promptly responded by expanding to three of these markets and refusing to allow even minor league players to sign with a new major league. In another industry, this sort of conduct led to a finding that Alcoa had unlawfully monopolized aluminum,[15] but it has been immunized by the courts when it comes to baseball.[16]

Other sports aren't immune from antitrust laws, but that has not stopped them from maintaining their monopolies by equally anticompetitive means. The NFL's monopoly was obtained when, in return for a promise to powerful Congressman Hale Boggs of New Orleans for an expansion franchise, Congress passed a last-minute rider to a tax bill allowing the NFL and AFL to merge.[17] Later, the NFL's plan to ward off the United States Football League was found by a jury to be illegal monopolization.[18] Both the NHL and the NBA maintained their monopolies in the 1970s by a course of predatory spending (that is, raising salaries to unsustainable levels in order to exclude rival leagues or get them to merge on favorable terms) similar to the MLB response to the Federal League prior to World War I.[19]

The remainder of this chapter details our claim that consumers are being harmed by the policies of these sports league monopolies.

Tax Subsidies and Restricted Entry

Perhaps the greatest harm in dollar volume resulting from sports leagues' monopoly power comes from the billions of dollars in tax subsidies provided to owners in stadium deals. Club owners are able to exercise this monopoly power because they guarantee themselves permanent membership in a dominant sports league, and then restrict membership of new entrants to their terms. Absent a monopoly, the subsidy disappears. For example, during the brief period in the 1960s when the National Football League and the American Football League were rivals, they both sought to expand to Houston, Texas. The AFL's Oilers won the bidding when their *owner agreed to pay* a significant sum to make improvements on a municipally owned stadium. Several decades later, once the NFL's monopoly was reestablished, the same owner threatened to move to Jacksonville. To keep the Oilers in Houston, local officials had to promise to grant the club more favorable lease terms as well as refurbish the Astrodome, *at taxpayer's expense*, with additional seating capacity and luxury boxes. Finally, in 1995 the Oilers did relocate to Nashville, in return for a whopping $240 million subsidy from Tennessee taxpayers.[20]

Of course, the only communities wealthy enough to provide generous tax subsidies are those large enough to support major league teams, so the scheme only works if *some* markets that could support a team are kept open. Former Commissioner of Baseball Francis T. Vincent once conceded in congressional testimony that he viewed the Tampa Bay market as a "baseball asset,"[21] and he was correct: a number of teams used the threat of locating to Tampa Bay as leverage in persuading their home communities to fund new ballparks at taxpayer expense.[22] A few years ago, after expanding to Tampa Bay and Phoenix under threat of litigation, MLB was faced with a problem. Other than Washington, D.C. (where the Orioles' "veto" posed problems), there were no attractive markets to which teams could credibly threaten a move. As a result, clubs were finding it more difficult to obtain tax subsidies, and MLB publicly contemplated contracting the number of teams to maintain franchise scarcity.[23]

Although Washington, D.C.'s size made it the obvious choice for relocating the Expos, the interest shown by a variety of other cities in attracting a MLB team has once again demonstrated to MLB officials that they are back in the driver's seat. As of May 4, 2007, the Florida state legislature had not approved the needed funding for the Marlins' stadium.[24] However, if the $490 million stadium package is finalized, the Marlins would garner a $60 million tax subsidy incentive plan, a proposal unanimously passed by the Florida Senate Commerce Committee [25] and later passed by the Florida House of Representatives.[26] The proposed $490 million stadium would be funded through $250 million in community development spending and bed taxes pledged by the city of Miami and Miami-Dade County and $210 million from the Marlins.[27] The City of Miami Commission has decided to relocate the proposed stadium to the Orange Bowl property.[28]

As long as there are more markets seeking teams than there are slots in the exclusive, invitation-only preserve of the "major leagues," even less dominant leagues employing less restrictive expansion plans can secure tax subsidies. For a variety of cultural and political reasons, Canadian provincial and local governments are much less willing to match their American cousins in the sports corporate welfare department. Although the data are no longer quite as stark, as of a few years ago the Montreal Canadiens paid more in provincial and local taxes than all the American NHL teams *combined* paid in state and local taxes.[29]

All of this is occurring at a time when state and local budgets are being severely stretched by an economy with flat tax revenues and increasing demands for needed government services. When communities debate stadium subsidies, the focus is often on whether the subsidy is a "good investment" for the community that will be recouped in increased tax revenues from jobs and businesses attracted by the presence of a major league team. Some would compare the economic benefits of hosting a major league franchise to those of a new manufacturing plant or bank headquarters. It is commonplace for businesses to seek out a subsidy from local government as a reward for locating in a particular city. However, when it comes to sports franchises, the overwhelming independent economic evidence is that sports franchises deliver negligible economic benefits. As one well-known study put it, "Few fields of empirical economic research offer virtual unanimity of findings. Yet, independent work on the economic impact of stadiums and arenas has uniformly found that there is no statistically significant positive correlation between sports facility construction and economic development."[30]

Although this issue is interesting and important, it is beside the point. Whether or not paying a monopoly price is a sound investment for fans and taxpayers, the key policy issue is whether they should have to pay a monopoly price in the first place. Most businesses seeking local subsidies to relocate are themselves operating in competitive, often global markets. Any subsidies they receive are likely to be passed on to consumers in the form of lower prices. In major league sports, however, subsidies go to monopolists. By way of analogy, most businesses would find it prudent to spend three or four times their current fees for telephone service, because even at those higher rates an investment in the telephone is essential. This does not lead to the conclusion that resurrecting the AT&T monopoly is a good idea.

As a necessary by-product of a monopoly league's decision to maintain limited and exclusive membership policies, many fans are deprived of top-quality teams. Keep in mind that the alternative for fans in areas without major league sports is minor league sports. The decrease in quality is not like dropping down from a Mercedes to a Honda: imagine that if you didn't want or couldn't afford a luxury car your only other choice was a Ford Escort!

Fans in many cities that could support a quality of sporting entertainment much greater than AAA baseball or top-level minor hockey are deprived of such a team. Fans in major metropolitan markets are sometimes deprived of any real competition for their patronage when the market would support multiple teams (for example, Chicago Bears and Blackhawks). New York may have two teams per major league sport, but fans in London usually have at least six Premier League soccer teams to choose from, along with multiple teams in the other British sports!

Ticket Prices

To some degree, the very fan loyalty that shields major American sports from "market retribution" if price goes up or quality goes down means that high ticket prices may be fairly attributable to a superior product that developed such loyalty, rather than monopolistic practices. Chicago Cubs fans are not going to start patronizing the White Sox because of a "small, significant, non-transitory increase in price" for a ticket to Wrigley Field (the quote is the measure used by federal antitrust agencies to determine whether a merger is likely to harm consumers).[31]

Nonetheless, MLB recently changed its rules to bar even minor league farm teams from operating within fifteen miles of a major league ballpark, absent consent.[32] This reflects a recognition that these teams must impose some constraint on major league clubs' pricing power. Such an effect would be even greater if entry into the major leagues was based on merit rather than lifetime guarantee. With entry by merit, new teams would not be farm teams but independent clubs stocked with young talent and a few talented veterans, with a realistic chance of entering the major leagues if they succeeded in the lower-tier competition.

Television Blackouts

The harm to taxpayers and fans in stadium markets is the textbook result of sports leagues' monopoly power: increased monopoly profits through the creation of artificial scarcity. The effect of the monopoly on broadcast markets is more complex. The principal harm illustrates the other important and unfortunate aspect of sports today: when owners act collectively and without constraint by government or market rivals, they cause harm beyond that caused by a single profit-making monopolist. Television restrictions reflect the willingness of owners, who are primarily interested in their own club's profits, to forego efficient and profitable opportunities because of their inability to divide the spoils.

Broadcast rights to sporting events are assigned by common law precedent to the home team.[33] With the exception of the NFL, where all broadcast rights are transferred to the league, each league has a similar master licensing agreement whereby national broadcast rights are marketed by the league, with each team retaining local rights and granting rights to the visiting team to broadcast the contest back into their home market.[34] In some cases, such as baseball, the league retains the rights to market live webcasts via its website, www.mlb.com.

Because of the prevalence of local broadcasting and team loyalty, most fans living within the assigned territory of their favorite team can enjoy—for a price—most of the games they want to watch, either on free-to-air, premium cable, or pay per view. In an increasingly mobile society—only 60 percent of native-born Americans reside in the state in which they were born[35]—the principal harm caused by sports leagues' market power in broadcasting comes from the significant limits on the ability of fans to watch out-of-market games. These "expatriate" fans might be able to watch a handful of their favorite team's games (1) when selected for the broadcast by national networks, (2) if their favorite team plays the team in the market in which they now live, or (3) if their team is playing a team whose games are carried by a superstation. (Teams whose games are shown on superstations pay substantial fees to MLB to reflect their out-of-market broadcasts.[36]) These fans also may subscribe—for a substantial fee—to a premium package that broadcasts almost all games available on any of the myriad regional cable sports networks that have local rights. However, fans do not have the option of paying a lesser fee simply to watch their favorite team's out-of-market games; nor can they watch their favorite team's local announcers when their team is playing on the road and the game is also being televised by the home team.

Absent the exclusive territorial arrangements agreed to by league owners, individual teams would either directly, or more likely via intermediaries, arrange for their own games to be available to out-of-market fans. Although eclectic fans, fantasy league participants, and those who enjoy a sporting wager may prefer the convenience and options afforded by the leaguewide package, others may prefer to save money because they watch only their favorite team. Fans wishing to see only their favorite team now pay for more games than they want, so sports leagues are currently using their monopoly power to effectuate a huge wealth transfer. Another significant group of less fanatic consumers would be willing to pay a more modest sum for their favorite teams' games only. As to these fans, the current scheme reduces output.

The games are still being played, and it costs virtually nothing to broadcast them to out-of-market fans, who, by definition, are willing to pay a monopoly price to watch their favorite team (otherwise their out-of-town "favorite" wouldn't be a "favorite"). Unfortunately, the current territorial scheme fails to take advantage of this phenomenon. The explanation for this result—less output *and* less profits—lies in transactions costs. Each club is concerned that expatriate fans residing in their own local market will watch fewer games involving the local team if the option exists to watch out-of-town favorites. The efficient result would be to permit out-of-market broadcasts, with the local team receiving some form of compensation. Transactions costs, however, make it difficult to agree on terms. As a result, money is "left on the table" because of an inability to agree on how to divide it.

In addition to reducing output in live games, the territorial division reaches almost ridiculous proportions on matters that are economically more trivial but significant to expatriate fans. MLB requires satellite programmers to black out hundreds of games on regional Fox Sports channels, requiring expatriate fans to watch another team's often biased broadcasters, *even though both regional networks are owned by the same corporation.* Similarly, YES Network highlight shows and other programming on the all-Yankee station cannot be shown, even to subscribers to MLB's Extra Inning out-of-market package, when they potentially conflict with other programming shown in the subscriber's local areas. The harm to local markets in these cases is extremely minor, yet MLB owners remain unwilling to make their products more attractive to consumers.

A recent NBA example illustrates how anticompetitive owner restraints caused by transactions costs can frustrate innovations. Several years ago, Dallas Mavericks owner Mark Cuban invested in HDNet, a satellite-based station offering high-definition broadcasts. However, the NBA's territorial rules with regard to club-sold broadcast rights precluded him from showing Mavericks games in high definition outside the Dallas media market. Surely affluent, techno-savvy fans around the country would have been willing to pay far more for high-definition games than existing rights holders would lose if these fans stopped watching the game on local television. But the difficulty in figuring out the required payments among thirty individualistic owners meant that most fans were unable to take advantage of this popular innovation.