

STATEMENT OF MICHAEL J. MELLIS,
SENIOR VICE PRESIDENT AND GENERAL COUNSEL, MLB ADVANCED MEDIA
BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF REPRESENTATIVES, 111TH CONGRESS, 1ST SESSION
DECEMBER 16, 2009

Hearing on Piracy of Live Sports Broadcasting Over the Internet

Chairman Conyers, Ranking Member Smith and distinguished members of the Committee, on behalf of Major League Baseball, I would like to thank you for the privilege of addressing you this morning. My name is Mike Mellis and I am Senior Vice President and General Counsel of MLB Advanced Media, which is MLB's Internet and interactive media company.

Under the leadership of Commissioner Allan H. Selig, MLB has developed highly successful, diverse and innovative sports media businesses. On television, game telecasts are distributed nationally through DirecTV, ESPN, Fox, inDemand, the MLB Network, TBS and Verizon; locally through broadcast television stations and regional sports networks; and internationally, to over 200 countries and territories and the U.S. Armed Forces overseas. On the Internet, MLB has also been a pioneer in distributing live sports. MLB.com's first live game webcast occurred in 2002, an innovation to better serve our fans in the pioneering tradition of the first radio broadcast of a game in 1921 and the first television broadcast in 1939. Today, MLB.TV is the world's most successful and comprehensive live video service on the Internet, distributing thousands of games each season to a global audience of baseball fans on personal computers and iPhones.

Clearly, rights owners like MLB can be adversely impacted by telecast piracy. And right now there is an emerging type: unauthorized streaming over the Internet of live television programming of all types, including live sports telecasts and related programming.¹

The process starts by plugging a cable or satellite television line into a personal computer connected to the Internet. A TV tuner card or stick with accompanying software allows the computer to capture the television signals and function like a TV. These cards and sticks cost less than \$100 each and are widely available. Next, with the help of a free streaming over peer-to-peer service² (“p2p”) software download or other enabling technology, the signals are uploaded onto the public Internet for worldwide viewing.

The number of sites and services involved in this phenomenon is significant and has grown rapidly.³ They are believed to be located in many nations including the People’s Republic of China, the Republic of Korea, Sweden and the United States.⁴ Many are open doors,

¹ See e.g., Organisation for Economic Co-operation and Development, *Case Study: The Sports Rights Owners Sector*, in *Piracy of Digital Content* at 87-115 (2009) [hereinafter OECD]; Michael J. Mellis, *Internet Piracy of Live Sports Telecasts*, 18 Marq. Sports L. Rev. 259-284 (2008) [hereinafter Mellis].

² Streaming over peer-to-peer networks involves media streams being passed (in real-time) through the Internet among network participants, rather than from a central server to an end user. See OECD, *supra* note 1 at 29 (“...recent technological developments also permit P2P networks to also be used for the unauthorised distribution of live broadcasts of sports events, which has become a significant threat for the sports broadcasting industry....”).

³ See OECD, *supra* note 1, at 106-112 for specific industry examples about the number of sites and services involved in the piracy.

⁴ MLB Advanced Media Comments, Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974, USTR-2009-0001-0037, at 2 (Feb. 19, 2009) *available at* <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064808bc81b> [hereinafter MLB Advanced Media Comments]. These comments were submitted on behalf of the Sports Coalition, which consists of the following amateur and professional sports leagues, associations and related entities: MLB; MLB Advanced Media; National Basketball Association; National Collegiate Athletic Association; National Football League; and NHL Enterprises, L.P. (the licensing arm of the National Hockey League).

permitting any type of television programming to be streamed live, persistently and globally, without authorization from copyright owners. Some stream dozens of television networks at a time. For example, one industry association recently described pirate services based in China as responsible for streaming “entire bouquets of pay-TV channels” including the Cartoon Network, CNN, Discovery Channel, Disney Channel, ESPN and HBO.⁵ Many parse out programming into genre or game-specific “channels.”

This poses a threat to the global televised media sector. Although there is much that remains unknown about this problem, particularly with respect to its offshore aspects, it is clear that on an annual basis, tens of thousands of hours of live television programming from networks around the world are being pirated. Included is significant piracy of live sports telecasts and related programming of the world’s premier sports organizations. For example, earlier this year, MLB, NBA, NCAA, NFL and NHL informed the Office of the U.S. Trade Representative (“USTR”) that a hub of online television piracy called “TVAnts,” based in China, was pirating nearly every one of their live event telecasts and profiting from it by selling advertising on the TVAnts media player.⁶

In our rights enforcement efforts throughout the past several years, during which we have identified and logged thousands of piracy incidents, the dominant pattern we have seen is piracy occurring through p2p services based in China, a nation on the USTR’s “Priority Watch List” because of its intellectual property rights protection and enforcement problems.⁷ Late last year,

⁵ Cable & Satellite Broadcasting Association of Asia Comments, Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974, USTR-2009-0001-0013.1 (Feb. 17, 2009) *available at* <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=090000648085bcea>.

⁶ MLB Advanced Media Comments, *supra* note 4, at 3-4.

⁷ Office of U.S. Trade Rep., 2009 Special 301 Report at 13-15 (Apr. 30, 2009) *available at* <http://www.ustr.gov/about-us/press-office/reports-and-publications/2009/2009-special-301-report> [hereinafter USTR] (“[o]f particular concern is the rise of Internet piracy in China, especially given its emergence as a leading nation in terms of the number of Internet, broadband

we observed a newer pattern of piracy involving live streaming user-generated content sites, sometimes called “lifecasting” sites, most of which are located in the U.S.

We have also seen that when operators of sites and services decide to take affirmative steps to prevent or block unauthorized streaming, the piracy can be substantially mitigated. These steps can include: clear warnings against service misuse; account termination for violators; prevention through screening (including the possibility of real-time content filtering); and cooperation with copyright owners, including immediate take-down of unauthorized streams upon notice.

Our copyright law is clear: the piracy is copyright infringement.⁸ However, domestic copyright litigation is a remedial tool available only in limited circumstances. This is because the piracy is a global phenomenon, often involving sites and services that operate entirely offshore, outside the effective reach of our courts. Pirates take advantage of the borderless Internet and readily available technologies to distribute streams worldwide. To illustrate this point: approximately 75% of the pirated retransmissions of our game telecasts have occurred through sites and services located offshore, and approximately 50% through sites and services located in China.

Under these circumstances, the remedial steps available to the U.S. private sector are limited. We therefore believe that coordinated initiatives are needed to arrive at enduring solutions, and are encouraged by several already underway. One private sector initiative is the Coalition Against Online Video Piracy, a forum through which more than fifty worldwide sports and mobile device users. Strong action to curb trademark counterfeiting and copyright piracy on the Internet is critical to the future of IPR [intellectual property rights] protection in China.”).

⁸ See *Twentieth Century Fox Film Corp. v. iCraveTV*, 2000 U.S. Dist. LEXIS 11670 (W.D. Pa. Feb. 8, 2000); cf. Register of Copyrights, Satellite Home Viewer Extension and Reauthorization Act Section 109 Report at p. xii, 181-189 (June 2008), available at <http://www.copyright.gov/reports/section109-final-report.pdf> (retransmissions of television programming over the Internet require licenses from copyright owners).

organizations (including MLB), entertainment companies, telecasters and trade associations share information, resources, experiences and strategies.⁹ One private-public sector initiative is the ongoing dialogue that MLB, NBA, NCAA, NFL and NHL have with USTR. USTR should be commended for its early identification of this matter as an international intellectual property rights protection and enforcement issue in its 2008 and 2009 Special 301 Reports to Congress.¹⁰

We also believe that international cooperation about this problem must be improved. Most nations are both exporters and importers of television programming. So we see common ground – both in terms of shared economic interests and legal obligations – for the U.S. and the nations with which it engages in international trade to work cooperatively to stop Internet-based television piracy. We therefore recommend that Congress and the Administration give this matter priority in our nation’s ongoing efforts to improve intellectual property rights protection and enforcement on a worldwide basis.

In conclusion, this emerging breed of piracy is international in scope and has demonstrated growth characteristics. The threat it poses to the U.S. televised media sector must be taken seriously. We believe it is prudent to move proactively against this threat now, and commend this Committee for shining a spotlight on it today through this hearing.

⁹ See <http://web.caovp.com>.

¹⁰ Office of U.S. Trade Rep., 2008 Special 301 Report at 10 *available at* <http://www.ustr.gov/about-us/press-office/reports-and-publications/archives/2008/2008-special-301-report> (“[u]nauthorized retransmission of live sports telecasts over the Internet is reportedly becoming an increasing problem internationally, particularly in China”); USTR, *supra* note 8, at 5 (“[u]nauthorized retransmission of live sports telecasts over the Internet continues to be a problem in many countries, particularly in China”). Another initiative involved the U.S. Copyright Office and Patent and Trademark Office in connection with their representation of the U.S. at the World Intellectual Property Organization’s (“WIPO”) discussions about a proposed Treaty for the Protection of Broadcasting Organizations. The U.S. delegation should be commended for specifically identifying the matter of Internet piracy of television programming (in its June, 19 2007 statement during a WIPO Standing Committee for Copyright and Related Rights session) as one that could be addressed in an appropriately crafted treaty. See Mellis, *supra* note 1, at 276.

As we develop more experience in this area, we look forward to the opportunity to make additional recommendations to you. Once again, thank you very much for your interest in this matter and the privilege of addressing you this morning.