

ESPN STAR SPORTS

SUBMISSION OF COMMENTS

**CONTENT PROTECTION REQUIREMENTS IN SUPPORT OF THE
CROSS CARRIAGE MEASURE IN THE PAY TV MARKET**

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1. SUMMARY OF MAJOR POINTS

While the proposed guidelines in respect of minimum content protection security requirements (“Proposed Guidelines”) provide some protection in respect of head-end security, content protection delivery system security and set top box security, the guidelines fail to cater for field tested and robust measures, such as covert and overt fingerprinting, that have been successfully used in the battle against online signal piracy for high value live broadcasts.

2. STATEMENT OF INTEREST

With its headquarters in Singapore, ESPN STAR Sports (ESS) is a 50/50 joint venture between two of the world’s leading cable and satellite broadcasters. As Asia’s definitive and complete sports broadcaster and content provider, ESS combines the strengths and resources of its parent companies – Walt Disney Company (ESPN, Inc.) and News Corporation Limited – to deliver a diverse array of international sports to viewers via its encrypted pay services.

ESS is a major supplier of sports entertainment and information and content to consumers in Singapore and the region. We have made significant investments in Singapore and employ substantial numbers of Singaporeans, in keeping with the expressed goal of the country playing a role as an Asian content production hub. We have been an active participant in the Singapore media industry since our formation 14 years ago and maintain a cooperative working relationship with the Ministry of Information, Communication and the Arts and the various regulatory authorities with responsibility for market issues related to the Singapore pay TV market.

We have brought a variety of premium sports content into the homes of Singaporeans over the years through our services ESPN, STAR Sports, STAR Cricket, ESPN HD, ESPNEWS and ESPN Player including football (e.g. Barclays Premier League, the UEFA Champions League, the FA Cup and England home matches, and major Asian Football Confederation events), cricket (e.g. ICC), basketball (e.g. the NBA), baseball (e.g. MLB), tennis (e.g. Wimbledon and the Australian Open), golf (e.g. the Masters, Open Championship, the US Open and the One Asia Tour), motorsports (e.g. F1 and the MotoGP), snooker and billiards (e.g. World Pool Championship) and the Olympics (e.g. Vancouver 2010). Next year we will be showcasing the London 2012 games.

We are also a leading producer of original sports programming in the region. ESS produces over 3,600 hours of high quality original programming per year around football, cricket, and motorsports as well as our flagship sports news shows SPORTSCENTER and SCORE TONIGHT.

3. COMMENTS

The Consultation Paper on Content Protection provides an indication of the enormous complexities involved in administering and operating a mandatory “cross-carriage” system, where flows of content are determined by regulatory mandate rather than market negotiations.

The paper covers many issues related to content protection relevant to the protection of recorded content, but a large amount of high-value television content is transmitted on a live, real-time basis. This is particularly true of live sporting events. Such programming is necessarily transmitted almost instantaneously on all authorized platforms. It is also pirated live, as it has most value to the piracy industry if the pirates can provide consumers with a real-time viewing experience.

This means that content protection measures for such programming must be effective in real-time. Where, as is contemplated under mandated cross-carriage, the content rights-holder has no contractual relationship with the Receiving Qualified Licensee (RQL), the rights-holder will not have the ability, on its own, to enforce fingerprinting requirements suitable for the value and immediacy of the content. The rights-holder will also not be in a position to ensure that the RQL takes real-time remedial action if its network or its subscribers are found to be the source of pirate program streams.

It is essential, if high-value programming is to be passed to (one or more) RQLs, that each RQL is required to take immediate and effective action to close down program streams being used to feed unauthorized redistribution, whether via the Internet or by other means. The regulations must include such an obligation, and must also include provisions for creation of the necessary structures and procedures (e.g. responsible RQL officials who can be real-time points of contact for remedial action). We have learnt from other jurisdictions that close cooperation is required in order to ensure that timely action is taken in deploying countermeasures, in order to shut down identified streams of theft, particularly for popular live sporting events.

Although there are references to transactional forensic watermarks in the Proposed Guidelines, it should be clarified that where required by a rights-holder of an SQL, the RQL is obliged to implement fingerprinting and respond to any requests of the rights-holder to shut down illegal streams. We would be pleased to provide further information regarding industry practices in other jurisdictions, but in the meantime the requirements in publicly available Reference Interconnect Offers published by sports broadcasters in India provide a useful example.

The regulations must also incorporate requirements for RQLs to be responsive to changing requirements, as industry practices and technologies are constantly evolving. Given the rapidly-evolving nature of practices in our industry (and in the pirate industry), the provision of a 3-year review cycle is simply too long, even if the draft does foresee earlier review in light of technological developments. We submit that additionally, a review should be initiated as soon as any of the involved parties (rights-holder, RQL or SQL) requests a review, where there had been a breach with respect to cross-carried content.

4. CONCLUSION

In light of the disconnect between the rights-holder and the RQL, it is necessary for the MDA to mandate minimum protections that can be relied on by a rights-holder seeking to deploy counter-measures in respect of online piracy of high-value live events. The Proposed Guidelines currently provide insufficient protections for rights-holders and we urge the MDA to address that concern by prescribing a minimum degree of cooperation in respect of online piracy.