

A Guide to Piracy Protection for Sports Broadcasting Rights-Holders in the UAE

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A number of laudable recent steps to deal with the growing legal problem suggest that both internal and external rights holders to the UAE market can take some comfort that rights will be recognised and protected and, where practical, aggressive enforcement can be pursued.

A growing global problem

In the TV broadcasting world, the value of premium rights to sporting events makes them a prized asset. The inherent nature of live sporting events means that they have the now relatively scarce appeal of immediacy, with extremely high value before and during the event itself, rapidly diminishing thereafter. This reality has elevated the value of live sporting event broadcasts above all others in the pantheon of TV advertising platforms – take, for example, the English Premier League.

The auspicious trade winds have, however, drawn a threat to the horizon. As subscription rates climb there is an increasing threat from pirates adroitly brandishing advances in technology to illegally broadcast sports content to consumers. Their motivation is the substantial rewards that can be reaped for bypassing legal rights holders. Approximately one billion people watched the final match of the FIFA World Cup last year, 900 million watched the opening ceremony of 2012 Olympics in London and, for single match events, in excess of 110 million watched the Superbowl. These figures hint at the golden gains of advertising investment and subscription fees that can be made by those prepared to operate outside the law on a quest for revenues without paying for broadcasting rights.

As the sports rights market grows, evidence shows that the problem, which can take several specific forms, is growing at a significant rate globally, which suggests the framework of laws and regulations – handicapped by jurisdictional limitations in dealing with global offenders – has in general struggled to keep up with detection and enforcement.

Local face of a global problem

In the UAE, broadcasting piracy has shown a marked increase over the past couple of years, similar to many other markets with diverse sporting interests and a growing cosmopolitan population. TV broadcast piracy includes a range of abuses that are evolving with technology but, for the purposes of this article we will consider specifically the legal issues surrounding:

- unauthorised internet content (unicast and peer to peer streaming);
- pirate satellite channels showing premium content; and
- illegal set-top boxes and other hardware allowing access to hundreds of channels for a one-time and/or short term subscription fee.

In respect of this latter category, it has been suggested that licensed retailers of electronic equipment for premium content in the UAE are being deprived of up to forty percent (40%) of business because of the proliferation of illegal decoders and satellite dishes with reports of in excess of one million illegal set-top boxes entering the Gulf Cooperation Council region annually.

It is instructive to note that ready access to high-speed internet connections is ubiquitous in the UAE and a largely expatriate population features a broad interest in sporting activity from around the world and consumers highly sensitive to choice content. These factors contribute to make policing the market a difficult task, as identifying targeted content to include niche sporting activities can be difficult and tracking potential multijurisdictional sources of illegal content or hardware can be elusive.

A recent example illustrates the issue. Throughout much of last year beIN Sports, the Qatar-based network and an exclusive rights holder to the EPL in a number of countries in the region, reportedly suffered piracy issues with some of its live transmissions. Saturday afternoon kickoffs were particularly sensitive because of UK blackout rules, so in what was perceived as a measure to pacify the UK rights holders beIN covered only one match per week in that timeslot whereas previously, it had shown all live EPL matches during that timeslot. In addition to significant subscriber complaints about loss of access to content of the other matches in that timeslot, it has been suggested that many fans were galvanised into seeking alternative access, including through pirate broadcasts.

What is the legal position of TV broadcast rights in the UAE?

The UAE Federal Law No. (7) of 2002 Concerning Copyrights and Neighbouring Rights (“Copyright Law”) provides provisions to protect rights holders against TV broadcast piracy. Specifically, Article 19(1) grants broadcasting organisations the economic right to grant licenses for the exploitation of their recordings and broadcasting programmes, while Article 19(2) empowers broadcasters with the right to prohibit unauthorised communication of their programmes or recordings to the public.

The Copyright Law further includes significant penalties for acts in contravention of its provisions, ranging from seizure of works and revenues, to the imposition of fines and even prison terms. Quite apart from these significant provisions, the particular facts of an infringement could also bring the UAE Penal Code into play, particularly where there is a suggestion of theft, intentional misrepresentation for gain, etc.

In addition to the primary statutory tool of the Copyright Law, as an approach in lateral thinking, if a case can be made to suggest content is targeted at consumers in the UAE, then advertising included with the content will be subject to UAE advertising laws. These laws, outlined in the National Media Council Resolution on Advertising Standards, can be interpreted as relatively paternalistic and potentially restrictive taken as against western European counterparts (e.g., with bans on the advertising of gambling, alcohol and tobacco and conservative views on depictions of nudity, male/female interaction, clothing, etc.), and expressly include both Federal Law No. (15) of 1980 Concerning Printing and Publishing (“Publications Law”), which covers all forms of published expression and is broad enough to cover television broadcasting, and Federal Law No. (5) of 2012 on Combating Cyber Crimes (“Cyber-Crimes Law”), which specifically addresses content distribution via the internet.

Where advertisers are readily identifiable and have assets or distribution networks in the UAE, enforcement against them (specifically those purposefully collaborating or the equivalent of “reckless” – as defined in the UAE – as to the scope of use) pursuant to these advertising laws is another option that could be considered. The forms that enforcement action takes – subject to identifying and locating wrongdoers – could range from warnings, to requirements for withdrawal of advertisements, to suspension of operating licenses, to having businesses closed down and assets seized, to claims for damages and, potentially, imposition of fines and/or prison sentences. However, the same difficulties with respect to litigation against other advertisers – as noted below may apply.

Strategies And Countermeasures Against Broadcast Piracy

Stakeholder Cooperative Efforts

An Anti-Piracy Coalition has been formed in the UAE. Leading industry players including OSN and MBC networks amongst others have strengthened the links between the industry and law enforcement and a number of aggressive steps have been taken by the authorities across the UAE to safeguard the sector.

For example, in Abu Dhabi, the Criminal Investigations Department (CID) and the Department of Economic Development have been involved in dozens of raids in hotels and shops. In Sharjah, the Sharjah Economic Development Department has responded to complaints, seizing illegal decoders and shutting down a number of retail shops.

In Ajman, the Department of Economic Development has conducted raids against illegal content providers, destroying illegal set-top boxes and imposing fines. In Dubai, the Department of Economic Development has added its cooperation, noting that broadcast piracy costs the industry more than \$500 million per year. Although in some respects this may seem an unlikely alliance, it should be noted that collective selling and collective purchasing of premium sports rights has been occurring for some time.

Significant strategic cooperation between direct competitors (e.g., as in respect of EPL broadcast rights) can act as a touchstone emphasising that where there is a strong commercial shared interest, cooperation is both prudent and possible. Broadcast piracy is certainly reaching a level that could create a similar imperative, and we are seeing the roots of such cooperation in the UAE.

Consumer Education/Awareness Campaigns

The Dubai Department of Economic Development has used its Commercial Compliance and Consumer Protection sector to engage with the leading pay TV network in the Middle East and North Africa, OSN, to launch an extensive public campaign against TV piracy.

The campaign spans TV, print, radio and online media and emphasises the harm done to the sector, including stunting sector growth and compromising job creation among other goals. This is a key step where some evidence suggests consumers tend to think of TV piracy as a victimless crime.

Addressing the lack of awareness the general consumer may have regarding the costs involved in legally securing rights, the harm done to the economy by piracy and the benefits of safeguarding legitimately traded rights can potentially increase consumer choices. A telephone hotline to report piracy issues as complaints has also been publicised as part of the program.

Product & Delivery modifications

There has been significant speculation in the UAE market that price-point is a crucial determinant of the level of consumer consumption of pirated content; and that lowering the price of legitimate subscriptions (or at least de-coupling or unbundling channel packages to achieve lower prices for more tailored target content) would encourage more consumers to purchase legal access.

Additionally, the introduction of greater access to legal streaming options tailored for the local UAE market and pricing has been suggested as a positive step, which can counter the consumer rationalisation that there is a need to look outside standard options. US company, StarzPlay, recently launched in the UAE and anecdotally appears to be making positive inroads into the consumer market.

Avenues for appropriately licensed screening of content on demand for a fee and allowing consumers to avoid delayed delivery is another option that can remove a temptation or rationalisation for paying for pirate access. Consumers do not like to wait – and experience suggests they are least tolerant of delay when it comes to live sporting events.

Developing Anti-Piracy technology

Some pay TV service providers have systems in place to prevent TV piracy but they cannot always prevent more sophisticated types of piracy with well-designed online sites and highly structured illegal redistribution schemes. Due to greater availability of bandwidth and technology that enables retransmission, high quality content like sports can be viewed illegally, almost instantaneously around the globe with little loss of quality.

Pirates are no longer operating from flea markets and car boot sales or sending runners through the shadows with low quality DVDs. They are becoming adept at promoting and selling illegal content through user friendly websites with advanced programming guides, credit card payment options and season packages that are designed to match traditional broadcast product but do so at a significantly lower price point because the legitimate rights holders are not paid the fees they are entitled to receive.

Investing in better encryption technology is one proactive option. OSN has put significant investment into upgrading its decoder technology in recent years to enhance its set-top box anti-piracy technology. Qatar-based beIN Sports has been reported to have significantly upgraded encryption technology. Also, engaging third party professional pirate hunters is an option that some broadcasters take (and many maintain a similar in-house function).

Litigation

In an ideal scenario, restrictions and prohibitions against abuse of broadcast rights would be clearly set forth in statute and any breaches swiftly enforced by prescribed sanctions. As noted above, UAE law clearly outlines relevant rights and provides a remedy for enforcement against infringement of copyright protection. However, this strategy has its limitations:

- it is after the event, and the damage has already been done;
- the practical requirements for enforcement often prove elusive when trying to identify and locate the infringer before bringing the power of the courts to review and possibly sanction them.

It should, however, be noted that where the wrongdoer is readily identifiable and situated in the UAE, litigation is often the first recourse, as it includes reporting and prosecution – i.e. Government-managed litigation, which is both swift and cost-effective.

Claims will vary depending on the specific facts and the law to be applied; and, pirates can be adept at intellectual property arbitrage or using jurisdictional choices to complicate matters. For example, beyond the shop-front, many purveyors of illegal set-top boxes and related hardware maintain their corporate location in South Asia so without a presence or assets within the UAE, the time and expense involved in bringing a formal claim against a pirate for infringement could be entirely misspent.

This can effectively result in the higher protections afforded by one jurisdiction being undercut by less protective IP regimes in another. There have, however, been some successes. Notably, where the infringement includes a retail presence in the UAE, there is a greater likelihood of enforcement. For example, after a police raid found illegal equipment and services from Indian pay TV operator Dish TV, Abu Dhabi CID recently referred a retailer illegally selling premium services to the Court of First Instance, where a fine, closure of the shop and deportation of the manager was ordered.

Recap

- The UAE is the leading regional market by growth in premium content matched by growth in piracy.
- It has a statutory regime that protects and upholds rights but enforcement is inherently difficult.
- Multi-layered strategies are in place and there is a will to proactively combat piracy for rights holders.
- There is little evidence of negative impact on regional sports development.
- There are excellent beginnings of cooperation between industry/authorities to enforce broadcasters' rights.

Comment

For now, the growth in premium sports consumption in the region continues to outperform global growth. Television has maintained its position as the dominant media platform for consumption despite the rise of online streaming, smart-phone and other device penetration. However, given these legitimate impending challengers, and considerable recent developments in the live mobile streaming space through mobile

apps such as Meerkat and Periscope, TV broadcasters will likely want to increase their efforts to suppress (if not eradicate) illegal challenges to the success of the platform, which is the cornerstone of a thriving industry.

There are those who would suggest that the impact of piracy is overstated and that a certain level of piracy can add to the cultural buzz around an event or a product. It should also be noted that while the impact on the broadcast industry, particularly in terms of revenue generation, reinvestment capability, job security and growth is direct and tangible, there is no reliable data that currently suggests the development of any given sport or sporting event in the UAE is in immediate jeopardy of being discontinued as a direct result of TV broadcast piracy.

The proliferation of illicit websites offering live streaming of most major sporting events does, however, ultimately result in significant amounts of broadcast revenue being siphoned out of the world of sports – potentially threatening the sports sector in the same manner that peer-to-peer websites completely undercut the music business a decade ago.

Piracy is not only becoming more technologically capable but also bolder. Whereas pirates have previously tapped into the feeds of sport content, such as the EPL, from broadcast rights holders in other jurisdictions and then sold it into other markets with foreign commentary teams, they are now offering the same access to target markets at cheaper prices than the legal rights holders as they do not incur the same license fees nor do they need to invest in personnel and production staff where feed is accessed illegally.

Unchecked, the numbers suggest it can only be a matter of time before pirates could force some traditional broadcasters from their markets by compromising their ability to monetise the rights they have paid legitimate license fees for.

Perhaps more concerning for a developing market like the UAE is the spectre of piracy potentially dissuading legitimate rights holders from entering the market for fear of uphill competition against illegal activity. Mohammed Lootah, Executive Director of the Commercial Compliance and Consumer Protection sector at the Department of Economic Development in Dubai stated that broadcast companies incur significant losses when their exclusive broadcast rights are violated, which also impacts the national economy directly and indirectly. Piracy interferes with the growth and development of the TV sector as companies do not receive their rightful share of investments, which in turn denies opportunities for job creation and growth in associated industries.

This deleterious effect would be difficult to quantify but would have a negative economic impact and deprive consumers of competition and choice. A concerted effort of cross-border cooperation between the relevant authorities, a strategy of consumer education, strong anti-piracy rights, enforcement and continued coordinated industry leadership such as has been exhibited in the UAE by the Anti-Piracy Coalition, is a strong step towards tackling this problem.

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