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“Short Form Video Content: The new sports rights battleground and how to win”.

For millions of sports fans around the world viewing, posting and sharing short form video content is now central to the way they want to consume and interact with the sports they love. Worryingly for the entities in charge of those sports, demand for this content is increasingly being met by communities of fans or unofficial blogs and fansites which have stolen a march and are amassing large followings using a mix of original and infringing content. In this piece we look at how sports properties can compete with the legitimate efforts of unofficial publishers, fight piracy and take advantage of the opportunities around short form video – a key challenge for all sports in 2016.

The rise of short form content

In a sports context the most powerful short form video content remains clips of match action (goals, saves, tackles and pieces of skill) but there is also now huge demand for additional content in this format such as fan reactions, behind-the-scenes footage, interviews, archive, analysis and more. This content can be published in “real-time” during events to compliment TV coverage or throughout the week between events to keep fans interested and engaged.

Fans love it because it offers bite-sized chunks of the excitement and emotion of sport that fit conveniently into their daily lives. Sponsors and advertisers love it because it can generate millions of views and shares in a short space of time and allow them to reach huge numbers of fans (including those elusive millennials) with targeted messages for a fraction of the cost of traditional advertising.

So, if short form content is key to attracting sponsors and ad revenue and achieving the holy grail of an engaged fanbase what should sports properties be doing to take advantage of the opportunity?

Fight for the rights

When it comes to use of clips of match action, strategy starts in the agreements a sports property negotiates with its media rights partners. Live broadcast and highlights packages attract the highest rights fees and therefore broadcasters have traditionally asked for (and been granted) high levels of exclusivity in respect of all live and near-live coverage.

However, technological advances and the advent of social media have revolutionised the way fans consume content and created opportunities for sports properties to engage with their fanbase that didn't exist 10, 5 or even 2 years ago. Many sports properties are realising that to take advantage of these opportunities they need to review media rights arrangements that have been in place for a number of successful rights cycles but may no longer suit their needs.

If a sports property manages to carve out clip rights in some form it then needs to decide which (if any) of these rights to license to third parties and which to exploit itself. The market for digital and mobile clip rights is healthy and new revenues in the form of rights fees will always be attractive but this needs to be balanced against the benefits of using clips to build the profile of your own digital platforms.

Combat piracy

So far so good, but of course sports properties are not the only ones trying to meet the demand from fans for interesting short form content.

Social media platforms are awash with content being published and shared by communities of fans and more sophisticated unofficial blogs and fansites. Although these unofficial sources do publish some extremely innovative and original content, many also fail to respect the rights and licensing structures that apply to other content they (re)publish, in particular when it comes to match clips.

Some match clips originate from fans who film and upload footage from inside stadiums using mobile phones. It is clearly important for sports properties to take a strong stance against this and many do seek to use ticket terms and conditions and the threat of ejection from the stadium to deter the practice but stopping it entirely is almost impossible. Thankfully, for now, the relatively poor quality and unreliability of these clips means they are for the most part only shared between relatively small groups of fans.

Of arguably more concern are unofficial blogs and fansites that regularly publish live (or near-live) clips taken from TV coverage and generate revenue from the sale of advertising around this content. This can damage the value of official rights and divert traffic away from official digital and social platforms thereby creating issues for sports properties with their rights holders and sponsors.

Under English law, sports broadcasts¹ (as well as individual elements within them such as graphics, logos and music²) are capable of protection by copyright and anyone that copies and/or makes available the whole or a substantial part of a broadcast without permission runs the risk of committing an infringement. There are interesting arguments to be explored around whether the clip constitutes a “substantial part” of the wider broadcast. The test is qualitative rather than quantitative so clips featuring goals are very likely to be deemed substantial but the position regarding clips of individual bits of skill or amusing mistakes is less clear cut. Even if a breach of copyright can be established in relation to a clip, a number of permitted acts and exemptions may also apply to provide a defence for some publishers³.

In reality, formal copyright claims against publishers will only be worth pursuing in limited circumstances and the majority of time and resources are spent identifying infringing content and working with social media platforms to have it taken down.

The role of social media platforms

Although social media platforms do have terms of use and take-down procedures that deal with infringing content, in effect these often reflect the bare minimum required to benefit from the “safe harbour” provisions under the US Digital Millennium Copyright Act and rights owners have long complained that platforms should do much more to help identify and remove infringing content quickly.

However, we may be about to enter a new phase in the relationship between social media platforms and sports properties and this could have a big impact on how infringing content is dealt with and the position of sports properties in the short form content market more generally.

In essence, the platforms know that sports events and the excitement they generate is now one of the main drivers of social media activity. To harness this power they want to work more closely with sports properties and these partnerships incentivise the platform to do more to find and take down infringing content whilst at the same time helping the sports bodies to offer a viable (and hopefully superior) official alternative to unofficial short form content for fans.

Twitter has partnered with organisations including the NFL and MLB in the US and UEFA and LaLiga in Europe for its Twitter Amplify service which allows these organisations to publish short form video with advertising embedded in real time. Ad revenue is shared between the parties, Twitter gains premium content to keep users on its platform and the sports properties (and their sponsors) gain enormous reach and exposure. Sport is also seen as central to Twitter’s newest venture Twitter Moments which launched with the MLB as a founding partner. In October 2015, shortly after expanding its partnership with the NFL, Twitter went as far as suspending (albeit briefly) the accounts of @Deadspin and @SBNationGIF which had regularly posted unauthorised GIFs and video highlights of NFL games. This isn’t the first suspension of its kind but the timing is interesting and many people will be watching to see if this trend develops.

Elsewhere YouTube, a platform which some would argue was built on the foundation of offering access to infringing content, has long since changed tack and has partnerships with many rights

¹ S.6(1) CDPA 1988

² UEFA and Ors v Keith Briscoe and Ors [2006] EWHC 1268 (Ch)

³ See: fair dealing for the purposes of reporting current events (s.30(2) CDPA 1988 and fair dealing for the purposes of quotation (The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014)

owners including sports properties that provide an official channel for their content, a share in ad revenue and access to tools which identify infringing content and gives the option of removing it or sharing in the ad revenue being generated from it. With the launch of YouTube Red a subscription service which offers access to exclusive content without ads, YouTube will now presumably have even more of a vested interest in finding and removing content which has been posted in the free ad-funded sections without permission.

The other major players in this space, Facebook and SnapChat, are also pursuing partnerships with sports properties. SnapChat's new tool within its Live Stories feature is "Story Explorer" which allows users to explore a story by viewing photos and videos from many different perspectives and the NFL have been signed up as a partner. It is early days but this type of arrangement could eventually provide a way for sports properties to retain some control and benefit from content published by fans from within venues.

Conclusion

Short form video content has quickly become an established feature of the sports media landscape and is certainly here to stay. Sports properties are in some ways a late entrant to a market that is already being served by unofficial sources and they must develop commercial and legal strategies quickly in order to compete. This may start with restructuring existing media rights agreements to carve out clip rights but inevitably leads on to creating effective partnerships with social media platforms.

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