

TESTIMONY
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World Intellectual Property Day 2019: The Role of Intellectual Property in Sports and Public Safety

BEFORE THE SUBCOMMITTEE ON INTELLECTUAL PROPERTY

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Good afternoon Members of the Subcommittee. I am Michael Potenza, Vice President & Assistant General Counsel, Intellectual Property for NBA Properties, Inc. (“NBAP”).

I appreciate the opportunity today to submit a statement regarding the piracy of live sports broadcasts for the record of the Senate Judiciary Committee hearing on “*The Role of Intellectual Property in Sports and Public Safety*”.

Introduction

NBA Properties, Inc. (“NBAP”) is the exclusive marketing and licensing arm of the National Basketball Association (“NBA”), a global sports and media business comprised of 30 teams across North America featuring the best basketball players in the world. The NBA is a major international presence with games and programming in 215 countries and territories in 50 languages. The NBA’s content distribution assets include NBA TV, NBA.com, the NBA App and NBA League Pass.

The sports industry represents an integral sector of the U.S. economy, driving investment in public infrastructure projects and employing tens of thousands of people – from professional athletes, to athletic trainers, to concessionaires at the stadium.

The impact of the sports industry on the U.S. economy is significant. The distribution of copyrighted sports broadcasts is a significant contributor to the global sports market and represents a primary revenue source for many sports organizations. Ensuring effective protection of this valuable copyrighted content is of the utmost importance to the sports industry.

The Evolution of Content Distribution Technology

Advances in technology, including greater broadband penetration and improvements to mobile infrastructure, have made it easier for content owners to distribute their programming globally. Sports organizations have utilized these improvements along with live streaming technology to distribute live copyrighted broadcasts to fans around the world. Thanks in large part to these technological innovations, it is now possible for fans to follow a live sporting event on a mobile phone or a virtual reality platform anywhere from Beijing to Bethesda.

Sports leagues have pursued content distribution strategies designed to offer fans a multitude of options to access live game broadcasts featuring their favorite team. For example, the NBA offers a premium digital subscription product that provides fans with access to hundreds of out-of-market games every season. More recently, the NBA introduced options for fans to watch portions of NBA game broadcasts, such as the last quarter or even the final 10 minutes of a game.

Unfortunately, these same advancements in technology also are being used by pirates to distribute copyrighted game broadcasts illegally. With readily available technology, pirates are able to steal decoded broadcast signals and redistribute those signals to viewers. These illegal streams often are produced in High Definition quality and made available to viewers on the device of their choice, through an easy to navigate interface. Many of the pirate operations charge monthly or annual subscription fees to access

illegal streams of a broad range of live sports content. Other illegal services provide live sports streams at no cost and instead generate revenue from selling advertising or soliciting viewer “donations”.

Pirates increasingly have been making illegal content available via illicit streaming devices (ISDs). ISDs are functionally similar to Roku and Apple TV devices, but are pre-loaded with apps and services that enable the viewing of illegally obtained copyrighted content. The companies and individuals that manufacture and distribute ISDs offer a cheap and convenient way for consumers to access a virtually unlimited amount of live and recorded copyrighted content via free rogue services or illegal premium subscription services.

Impact of Live Sports Piracy

Although currently there is no reliable model to accurately quantify the scope of piracy, a 2016 study by Business Action to Stop Counterfeiting and Piracy (BASCAP) and the International Trademark Association (INTA) estimated that the value of digital piracy in film would be \$644B by 2022 (Frontier Economics, 2016).

Recent trends reflect that live sports piracy continues to grow - both in terms of the quantity of illegal streams and the sophistication of the pirates and services used to illegally distribute live sports content.

International organized crime syndicates have been found to be behind some of the more sophisticated live streaming operations, profiting from thousands of subscribers who pay to access illegally distributed copyrighted sports content. These operations engage not only in IP crimes, but also in money laundering and fraud, employing an ever-changing network of computer servers and payment processors to avoid detection by law enforcement.

Fans also put themselves at risk – often unknowingly - when engaging in the consumption of illegal content. Users of piracy apps and ISDs put themselves at greater risk for cybersecurity related issues - including viruses and malware - than those who consume content from authorized sources.

Consumers also are at risk of fraud resulting from providing their personal and financial information to untrustworthy sources who operate illegal streaming services. For example, consumers will be tricked into subscribing to an illegal service in exchange for upfront payment of an annual subscription fee only to have the service disappear a short time later, leaving consumers without recourse.

Enforcement Efforts

The NBA has implemented a multi-pronged approach to combat content piracy.

A key aspect of the NBA’s strategy involves dedicating technological and human resources to search for and remove illegal streams of NBA game broadcasts as quickly as possible. The NBA deploys a combination of technology and staff to crawl websites and social media platforms for illegal streams during every game, every night of the NBA season and post-season. Even when the NBA is successful in shutting down an illegal streaming website or social media account, continued vigilance during all live

games is important, as the illegal streams often reappear at a new domain extension or social media account.

The NBA also participates in a variety of industry associations dedicated to combating content piracy, working with representatives from different sectors, including other sports organizations, content creators and content distributors. The NBA finds tremendous value in sharing information with other concerned parties and collaborating on how most effectively to combat live streaming piracy.

Enforcement Challenges

Because of the unique value of live sporting events, it is critical that illegal streams of live sports broadcasts are removed as quickly as possible, while the live event is still in progress. One of the most significant obstacles to effective enforcement against illegal streams of NBA games is achieving such “expeditious” removal of an unauthorized stream by the Internet Service Provider (ISP) hosting the streaming service.

Under the notice and takedown framework of the Digital Millennium Copyright Act (DMCA), the need for an ISP to respond in near real time to a takedown notice for a live sports broadcast is critical for effective enforcement. For example, delaying removal of an illegal stream for even a few minutes could render enforcement meaningless for a Pay-Per-View boxing event that ends with a knock-out in the first round. Although more legitimate platforms typically will act upon a DMCA notice and remove an illegal stream within 15 minutes of receipt, it is not unusual for the same pirate to upload a new illegal stream of the same event on the same platform. It is our hope that these legitimate platforms will continue to work with content owners to develop more advanced tools to stop recidivist pirates and to proactively monitor for and quickly block illegal streams before they are made available.

Live sports streaming piracy is a global problem. Because many of the pirate services operate in countries outside the United States and/or use hosting services located in countries with inadequate copyright laws, these services often are delayed in responding to DMCA take down notices or, in the case of the most egregious offenders, never respond at all. Some of these bad actors actively promote non-compliance with DMCA notices as a reason to sign-up for their “DMCA Ignored Hosting” services. Platforms that utilize these services and fail to respond to take down notices in a timely manner do so intentionally.

Another obstacle content owners face in combating illegal live streaming are the limitations on criminal enforcement currently available under US Code Title 18 Section 2319, which classifies illegal streaming as a misdemeanor. This makes it difficult for law enforcement to deter bad actors by imposing meaningful consequences for illegal streaming. Without a real fear of criminal prosecution, pirates are emboldened to continue engaging in illegal activity to distribute sports content - whether it is manufacturing and selling ISDs or operating an illegal streaming service. It is important to revise the criminal law to recognize illegal streaming of copyrighted content as a felony, which would provide a more effective way to deter illegal streaming.

Conclusion

In conclusion, I hope my testimony today helps illustrate how important it is that we continue to develop and implement technological, business and statutory tools to address the illegal live streaming of sports content. It is critical that the private and public sectors continue to collaborate in their efforts to establish an effective framework for providing adequate protection of sports broadcasts. By doing so, we will ensure continued support for sports organizations and authorized content distributors and what they contribute to the U.S. economy, and provide fans the best experience to enjoy the sports they love.

The NBA is grateful to the committee for the opportunity to discuss this important issue. Thank you.