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THE BROADCASTING AND MEDIA RIGHTS SCENARIO

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The Broadcasting and Media Rights Scenario

Carole Croella

Copyright law- Culture and creative industries



Business of Sports

- Commercialisation of Sports
 - sportsmen are marketable commodities
 - businesses heavily investing in sports
- Licensing and merchandising of sports properties has transformed into a \$17 Billion global industry.
- The leagues, teams, athletes possess intangible property - trademark names, logo designs etc to licence and reproduce those items for merchandising purposes

Exploitation Avenues

- Merchandising – of Players, Boards logos, Leagues
- Right of Publicity/Image/Personality
- Broadcasting Rights

HOW DO WE BALANCE THESE RIGHTS WITH THE
CORRESPONDING RIGHT OF DISSEMINATION

Broadcasting Rights: What is at stake

- \$3.9 billion secured for the 2010 Winter Olympics in Vancouver and the 2012 Summer Games in London
- Euro 2008 generated €1.3 billion (US\$ 2 billion) from broadcasting rights, trademark sponsorship and ticket sales – 50 percent more than the 2004 total
- Nimbus Communications paid \$612 million – Cricket rights for 4 years
- The sums from TV rights and sponsors are much bigger than the sums generated from ticketing



Sports Rights

- Sports Rights are generally NOT recognized by copyright legislation as a dramatic work in which a performance may subsist
- In many countries no legislative recognition of sports rights
- Civil law countries: France organizer sports event owns a defensive property right in the sporting event.
- Statutory IP occasionally created in relation to sports events: legislation protecting the ownership of Olympic rights in host countries such as Australia and UK.
- Sports rights are not afforded specific protection under international treaties

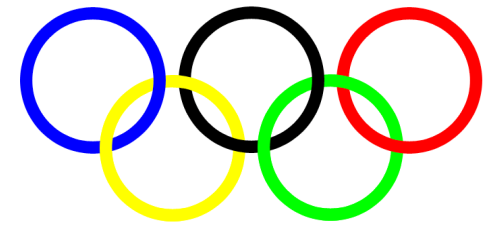
Licensing Broadcasting Rights

- Following technological advancements, sales and distribution of broadcasting rights has evolved
- Typical agreements include various categories:
 - i. medium of distribution : TV broadcast including terrestrial TV, distribution via Internet, distribution via mobile telephony, fixed media such as DVDs..
 - ii. Methods of revenue generation: whether free to air, pay per view...
 - iii. Timing: live in full, delayed, archive
 - iv. Type of program: live in full, for use in news, video on demand
 - v. In specified languages
 - vi. Specified license territories
 - vii. Specific license period

Licensing Broadcasting Rights

- Combinations of these rights will be provided to third parties by exclusive or non exclusive license agreements
- All rights not specifically licensed by the rightholder to the licensee are retained by the rightholders
- Rights are generally not assigned but licensed
- Licensees also receive the right to create new IP for instance to:
 - - use footage from the broadcasting rights I other copyright programming
 - To provide commentary in other languages
 - To insert “channel bugs”

IOC Sales Strategy



- IOC routinely obliges a rights-holding broadcaster by contract to broadcast a minimum of 200 hours free-to-air in respect of summer Olympic Games and 100 hours free-to-air in respect of winter Olympic Games.
- For many decades, in most continents IOC worked principally with the big ‘broadcast unions’ – for example the European Broadcasting Union, the OTI in South America, ABU in Asia...
- Progressive development of sales rights in certain territories on a ‘platform by platform’ basis. 2008 IOC licensed separately the right of broadcasting Olympic Games on TV and the right of broadcasting Olympic Games on New Media (Internet video, mobile platform).
- “gatekeeper basis

Licensing of media sports rights/EU

- Raises the question of the legal basis for sports broadcasting rights
- Issue comes with the collective selling of TV rights: whether sports federation allowed to sell on a centralized basis
- The [European Union](#) Court of Justice advised to rule that EU law does not prohibit pubs showing live [Premier League](#) matches from foreign broadcasters
- Potential dismantling country specific sports rights regime
- Premier league sells rights on a territory by territory basis
- “Economic exploitation of TV rights is not undermined by the use of foreign decoder cards as the corresponding charges have been paid for these cards”
- Towards selling rights on pan-European basis ?

Broadcast Piracy: Why protection is needed

- Need for broadcasters to be adequately protected against the piracy of broadcasts
- Unauthorized copying and/or retransmission of the sports programme devalue the broadcasters exclusive right and substantial investment
- Piracy act frequently known when too late to take effective legal action
- Various consequences: advertisement income reduced, income from sub licensing not feasible
- Funds designated to support the growth of sports are reduced by piracy
- Change in the pattern of broadcasting rights from the traditional forms (live TV telecasts) to broadcasting via Internet, mobile phones, convergence TV.

Digital Piracy of Live Sports

- The **range of sports** available for viewers to consume through pirated means on the internet is enormous and rapidly growing.
- Today all major sports leagues have their content stolen
- Sports broadcast piracy offers **immediate, live, and often free access** to streams of matches, games, or events as they happen.
- Scale? **1,500,000+ viewers** for most popular events. This figure varies significantly by event, but major football matches have resulted in streams of 1,000,000+ viewers.
- Unicasting to lifecasting



Main types of broadcasting piracy

- Use of TV services without being a subscriber of the service provider (unauthorised connection to the network) or viewing free-to-view services that should be locked for your geographic area;
- Sharing of the service provider connection (splitting the cable and adding extra connections to neighbours)
- Selling, advertising, possessing or using illicit devices to circumvent encryption measures to access TV services without permission or payment;
- Unauthorized re-transmission of the signal on other platforms on a commercial basis.

Piracy range of players

- Hobby, technical challenge – Closed circle sharing
- Open source community – all for free ... free for all
- Commercial - Organised & finance driven
- Organised crime – Syndicates & hackers



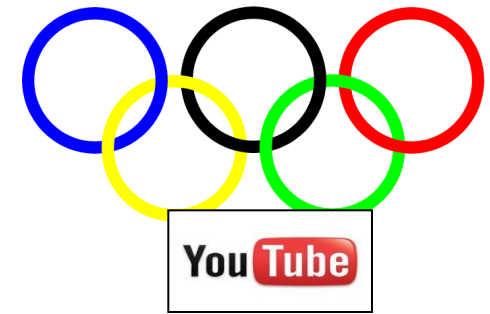
- News Headlines
- Unauthorized re-transmission of the signal on other platforms on a commercial basis.
- injunction filed against cable operators across the country against unauthorized broadcast of th ICC Cricket World Cup 2011
- Feb 21 2011, Delhi High Court restrained 144 named cable operators from transmitting and/or telecasting in any manner whatsoever without license from ESS the telecast of ICC Cricket World Cup 2011 and infringing the copyright/re-broadcast right of ESPN STAR Sports.

News Headlines

- **Feb 2011 US agents have sidelined 10 websites they said were linking viewers to pirated telecasts of live**
- **sporting events including professional basketball, hockey, wrestling, and other sports.**
- Federal officers armed with court-issued warrants seized the online domains of Atdhe.net, Channelsurfing.net, HQ-streams.com, HQstreams.net, Firstrow.net, Ilemi.com, lilemi.com, lilemii.com, Rojadirecta.org, and Rojadirecta.com
- The sites provided illegal access to copyrighted telecasts of the US National Football League; National Basketball Association; the National Hockey League; World Wrestling Entertainment, and the Ultimate Fighting Championship.



IOC anti-piracy strategy



- IOC has launched its own Internet channel, available on YouTube based platform
- Anti piracy strategy based on video fingerprinting technology, combined with web crawling techniques .
- close collaboration with our Rights-holding Broadcasters, non rights holding online video platforms and government organizations
- 2008 Beijing Proclamation of Olympic New Media Copyright Protection
- Rapid Response Mechanism in Proceeding Illegal Broadcast of Olympic Games

Addressing Signal Piracy

- Legal actions: Civil lawsuits
- Take Down notification programs require daily monitoring and enforcement of live streaming websites
- Technology – As technology constantly evolves, so does piracy threats, technology countermeasures have to be developed constantly and have to follow a never ending cycle of managing new vulnerabilities;
- Strategic partnerships: Coalition against online video piracy
- Laws and Government regulation: Worldwide consensus for improvement of broadcasters right at international level

The International Legal framework

1961 WIPO Rome Convention

- broadcasting organizations are granted exclusive rights concerning :
 - (a) the re-broadcasting of their broadcasts;
 - (b) the fixation of their broadcasts;
 - (c) the reproduction of fixations of their broadcasts;
 - and (d) the communication to the public of television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee

Is the Rome Convention still relevant?

- It does not provide protection against:
- unauthorized cable distribution of signals
- unauthorized deferred rebroadcasts
- unauthorized distribution of recordings of broadcasts
- unauthorized use of pre-broadcast signals

The WIPO Broadcasting treaty : Objectives

- Long road for broadcasters since 1997
- The industry has grown and so has piracy
- Until now Broadcasting is protected only under local laws- Treaty intends to give international protection
- Protection being discussed is under Copyright law not under Telecommunication or Unfair competition or other regime
- Broadcasting is not traditional copyright; It is a related right or a “Neighbouring Right”
- Rights are therefore to be the minimum that is required to exercise control and authority over the signal

Objectives of the Treaty

- To provide adequate and effective legal protection for *signals of* broadcasting organisations against unauthorised use of their broadcasts”
- To ensure Broadcasters control the right to authorise the viewing or listening of their broadcast (TV & radio should be covered

Sports event

- Broadcast Right to X in Asia & Africa
- Broadcast Right to Y in Europe
- Broadcast Right to Z in USA
 - All the above given by the Content owner

- A intercepts the signal in Asia and puts it on the internet.
- X can take action against A
- If not protected, then the Content owners rights in other countries is in jeopardy.

The Broadcasting Treaty: Scope

- Broadcasting – in the traditional sense is to be protected – not newer forms of broadcast like a broadcast which originates through the internet (Webcasting).
- Should not be covered in this Treaty because Inadequate national experiences under national laws
- Simulcasting ?

Broadcasting Treaty: Scope

- Broadcasters to have the following rights ?
- Exclusive right to authorize the reception, viewing, re-broadcasting of the broadcast signal
- Exclusive right to control the reception of the signal
- Exclusive right to receive payment for the reception of the signal
- Exclusive right to make a recording of the broadcast

The Broadcasting Treaty : To be covered ?

- Retransmission: Protection against Re-transmission is needed to cover retransmissions by cable operators and on all platforms

Note: Provision can be made so that mere retransmission does not constitute broadcast. For eg., Cable operators, DTH operators would not be treated as Broadcasters.

- Illegal interception of the signal
- Illegal streaming of the signal in any electronic form
- Protection of Pre-broadcast signals
- Protection of technological measures/ protection against decryption of encrypted broadcasts

Limitations and Exceptions

- Fair dealing and Fair Use
- For purposes of News, Current Affairs and reporting of current events
- Criticism, review
- For *bona fide* educational purposes and legal proceedings
- Berne Convention: information (10*bis*), education (10(2)), public access (11*bis*(2)), protection of certain industries (namely, recording industry (13(1)), protection of cultural goods (11*bis*(3))

Rights of the media/journalists

- HOW MUCH CAN BE LEGALLY USED?
- WHAT CAN BE LEGALLY USED?
- Countries must examine and, where necessary, take legal measures such as introducing the right to short reporting on "events of high interest for the public"
- Short (news) report" is normally understood to mean brief sound and moving image sequences which give an overview of the essential aspects of the event. strictly limited to the use of such reports in proper news programmes

BBC Vs. BSkyB 21 IPR 503

- U.K. High Court
- World cup Football
- BBC had exclusive rights
- BSkyB used footage in their SPORTS DESK Bulletins
- Court held that the use of footage is Fair Use
- Just because there are advertisements are present – Fair Use is not negated.



Anti-Hoarding and Anti Siphoning Provisions

Legal measures to ensure general public can continue watching events on free to air TV events of major importance

EU measures based TV without frontiers Directive called “major events list”

Lists drawn by national authorities

Broadcasters and media companies need to respect lists drawn by other MS

Case law is scarce



Thank you

www.wipo.int/copyright