

Streaming, copyright and new technologies – whither the response of sports organisers?

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It is well established in Commonwealth law that there are no intellectual property rights or indeed, any other proprietary right in a (sporting) event *per se*. United States jurisprudence discloses a similar result albeit qualified by a long-standing misappropriation of information rubric: free riding off the information collection efforts of another.

However, both commonwealth and US legislation changed subsequent to the development of television broadcasting. Accordingly, copyright subsists in the broadcast of an event which arises instantaneously for the broadcaster (subject to relevant contractual agreements) whether it is recorded or not. That also of course then means that third parties have no right to record or re-transmit the original broadcast subject to defined exceptions to copyright infringement: fair use/ fair dealing, personal and private use and for the purposes of time-shifting.

As the exceptions to infringement have been developed and judicially refined, various companies have tried (almost always unsuccessfully) to create commercial “re-broadcasting” platforms that fit within the exceptions. Generally, these platforms have involved a ‘copy’ of a broadcast which is held remotely and then accessed by an individual subscriber in a domestic setting at another time. Such platforms have been determined to be infringing on the basis that they were either dealing with infringing copies and/or were facilitating unauthorised re-broadcasts.

Arguably, the litigation that has occurred clearly demonstrates circumstances where technological change has outpaced legal change with the courts straining to apply traditional copyright principles to content delivery systems that were not contemplated at the time legislative change was made. As a next step, the increasing availability of digitally streamed broadcasts will presumably strain the existing infringement models even further. After all, if there is no proprietary right in the event and a broadcast stream (which remains a transient reproduction) is merely being viewed domestically, it is not clear that any copyright infringement occurs. The fact that these types of Internet-TV may subvert existing business models and revenue streams of broadcasters does not mean that copyright is infringed. However, it may impact the viability of some content creators – and to that extent there may need to be a technological realignment in order to retain a balance between copyright’s fundamental principles of incentive and access as well as due recognition of the interplay between content owners and content users rights in the digital environment.