

Sports Video Content in the Mobile Age

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Video content featuring sporting events and sports highlights is increasingly being licensed for viewing on mobile devices such as cell phones, PDAs, and iPods. This article addresses some of the business and legal issues that content providers and wireless carriers should consider when licensing sports video for mobile devices including territory of distribution, sharing revenue streams with existing licensees, and privacy and security issues relating to mobile devices.

Watching sporting events and sports highlights on your television is no longer the only game in town. These days (or in the very near future), sports fans can watch sports on cell phones, PDAs, iPods and their computers, as well as enjoy an increasingly interactive delivery of sports content, from All-Star voting by cell phone to accessing real time scores on PDAs while attending sports tournaments.

While matching sports video and mobile devices may be a great fit, all of this new technology raises a host of new legal issues that content owners and the wireless providers must face, including ensuring that each new licensing deal dove-tails with existing licensing agreements for sports content. This is not always an easy feat, as most sports content is already licensed to television, radio and/or cable broadcasters, as well as Web sites and sports arenas. This article addresses selected business and legal issues in this new and promising area.

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LICENSING IN THE MOBILE SPACE

Licenses for distribution of sports content to mobile devices will typically include a description of the content and how the licensee may use it, the duration of the license, compensation, the licensee's obligation to advertise the content, exclusivity, rights of approval, various copyright and trademark requirements, and various warranties. One thing content providers learned in the beginning of the Internet age is that technological advances and new laws regulating a use of content online cannot always be foreseen. That is why some flexibility in a content license is usually a good idea. To maximize flexibility, the licensee may want the agreement to allow adjustments to be made over time, such as provisions that allow the licensee to increase the amount of content as well as clauses that address under what circumstances the licensor can license content to a competitor. A flexible agreement also defines renewal terms, how to terminate the agreement, and changes in compensation.

As with all licensing deals, the licensee should know exactly what rights it is getting. Some sports content, such as highlights packages with interviews and music or fantasy games, will contain proprietary content and the licensor needs to get the rights to use that content from everyone who has an interest or proprietary right in the work. The licensee also needs to make sure it gets the rights for the uses it wants, such as in advertising and on its own Web site.

Although offering sports video to mobile devices is similar to making it available on the Internet, there are some significant differences. The first is that the wireless carriers control the distribution to the mobile devices; in the Internet space, a content provider can deliver directly to a computer user with Internet access. And, unlike the Internet, wireless carriers are heavily regulated by the Federal Communications Commission, adding another layer of complexity to any wireless deal. So far there are not many regulations specifically targeting distribution of video to mobile devices, but this could change. For example, the FCC has weighed in on text messaging advertisements sent to cell phones, so licensors need to stay up to date on developing regulations and how it may affect the use of sports content.

Another issue relates to technology: differences among wireless devices may mean that it's not feasible to offer all kinds of video content to all devices, requiring content providers and/or the wireless carriers to decide which devices to target. So far, only a small percentage of U.S. consumers have opted for the video-enabled mobile devices, although each year that percentage is likely to increase, especially as the devices themselves offer more applications and become easier to use.

Another major issue in structuring wireless deals relates to geography. Many sports leagues license broadcast rights to local games only in a particular territory and these rights may be exclusive in certain geographical areas and subject to blackout restrictions. Parties in wireless deals need to think about how the distribution of their content to wireless devices—which can be located anywhere the wireless signal is available—will relate to existing licensing agreements. A local television station that already has the rights to broadcast local games, and the advertisers that support such broadcasts, may not welcome the same games being available to cell phone subscribers in the same geographical area. If the sports content providers have existing exclusive broadcast licenses, they may need to negotiate new compensation structures or offer existing rights holders a percentage of revenue streams from the new wireless licenses.

HACKERS AND PRIVACY

Another issue to address in licenses for sports video delivered to mobile devices is protection from illegal copying, hackers, spyware, and viruses. Content providers will seek stringent requirements to minimize illegal copying and sharing of their content, which may compromise a user's ability to access the content. Such users, if they are paying a monthly premium for access to the content, may feel entitled to reimbursement if they are unable to access the content because of copy protection measures. These same users may feel they have a cause of action against someone who provides video content to a wireless device that secretly contains a virus or spyware, so those delivering the content may need to address these possibilities.

Finally, all players in the mobile space need to think about privacy issues. It took several years after content started migrating to the Internet

before state and federal regulators began to impose restrictions on the collection and use of personal information online. And mobile devices are more targeted than the Internet since each mobile device is licensed to a particular subscriber. Although the data collected from mobile devices that are used for viewing video content can be very useful in research and marketing, content providers and licensees need to be sure to include clauses in licenses that address who owns such data and what it can be used for.

CONCLUSION

The new opportunities in the mobile space create new licensing opportunities—and potential pitfalls. Content owners are eager to exploit their content in new media but are also treading carefully in this new arena. Many leagues already provide sports video clips on their own Web sites and license some of the sports video to other companies and affiliates, and it seems likely that delivering sports content to wireless devices will become more popular as more content is available on wireless devices and more devices with sophisticated viewing and interactive applications become available to consumers. Just like a coach has to be able to alter the game plan at half time, content owners and providers in the mobile age may have to scour their legal playbooks to find the right type of agreements for them.