No Ruling Means No Change for Fantasy Baseball Leagues

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WASHINGTON — Major League Baseball’s effort to maintain exclusive control of its players’ statistics failed Monday, when the Supreme Court turned down its appeal of a ruling that gave fantasy baseball leagues the right to use the data without purchasing a license.

The justices made no comment in turning down the case, which was an appeal of a ruling in October by the federal appeals court in St. Louis. The appeals court held that the First Amendment’s guarantee of free speech outweighed the “right of publicity” that team owners and the players union had invoked in arguing that the players’ names and statistics could not be used commercially without permission.

Fantasy baseball is a big business, with revenue estimated at $1.5 billion a year. League members assemble teams of actual major league players. Commercial leagues charge fees to play the game on their Web sites, sometimes with additional fees for trading players or acquiring free agents.

One of the leagues, the St. Louis-based CBC Distribution and Marketing, brought a lawsuit in 2005, after baseball’s Internet arm refused to renew a license it had granted since the mid-1990s. The major league teams had formed their own Internet company, Major League Baseball Advanced Media, and decided to run fantasy games on Major League Baseball’s Web site, MLB.com.

CBC, which operates under the name CDM Fantasy Sports, was informed that it could have a license to offer the MLB.com games on its Web site, but not to create its own.

CBC, which wanted to continue its business but feared a lawsuit, filed the pre-emptive lawsuit. It argued that the identity and performance of major league ballplayers was in the public domain and could not be cordoned off without violating the First
Amendment. The Federal District Court in St. Louis agreed, as did the United States Court of Appeals for the Eighth Circuit.

The appeals court said that “the information used in CBC's fantasy baseball games is all readily available in the public domain, and it would be strange law that a person would not have a First Amendment right to use information that is available to everyone.”

In its appeal to the Supreme Court, Major League Baseball Advanced Media argued that in balancing the right of publicity against the First Amendment, the appeals court had given too much weight to the First Amendment.

The “right of publicity” is a concept based on state law — in this instance, Missouri law — and the appeal argued that the federal appeals court had ignored the way the Missouri state courts would have approached the issue. The decision “resulted in a judicial refusal to enforce state-law publicity rights,” the appeal said.

In response, CBC said not only that the appeals court had decided the case correctly, but that “since most publicity cases deal with endorsement and advertising,” this was an unusual case that the Supreme Court should not bother to review.