

Periscope, Meerkat and the Threats of Live Mobile Streaming

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One recent development in the exponentially expanding world of apps is the rise of viable live streaming onto social networks via mobile devices. “Periscope” and “Meerkat” (with others no doubt soon to follow) allow users to create and distribute live video footage via social channels such as Twitter. Great for letting people know the fun they are missing or keeping in touch from birthday parties but a potentially material headache for sports rights holders. The use of this technology to distribute the Mayweather vs Pacquiao fight (circumventing pay-per-view arrangements) and accompanying outcry have brought it into sharp focus.

Historically the value of television and media rights for sports rights owners has rested on the rights owner being able to control who is able to produce coverage of their event. Normally this derives from control of access to the venue where the event is taking place. Broadcasters, with their multiple camera OB’s, trucks, scanners and other equipment, require specific permission to access venues for the purpose of producing coverage. By having control of production the sports rights owner is able to secure, via the matrix of contracts, control of and benefit from the exploitation of the resulting coverage.

There has for many years been concern that people would use small video cameras to shoot footage at events (even if their ticket conditions forbade it) but such footage was very poor quality and moreover could not be distributed, if at all, until long after the action. Some of these new streaming apps make it a practical possibility to stream unauthorised coverage of TV pictures and/or key moments (a goal, the big putt, a dropped catch) from the event itself of decent quality, live and to a large network of social followers. This diminishes the exclusivity that is enjoyed by the contracted broadcasters of the event and it is that exclusivity that drives the value of many sports rights. Notwithstanding that such clips are never the equivalent of fully produced, multi-camera coverage of the event in question, if such live streaming is not controlled, broadcasters who have paid top dollar will require protection for their investment, compelling rights owners to take steps to control the unauthorised material or risk diminishing values for their media rights.

In relation to people filming at an event, it is common place for ticket conditions, i.e. the contract between the spectator and the rights owner, to prohibit filming of the event. These are likely to be increasingly enforced – we saw Manchester United banning tablet devices from Old Trafford earlier this season – to protect media rights values. Individuals who carry out activity in breach of the ticket conditions can generally be expelled from the venue, provided they can be identified. This can be increasingly difficult – it may be relatively easy to spot 2 people filming the 18th green at a golf tournament but spotting them amongst the 80,000 at Twickenham? There is also the very real risk of a public backlash against what could be perceived as a heavy handed approach. It may be theoretically possible for venues to install technology that interferes with or prevents unauthorised transmissions which would at least delay the distribution of the material until the individual leaves the event. This, however, is likely to also interfere with other mobile traffic, including of course fans’ ability to use their mobile devices in standard and perfectly legal ways.

To make matters more complicated for sports rights owners, the use of these practical controls needs to be considered in the context of the valuable opportunities available to sports and their commercial partners if they can harness the power of content created and shared by fans during their “match-day experience”. From a legal perspective, once this unauthorised material has been created the question arises of who owns the copyright in the material. The person taking the video is very likely to be the first owner of the copyright. Ticket conditions are likely to include a provision which state that the spectator assigns copyright in any pictures or footage they produce to the rights owner. There are material questions about whether such provisions would amount to an effective assignment in all circumstances. Even if copyright was deemed to have been assigned, the distributor or platform facilitating the distribution might claim they were using the

clips for reporting current events and seek to avail themselves of a fair dealing exemption to copyright infringement. In any event the material is circulating, and the perpetrator, even if identified, has left the ground. Pursuit of a copyright infringement action against an individual or individuals is likely to be pointless. Action against the platforms enabling the clips or streaming is unlikely to involve more than removing the offending material with an inevitable time lag through the platform's takedown procedures though this will be a harder job than with straightforward piracy, given the copyright complications.

Where action is filmed from the "pirate's" own TV screen there is, prima facie, an infringement of copyright, at least in jurisdictions where copyright in a broadcast and/or in regard to the other copyright elements of the transmission is recognised. If the material disseminated by the pirate involves a continuous or substantive relay rather than a brief clip, it would be unlikely that a fair dealing exemption would apply. Notwithstanding that copyright is being infringed, finding and stopping the individuals involved would remain "difficult". Such actions will, other than in cases of hardcore or commercial piracy, seldom be worth pursuing.

From a practical perspective it would seem that once the footage is produced and "out there" most if not all of the damage that is going to be done has been done. At present, the threat may be limited due to the technical constraints that will affect the quality of any streaming or video. Wifi and cellular network restrictions will often be an issue for live streaming at a respectable resolution. Furthermore, the state of lens and camera technology on mobile devices is a very significant barrier to the production of high quality streams. However, as technology advances and these obstacles are gradually overcome, rights owners' efforts to prevent unauthorised filming at source are likely to become increasingly prominent.

Part of the solution for rights holders is likely to lie in closer cooperation with live streaming services and their distribution platforms, particularly Twitter. Major players in the sports and media industries will no doubt already be working behind the scenes to encourage streamlined takedown procedures (similar to those available via YouTube) which would allow content owners to take action to remove infringing live content as it appears as opposed to filing individual takedown requests and waiting for these to be processed. As with YouTube, the stance of the streaming service providers on this issue will probably be dependent on whether their own plans for the future involve creating official relationships with rights holders.

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Note to Editors

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