

Testimony of Ed Durso
Executive Vice President, Administration
ESPN, Inc.

Hearing on Piracy of Live Sports Broadcasting over the Internet
Before the Committee on the Judiciary
United States House of Representatives

2141 Rayburn Building
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Mr. Chairman, Ranking Member Smith, thank you for the invitation to appear before you today. My name is Ed Durso and I am Executive Vice President, Administration at ESPN. ESPN is proud to be a leading provider of sports programming. Each year, we invest billions of dollars to produce and distribute tens of thousands of hours of high-quality sports programming, covering more than 65 sports, for distribution around the world via television and a growing array of new media platforms.

I want to begin by thanking this committee for the time and effort it has invested in addressing this important issue and issues related to intellectual property theft generally. As you know, theft of intellectual property is a serious challenge that impacts the livelihoods of millions of Americans, as well as the strength and vitality of some of this nation's most important industries. According to the most recent estimates, nearly 5.6 million workers were employed in 2007 by the core copyright industries, in good jobs that pay workers on average 30 percent more than the national average.¹ In 2006-2007, the same core copyright industries were responsible for nearly one quarter (22.74%) of the total real growth in the U.S. economy, and between 2004 and 2007 they grew at real annual growth rates that were more than double the real growth rate of the U.S. economy as a whole.² But the continued success of these industries, and the ability of creative people to find work in them, is challenged by piracy in many forms. By some estimates, piracy results in more than \$58 billion in lost output and \$16 billion in lost wages each year, and more than 373,000 lost jobs.³

This is serious business. In an economy facing many unprecedented challenges, we cannot afford to let the theft of U.S. intellectual property undermine the vitality of what should be among our most promising creative and economic assets. So I commend you for holding this hearing today to continue examining these challenges, and in particular for your focus on new and emerging forms of copyright infringement on the Internet.

The subject of this hearing is important and we are here because live sports is not immune from the scourge of piracy. Whatever features may have in the past distinguished live sports from other forms of content in terms of its susceptibility to online infringement are being

¹ STEPHEN E. SIWEK, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2003-2007 REPORT 13 (2009) (available at <http://www.iipa.com>).

² *Id.* at 12.

³ STEPHEN E. SIWEK, THE TRUE COST OF COPYRIGHT INDUSTRY PIRACY TO THE U.S. ECONOMY 11-13 (2007) (available at <http://www.ipi.org>).

rendered increasingly irrelevant by new technological means for misappropriating linear programming.

As you will see today, there exist an increasing number of Internet sites that enable the theft of live sports programming. Sites like JustinTV, UstreamTV, LiveStream, TVU, channelsurfing.net, adthe.net, Sopcast, TVAnts, and myp2p.eu, for example, regularly make available real time streaming of live sports programming, uploaded we believe either directly or by the users of these sites. And the quality of these sites is improving to the point that programming can be streamed in a form that is almost on par with that accessed through legitimate distribution channels. It is important to note that this is not a problem limited to live sports, or even sports programming generally. These same sites also make available real-time streaming of every other form of television and new media programming. Thus it is an issue that affects the global media sector and its related industries.

To give you a sense of some of the challenges from ESPN's perspective, several of ESPN's cable networks, including ESPN, ESPN2, and ESPN Deportes are regularly available for streaming, around the clock and in real-time, on many of these sites. It is not uncommon to find other ESPN channels, like ESPNEWS or ESPNU, available on these same sites as well. ESPN invests substantial resources to purchase, create and distribute this programming, all of which appears routinely on these streaming sites without authorization and without compensation.

In addition, programming we now make available through our new media offerings is also misappropriated and retransmitted on these sites. ESPN has been a pioneer in expanding legitimate access to live sporting events through broadband-enabled services. ESPN360.com is our signature 24/7 broadband sports network, providing streaming access to more than 3,500 live domestic and international sports events each year. Online coverage is provided from a broad range of sports, including the NBA, college football and basketball, NASCAR, international cricket, the Canadian Football League, major golf and tennis events, including the Masters and the US Open, Wimbledon, the French Open, the Australian Open and the WTA Tour, as well as international soccer and basketball. Through the investments we have made in both technology and programming, these sporting events are now available via ESPN360.com to nearly 50 million households through 110 ESPN-affiliated Internet service providers. The same sporting events are also available to U.S. college students and U.S.-based military personnel via campus and military broadband networks.

These efforts have yielded tremendous benefits for consumers. Many of the households served by ESPN360.com would not have legitimate access to these events but for our programming investment. Yet at the same time that ESPN360.com is providing legitimate online access to these sporting events, we face the challenge of many of the same events appearing without authorization on these streaming sites. For example, approximately one-third of ESPN360.com content is made up of international sporting events. In some cases, ESPN has negotiated for and obtained the exclusive right to distribute these events on ESPN360.com in the U.S. in the same way we do for much of our programming on our linear networks. But these same events are generally telecast live outside the U.S. by another entity that has negotiated for those rights. It is not uncommon to see these telecasts misappropriated and simultaneously retransmitted to viewers worldwide on these streaming sites. Similarly, ESPN360.com offers

more than 50 exclusive college football and basketball games for online streaming, many of which also end up being retransmitted simultaneously and without authorization on rogue Internet streaming sites.

It is important to understand that this is a problem that is both relatively nascent and one that is international in scope and impact. In fact, the United States Trade Representative identified the unauthorized retransmission of live sports programming as an increasing international problem in its 2008 and 2009 Special 301 Reports.⁴ It is also an issue that affects a range of entities inside and outside the sports industry. ESPN, like all of these entities, is very focused on how it can be combated most effectively.

It is not entirely clear how real-time streaming piracy via these sites occurs in every case. We believe it happens, in part, by streaming pirates capturing the output of a television or set-top box to a computer, which can be easily done with consumer-grade equipment, and simultaneously encoding and uploading the programming stream to Internet streaming sites using peer-to-peer streaming application technology or otherwise. We believe in other cases, these infringing streams originate with streaming pirates who hack the authorized Internet streams of international rightsholders. And in some cases it may be as simple as pointing a camcorder at a television or computer screen to capture the programming, encode it, and upload it to these sites.

Part of the challenge is also the international dimension of the problem. We know that in many cases, these streaming sites set up overseas, particularly in Asia, where these sites can take advantage of massive broadband capacity, legal uncertainty, and lax enforcement. In some cases we believe these sites themselves upload and stream misappropriated programming directly. In others, they rely on users of their platforms to supply the content they stream, including through peer-to-peer streaming upload applications.

In terms of the overall scope of the problem, it is not hard to see how the widespread, unauthorized, and uncompensated availability on rogue streaming sites of the content that ESPN and others pay to produce and distribute would undermine the ability to invest in and provide this

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“The increased availability of broadband Internet connections around the world has made the Internet an extremely efficient vehicle for disseminating pirated products. Internet piracy is a significant concern in a number of countries, including Canada, China, Sweden, Spain, and Russia, among others. In addition, unauthorized retransmission of live sports telecasts over the Internet is reportedly becoming an increasing problem internationally, particularly in China.”

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2008 SPECIAL 301 REPORT 10 (2008) (available at http://www.ustr.gov/sites/default/files/asset_upload_file553_14869.pdf).

“Unauthorized retransmission of live sports telecasts over the Internet continues to be a problem in many countries, particularly in China.”

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2008 SPECIAL 301 REPORT 10 (2008) (available at <http://www.ustr.gov/sites/default/files/Full%20Version%20of%20the%202009%20SPECIAL%20301%20REPORT.pdf>).

high quality content. This is why ESPN has joined with sports organizations, entertainment companies, broadcasters and telecasters, and related trade associations in the Coalition Against Online Video Piracy.⁵ Through the Coalition we are able to share information and resources to understand the scope of the problem and its effects, as well as to develop strategies to deal with it.

I would also note that in some respects what we are experiencing with respect to these Internet streaming sites is not unlike what we experienced when user generated content (“UGC”) sites first came online several years ago. In that case, we saw a new, user-driven media platform emerge with interesting possibilities for promoting the creation and distribution of wholly-legitimate, user-generated original content. But we also saw that legitimate potential completely overtaken by massive piracy in the form of wholly-illegitimate distribution of non-user generated content belonging to others. At the same time, many of these UGC sites maintained that they were not interested in being a platform for infringing distribution, and that their interest was solely in providing a platform for legitimate distribution of user-generated original content.

ESPN’s parent company, The Walt Disney Company, was one of several leading content providers and UGC services that undertook an effort to forge a set of principles to foster an online environment that both promotes the potential and benefits of UGC services and protects the rights of copyright owners in the UGC environment. The result was an agreement on a set of Principles for User Generated Content Services (see <http://www.ugeprinciples.com>), under which these UGC services and content owners agreed to cooperate to implement a range of measures that were both commercially reasonable and effective, with the goal of eliminating infringement from these UGC services, and to do so in a way that accommodates the legitimate interests of the users of these services. Among other things, these measures include pre-upload filtering, notice-and-takedown, enhanced search and identification tools for rightsholders, and removal of links to sites the services determine are clearly dedicated to and predominantly used for the dissemination of infringing content or its facilitation. The result has been highly favorable, as we have seen infringement on these sites drop dramatically upon implementation of these principles with the corresponding emergence of these sites as a source of legitimate content to meet consumer demand. What the UGC Principles demonstrated is that significant progress can be made in reducing piracy through voluntary action by platforms and sites that are truly committed to that end.

Today we find ourselves in a similar position with respect to real-time streaming sites. We see new user-driven media distribution platforms with interesting possibilities for promoting legitimate, user-generated activity, but we also find those possibilities to be overrun by widespread piracy. It is too early to tell whether the measures embodied in the UGC Principles, alone or in combination, would be effective or sufficient in addressing piracy on the live streaming sites we are examining today. But it is intuitive that where we started with the UGC Principles is where we ought to look to start here.

At the heart of the UGC Principles is a set of shared objectives that include “the elimination of infringing content on UGC services” and “the encouragement of uploads of wholly original and authorized user-generated audio and video content.” What followed is a set

⁵ See <http://web.caovp.com>.

of principles designed specifically to achieve those objectives, including through the implementation of those technical and other mechanisms that are both commercially reasonable and effective in achieving the objective of eliminating infringement on these sites. Those principles further recognize that what is effective in achieving this objective may change over time, in light of advances in technology, changes in patterns of infringement, changes in users' online activities, and other circumstances.

Experience over time will shed light on what solutions are available and effective to combat piracy in this new real-time streaming environment. As a starting point, however, those sites that state their commitment to promoting a legitimate, user- and creator-friendly environment for the streaming of original content should begin by embracing the objective of eliminating infringement on their sites. Those same sites should then undertake to implement those mechanisms – including, but not limited to, technological mechanisms – that are both commercially reasonable and effective in achieving the goal of eliminating infringement on their sites. That commitment is important not only to protect the rights of creators and legitimate distributors of creative content, but it is also key to driving the development of a robust, trusted and content rich streaming environment to which mainstream consumers will flock.

Mr. Chairman, in closing I want to thank you again for your attention to this issue. While it is still a nascent problem, it is one that has potentially significant consequences in terms of its impact on long-term investment in high-quality programming and legitimate distribution media. We look forward to working with you and your staff as you continue your examination into real-time streaming piracy and other new and emerging issues involving the theft of intellectual property.

Thank you again for inviting me to appear before you.