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# INTERNET PIRACY OF SPORTS BROADCASTS: FINDING THE SOLUTION IN THE UNITED KINGDOM AND UNITED STATES

ANTWAYNE ROBERTSON\*

## I. INTRODUCTION

Piracy of sports broadcasts over the Internet has been problematic for professional sports organizations for well over a decade.<sup>1</sup> Websites that host pirated material are easily accessible to users all over the world and, in most cases, offer content for free. These factors make the possibility of watching streamed sports events much more appealing to fans. As Congressman Lamar Smith stated, “[W]hy buy the cow if you can get the milk for free? Why pay [for] the sporting event when you can watch it on line for free?”<sup>2</sup> This piracy issue is not unique to the United States (U.S.); it is a problem for sports organizations worldwide. This Article will examine how the U.S. has attempted to deal with the growing problem of Internet piracy of sports broadcasts, in comparison to how members of the European Union (EU), specifically the United Kingdom (U.K.), have attempted to address the issue.

Part II of this Article will briefly discuss the history and background of sports broadcast pirating. Part III will analyze the relevant sections of the copyright acts of the U.S. and U.K. Part IV will discuss the litigation that has en-

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1. See generally Joe Flint & Mark Heinzl, *U.S. Federal Judge Orders iCraveTV.com Closed Down*, WALL ST. J., <http://online.wsj.com/news/articles/SB949276807741121485?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB949276807741121485.html> (last updated Jan. 31, 2000); see also *Twentieth Century Fox Film Corp. v. iCraveTV*, 2000 WL 255989, at \*2 (W.D. Pa. Feb. 8, 2000).

2. *Piracy of Live Sports Broadcasting over the Internet: Hearing Before the H. Comm. on the Judiciary*, 111th Cong. 2 (2009) [hereinafter *Piracy of Live Sports Broadcasting*] (statement of Rep. Lamar Smith, Ranking Member, Comm. on the Judiciary), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111hrg54075/html/CHRG-111hrg54075.htm>.

sued in attempt to fight the piracy problem, including how the courts have handled the issue of jurisdiction and extraterritoriality—first focusing on the U.S., then examining the U.K.'s methods. Part V will compare the approaches of both nations. Part VI will discuss the effects and future implications of each approach.

## II. A BRIEF HISTORY OF SPORTS BROADCAST PIRATING

Internet piracy of television broadcasts has exploded in the past decade. By 2005, television broadcast piracy over the Internet was gaining the attention of the press, and the sources of the pirate websites were identified as being far outside of the U.S.<sup>3</sup> The amount of content available on these websites has increased as more sophisticated and accessible technology has become available to pirate websites, and maintaining the websites and expanding content is not costly.<sup>4</sup> The field of sports was not spared from this increase in piracy activity.<sup>5</sup> As sports organizations and their affiliated cable networks began to promote content outside of basic television (such as ESPN, NFL Network, MLB Network, and NBA TV), fans sought cheaper alternatives to watch their favorite teams.<sup>6</sup> The pirate websites cannot openly advertise themselves through normal means due to the illegal nature of their activities, so one of the main marketing approaches has been through word of mouth among the sports fans in online communities, usually through message boards or blogs.<sup>7</sup> While watching sports for free on a pirate website may seem appealing to the average sports fan, he or she may not consider the potential consequences of watching an illegal broadcast.

Pirating live sports broadcasts constitutes copyright infringement and negatively affects the holders of that copyright.<sup>8</sup> The exclusive right conferred to these copyright holders is incredibly valuable, especially in the sports context, where potentially more than half of any given sports organization's revenue

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3. Michael J. Mellis, *Internet Piracy of Live Sports Telecasts*, 18 MARQ. SPORTS L. REV. 259, 261 (2008).

4. *See id.* at 263–64.

5. *See id.* at 261–62.

6. *See id.* at 263.

7. *See id.*

8. *Piracy of Live Sports Broadcasting*, *supra* note 2, at 2 (statement of Rep. Henry C. Johnson, Jr., Member, Comm. on the Judiciary); *see, e.g.*, *Twentieth Century Fox Film Corp. v. iCraveTV*, 2000 WL 255989, at \*7–8; *Football Ass'n Premier League Ltd. v. British Sky Broad. Ltd.*, [2013] EWHC (Ch) 2058, [47] (Eng.).

comes from “exclusive television deals, Pay Per View sales, and licensed Internet distribution.”<sup>9</sup> Sports organizations must fight to prevent the illegal retransmission of their broadcasts. These legal battles to protect the copyrights are not free, however, and the costs of those battles, in addition to the cost of lost viewership, are then passed down to fans of the sports.<sup>10</sup>

### III. AN OVERVIEW OF COPYRIGHT LAW IN THE UNITED KINGDOM AND THE UNITED STATES

Copyrights allow authors to protect their works from being appropriated without permission.<sup>11</sup> The policy behind this set of laws is to promote creativity and expression by allowing authors to receive consideration for the effort they have put into their intellectual property.<sup>12</sup> As stated earlier, the value of owning a valid copyright is very high for sports organizations; the copyright laws of the land help protect the leagues’ financial interests.<sup>13</sup> The U.S. and U.K. each have their own set of copyright laws, which have several key similarities that will be discussed below.

#### A. *The United States’ Copyright Act of 1976*

A copyright owner receives exclusive rights under Section 106 of the Copyright Act of 1976.<sup>14</sup> Sports organizations should be primarily concerned with the exclusive rights conferred by paragraphs (1), (3), (4), and (5).<sup>15</sup> Those paragraphs provide the following rights:

- (1) to reproduce the copyrighted work in copies . . . ;
- . . . .
- (3) to distribute copies . . . of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

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9. *Piracy of Live Sports Broadcasting*, *supra* note 2, at 2 (statement of Rep. Lamar Smith, Ranking Member, Comm. on the Judiciary).

10. *Id.* (statement of Rep. Lamar Smith, Ranking Member, Comm. on the Judiciary).

11. *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984).

12. *Id.*

13. *Piracy of Live Sports Broadcasting*, *supra* note 2, at 2–3 (statements of Rep. Lamar Smith, Ranking Member, Comm. on the Judiciary, and Rep. Henry C. Johnson, Jr., Member, Comm. on the Judiciary).

14. 17 U.S.C. § 106 (2012).

15. 17 U.S.C. §§ 106(1), (3)–(5).

(4) in the case of . . . audiovisual works, to perform the copyrighted work publicly;

(5) in the case of . . . audiovisual work, to display the copyrighted work publicly[.]<sup>16</sup>

To sports organizations, these are the most significant of the exclusive rights because each of these paragraphs implicates sports broadcasts. These rights add tremendous value to the broadcasts.<sup>17</sup> When one of these rights is violated, a copyright infringement lawsuit can be initiated.<sup>18</sup>

In a copyright infringement suit, a plaintiff must prove that (1) the plaintiff holds a valid copyright and (2) infringement of the copyright occurred.<sup>19</sup> Registration with the U.S. Copyright Office is *prima facie* evidence of the validity of the copyright.<sup>20</sup> To register a work, an application must be filled out and submitted, along with a “deposit” of the work,<sup>21</sup> to the U.S. Copyright Office.<sup>22</sup> In almost all cases, a sports organization will have the copyrights to its broadcasts registered.<sup>23</sup> To prove that infringement occurred, the organizations must prove that one of their exclusive rights has been violated. Internet piracy of sports broadcasts most strongly implicates the fourth exclusive right: public performance.

Public performance is defined by the Copyright Act of 1976 (U.S. Copyright Act) as the right

to transmit or otherwise communicate a performance . . . of the work . . . to the public, by means of any device or process, whether the members of the public capable of receiving the performance . . . receive it in the same place or in separate places and at the same time or at different times.<sup>24</sup>

This right encompasses a sports organization’s ability to exclusively broadcast

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16. *Id.*

17. *Piracy of Live Sports Broadcasting*, *supra* note 2, at 2–3 (statement of Rep. Henry C. Johnson, Jr., Member, Comm. on the Judiciary).

18. *See* 17 U.S.C. § 501(b) (2012).

19. *See id.*

20. 17 U.S.C. § 40 (2012).

21. 17 U.S.C. § 408 (a)–(b) (2012).

22. *See Registering a Work*, U.S. COPYRIGHT OFF., <http://www.copyright.gov/help/faq/faq-register.html> (last visited May 8, 2015).

23. If a work is not registered, potential remedies are more limited. *See* 17 U.S.C. §§ 411–12 (2012).

24. 17 U.S.C. § 101 (2012).

games to the public.<sup>25</sup> The definition of what constitutes a public performance has broadened over time,<sup>26</sup> and courts have not hesitated to interpret the definition broadly to combat the Internet piracy of sporting events.<sup>27</sup> The U.K. statute regarding communications to the public has been applied similarly.<sup>28</sup>

### *B. The United Kingdom's Copyright, Designs and Patent Act 1988*

The U.K. is a member of the EU<sup>29</sup> and, thus, is subject to the directives that are passed down by the European Parliament.<sup>30</sup> Once a directive is announced, the member states generally have a deadline for adopting the directive into their own national law.<sup>31</sup> This is called “transposition.”<sup>32</sup> The directives have no direct power until a member state actually adopts the proposed legislation,<sup>33</sup> much like treaties in the U.S.<sup>34</sup> The Information Society Directive (ISD) is one such directive and was adopted by the EU to implement related treaties that were passed by the World Intellectual Property Office (WIPO) across its member states.<sup>35</sup> The ISD was passed in May 2001, and the member states had until December 22, 2002, to implement the provisions.<sup>36</sup> Member states that did not comply were subject to discipline by the European Court of Justice (ECJ).<sup>37</sup>

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25. Michael M. Fenwick, Comment, *Football's Intellectual Side: The NFL Versus Super Bowl Parties and the Story of the Fifty-Five Inch Television*, 4 J. MARSHALL REV. INTELL. PROP. L. 125, 135 (2004).

26. *Id.* at 134–37.

27. See, e.g., *Twentieth Century Fox Film Corp. v. iCraveTV*, No. Civ. A. 00-121, Civ. A., 2000 WL 255989, at \*7–8 (W.D. Pa. Feb. 8, 2000); see generally *Nat'l Football League v. PrimeTime 24 Joint Venture*, 211 F.3d 10, 12 (2d Cir. 2000).

28. See, e.g., *Football Ass'n Premier League Ltd. v. British Sky Broad. Ltd.*, [2013] EWHC (Ch) 2058, [29] (Eng.); *Union des Ass'ns Europeennes de Football v. Briscoe*, [2006] EWHC (Ch) 1268 (Eng.).

29. *United Kingdom in the EU*, EUROPEAN UNION, [http://europa.eu/about-eu/countries/member-countries/unitedkingdom/index\\_en.htm](http://europa.eu/about-eu/countries/member-countries/unitedkingdom/index_en.htm) (last updated Mar. 3, 2015).

30. See *Decision-Making*, EUROPEAN COMM'N, [http://ec.europa.eu/atwork/decision-making/index\\_en.htm](http://ec.europa.eu/atwork/decision-making/index_en.htm) (last updated Nov. 10, 2014).

31. *Monitoring Implementation of EU Directives*, EUROPEAN COMM'N, [http://ec.europa.eu/atwork/applying-eu-law/implementation-monitoring/index\\_en.htm](http://ec.europa.eu/atwork/applying-eu-law/implementation-monitoring/index_en.htm) (last updated Dec. 9, 2014).

32. *Id.*

33. *Id.*

34. *Treaties*, U.S. SENATE, [http://www.senate.gov/pagelayout/legislative/d\\_three\\_sections\\_with\\_teasers/treaties.htm](http://www.senate.gov/pagelayout/legislative/d_three_sections_with_teasers/treaties.htm) (last visited May 8, 2015).

35. Daniel J. Gervais, *Transmissions of Music on the Internet: An Analysis of the Copyright Laws of Canada, France, Germany, Japan, the United Kingdom, and the United States*, 34 VAND. J. TRANSNAT'L L. 1363, 1403 (2001).

36. *Implementation of the Directive 2001/29/EC of the European Parliament and the Council of 22 May 2001 on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society*, AEPO-ARTIS, [http://www.aepo-artis.org/pages/59\\_1.html](http://www.aepo-artis.org/pages/59_1.html) (last visited May 8, 2015).

37. *Id.*

Article 3 of the ISD addresses copyright owners' exclusive rights to communicate their works publicly.<sup>38</sup> Three parts of Article 3 are relevant to Internet piracy. First, paragraph (1) states that member nations shall grant their authors the exclusive right to prohibit the communication of their works to the public.<sup>39</sup> Next, paragraph (2) states that member nations shall grant their authors the exclusive right to authorize or prohibit making their work available to the public.<sup>40</sup> Lastly, paragraph (2)(d) grants this privilege to authors of broadcasts, "whether these broadcasts are transmitted by wire or over the air, including by cable or satellite."<sup>41</sup>

In the U.K., Section 20 of the Copyright, Designs, and Patent Act of 1988 implemented Article 3 of the ISD.<sup>42</sup> Section 20 can be found under the "Acts Restricted by Copyright" part of Chapter II of the Act.<sup>43</sup> This section is similar to the "exclusive rights" provided by Section 106 of the U.S. Copyright Act.<sup>44</sup> Thus, this is the section that adds to the value of U.K. sports broadcasts. Paragraph (1)(c) of Section 20 is relevant to Internet piracy of sports broadcasts because it affords a copyright holder the right to restrict the use of his or her copyright in the form of a broadcast.<sup>45</sup> Also relevant are paragraphs (2)(a) and (2)(b) of Section 20. Paragraph (2)(a) affords a copyright holder the right to restrict the communicating of a broadcast of the work to the public.<sup>46</sup> Paragraph (2)(b) allows a copyright holder to restrict making the work available to the public by electronic transmission.<sup>47</sup>

Section 20's conferral of the right to restrict communication of copyrighted work to the public is similar to the public performance right conferred by Section 106 of the U.S. Copyright Act, though different language is used.<sup>48</sup> The U.S. statute refers to the "performing" of the work publicly,<sup>49</sup> while the U.K.

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38. Council Directive 2001/29, art. 3, 2001 O.J. (L 167) 10 (EC).

39. *Id.* at ¶ 1.

40. *Id.* at ¶ 2.

41. *Id.* at ¶ 2(d).

42. *Football Ass'n Premier League Ltd. v. British Sky Broad. Ltd.*, [2013] EWHC (Ch) 2058, [29] (Eng.).

43. Copyright, Designs and Patents Act 1988, 1988, c. 48, § 20 (U.K.).

44. Compare 17 U.S.C. § 106 (2012), with Copyright, Designs and Patents Act 1988, c. 48 at § 16 (listing the exclusionary rights for copyright owners).

45. See Copyright, Designs and Patents Act 1988, c. 48 at § 20(1)(c).

46. *Id.* at § 20(2)(a).

47. *Id.* at § 20(2)(b).

48. Compare 17 U.S.C. §§ 106(4)–(5) (2012), with Copyright, Designs and Patents Act 1988, c. 48 at § 20.

49. 17 U.S.C. § 106(4) (2012).

statute refers to the “communication” of the work publicly.<sup>50</sup> The U.K. statute seems to have broader language, but the U.S. statute has been interpreted broadly as well, especially by courts that value the protection of the rights of their jurisdictions’ citizens.<sup>51</sup>

#### IV. LITIGATION HAS BEEN USED IN BOTH NATIONS AS A TOOL TO COMBAT PIRACY

Sports organizations must police their copyrights because of the immense value that rests within the exclusive rights of broadcasting. However, the piracy problem continues to grow, as free and easily accessible sites find ways to generate revenue without charging their users, usually through advertisements.<sup>52</sup> The first step a sports organization will take if it discovers that a website is illegally streaming the organization’s copyrighted content is usually a demand to cease and desist the illegal streaming.<sup>53</sup> These types of letters<sup>54</sup> are not always successful,<sup>55</sup> but sending a letter is a cheaper means of potentially stopping infringing activity rather than having to go through litigation. However, litigation is typically the next step for a sports organization in an effort to stop copyright infringement of broadcasts.<sup>56</sup>

The main problem when it comes to litigation against these streaming websites is that a good number of them originate outside of the U.S. and U.K.<sup>57</sup> Practically, it is easier for a nation to punish infringers that reside in its own country as a deterrent because the operators of the site are found more easily and can be brought to court within that jurisdiction.<sup>58</sup> However, when a potential infringer is located in a country that is not easily accessible, it becomes more

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50. Copyright, Designs and Patents Act 1988, c. 48 at § 20(1).

51. See *Twentieth Century Fox Film Corp. v. iCraveTV*, 2000 WL 255989, at \*7–8 (W.D. Pa. Feb. 8, 2000).

52. Mellis, *supra* note 3, at 264.

53. See *Twentieth Century Fox Film Corp.*, 2000 WL 255989, at \*2; *Football Ass’n Premier League Ltd. v. British Sky Broad. Ltd.*, [2013] EWHC (Ch) 2058, [22] (Eng.).

54. See generally Katie Lane, *So You Got a Cease & Desist Letter. Now What?*, WORK MADE FOR HIRE, [http://www.workmadeforhire.net/the-rest/cease\\_desist/](http://www.workmadeforhire.net/the-rest/cease_desist/) (last visited May 8, 2015) (explaining the purpose of a cease and desist letter).

55. See *Twentieth Century Fox Film Corp.*, 2000 WL 255989, at \*2; *British Sky*, [2013] EWHC (Ch) 2058, at [22].

56. See *British Sky*, [2013] EWHC (Ch) 2058, at [22].

57. *Piracy of Live Sports Broadcasting*, *supra* note 2, at 2 (statement of Rep. Lamar Smith, Ranking Member, Comm. on the Judiciary).

58. See, e.g., Ernesto, *Feds Arrest Owner of Seized Sports Streaming Domain*, TORRENTFREAK (Mar. 4, 2011), <http://torrentfreak.com/feds-arrest-owner-of-seized-sports-streaming-domain-110304/>; Shawn Knight, *Judge Sentences Link ‘Pirate’ to Time Served, \$13,000 in Restitution*, TECHSPOT (Nov. 1, 2012), <http://www.techspot.com/news/50677-judge-sentences-link-pirate-to-time-served-13000-in->



difficult for a U.S. court to enforce its order.<sup>59</sup>

Legally, the principle of extraterritoriality is an ever-present issue. Extraterritoriality is referred to as “domestic law that regulates conduct abroad.”<sup>60</sup> Congress must authorize extraterritoriality regulation for a court to apply the principle.<sup>61</sup> Copyrights generally “do not have extraterritorial effect.”<sup>62</sup> However, copyright law will apply to foreign entities if subject matter jurisdiction is established.<sup>63</sup>

Due to extraterritoriality, jurisdiction can be difficult to establish depending on the law of the various forums.<sup>64</sup> Even if jurisdiction can be established, a plaintiff may still have trouble receiving a sufficient remedy.<sup>65</sup> However, both U.S. and U.K. courts have not hesitated to extend jurisdiction in an attempt to protect their citizens from copyright infringers.<sup>66</sup> Similarly, each country’s sports organizations have not hesitated to seek copyright protection. In the U.K., the lucrative soccer leagues lead the charge to protect their valuable intellectual property rights.<sup>67</sup> One of the proactive leagues in the U.S. is the National Football League (NFL),<sup>68</sup> as football is the leading sport in the U.S.<sup>69</sup> The NFL was a party to one of the first lawsuits to strike a blow against Internet piracy of

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restitution.html.

59. See *Piracy of Live Sports Broadcasting*, *supra* note 2, at 2 (statement of Rep. Lamar Smith, Ranking Member, Comm. on the Judiciary).

60. Austen L. Parrish, *Evading Legislative Jurisdiction*, 87 NOTRE DAME L. REV. 1673, 1678 (2012).

61. *Id.* at 1683–84.

62. *Subafilms, Ltd. v. MGM-Pathe Commc’ns Co.*, 24 F.3d 1088, 1091 (9th Cir. 1994) (quoting *Peter Starr Prod. Co. v. Twin Cont’l Films, Inc.*, 783 F.2d 1440, 1442 (9th Cir. 1986)).

63. *Litecubes, LLC v. N. Light Prods., Inc.*, 523 F.3d 1353, 1368 (Fed. Cir. 2008) (“There is no indication that Congress intended the extraterritorial limitations on the scope of the Copyright Act to limit the subject matter jurisdiction of the federal courts.”).

64. See Paul Schiff Berman, *The Globalization of Jurisdiction*, 151 U. PA. L. REV. 311, 317 (2002).

65. See Graeme B. Dinwoodie, *A New Copyright Order: Why National Courts Should Create Global Norms*, 149 U. PA. L. REV. 469, 480–81 (2000).

66. See, e.g., *Twentieth Century Fox Film Corp. v. iCraveTV*, 2000 WL 255989, at \*3 (W.D. Pa. Feb. 8, 2000); see generally *Football Ass’n Premier League Ltd. v. British Sky Broad. Ltd.*, [2013] EWHC (Ch) 2058 (Eng.).

67. See, e.g., *Football Licensing: A Whole New Ball Game*, WORLD INTELL. PROP. REV. (Dec. 19, 2013), <http://www.worldipreview.com/article/a-whole-new-ball-game>; *SROC Position Paper on the Asser Study on Sports Organizers’ Rights in the European Union*, SPORTS RIGHTS OWNERS COALITION (Aug. 11, 2013), [http://sroc.info/files/9513/8667/7878/SROC\\_position\\_paper\\_on\\_Asser\\_Study\\_-\\_08\\_11\\_13.pdf](http://sroc.info/files/9513/8667/7878/SROC_position_paper_on_Asser_Study_-_08_11_13.pdf).

68. *Twentieth Century Fox Film Corp.*, 2000 WL 255989, at \*1.

69. Darren Rovell, *NFL Most Popular for 30th Year in Row*, ESPN, [http://espn.go.com/nfl/story/\\_/id/10354114/harris-poll-nfl-most-popular-mlb-2nd](http://espn.go.com/nfl/story/_/id/10354114/harris-poll-nfl-most-popular-mlb-2nd) (last updated Jan. 26, 2014).

copyrighted broadcasts.<sup>70</sup>

*A. Twentieth Century Fox Film Corp. v. iCraveTV*<sup>71</sup>

Defendants iCraveTV and TVRadioNow Corporation, both Canadian companies, streamed professional football and basketball games (in addition to other programming, such as television shows).<sup>72</sup> Users could access the site and its content by simply inputting any Canadian area code; the site even provided an area code for users.<sup>73</sup> Users from the U.S. could then easily revisit the site due to a cookie placed in the computer by the site, allowing users to bypass the screening process.<sup>74</sup> The defendants even posted an article written by a U.S. citizen that noted how easy it was for U.S. citizens to access the site.<sup>75</sup> The plaintiffs, including the NFL, brought suit in the Western District of Pennsylvania.<sup>76</sup> They sought a preliminary injunction against the defendants for violation of the U.S. Copyright Act, among other claims.<sup>77</sup>

The first step in the court's analysis was determining whether it had jurisdiction over the defendants on the plaintiffs' copyright claims.<sup>78</sup> The court addressed the issue of subject matter jurisdiction, noting that there was a perception that copyright laws do not have extraterritorial application.<sup>79</sup> However, the court concluded that it had proper subject matter jurisdiction because public performance occurred due to the fact that the "acts of infringement were committed within the [U.S.] when [U.S.] citizens received and viewed defendants' streaming of copyrighted materials" in the U.S.<sup>80</sup>

Next, the court found that there was general personal jurisdiction through the application of Pennsylvania's long-arm statute, which was based on minimum contacts.<sup>81</sup> The defendants' contacts had to be continuous and substantial, and the court found that the defendants had maintained minimum contacts through an agent who engaged in several activities within the state.<sup>82</sup> Among

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70. See *Twentieth Century Fox Film Corp.*, 2000 WL 255989, at \*1.

71. See generally *id.*

72. *Id.* at \*2.

73. *Id.*

74. *Id.*

75. *Id.* at \*3.

76. See *id.* at \*1–2.

77. *Id.* at \*1.

78. *Id.* at \*2.

79. *Id.*

80. *Id.* at \*3.

81. *Id.* at \*4.

82. *Id.* at \*3–4.

these activities were an attempt to sell advertising through a Pittsburgh office; the maintenance of a sales agent in the district's area; the registration of the iCraveTV.com domain name in the U.S., with accompanying billing and contact information linked to Pennsylvania; and the fact that the "defendants purposefully availed themselves of the privilege of conducting activities within Pennsylvania, thus invoking the benefits and protections of its laws."<sup>83</sup> Finally, the court found specific personal jurisdiction existed because the defendants' activities within the state were integral to the activities giving rise to the cause of action asserted, including the games that were streamed to computer users throughout the nation, and the defendants' extensive advertising activities within the nation.<sup>84</sup>

The court then determined that a preliminary injunction against the defendants enjoining them from continued operation of the websites was appropriate.<sup>85</sup> To obtain a preliminary injunction against potentially infringing websites, the plaintiffs "must prove: (1) a reasonable probability of success on the merits; (2) irreparable injury; (3) that less harm will result to the defendant if preliminary relief is granted than to the plaintiffs if preliminary relief is denied; and (4) the public interest, if any, weighs in favor of [the] plaintiffs."<sup>86</sup>

The court found the plaintiffs' copyright claims were likely to succeed based on the merits.<sup>87</sup> The plaintiffs presented evidence that they owned copyrights to the works in question without argument from the defendants.<sup>88</sup> The defendants did not deny that they copied the items and publicly performed the broadcasts.<sup>89</sup> The finding of public performance was backed by (1) evidence that the infringement occurred within the U.S.; (2) 45% (roughly 1.6 million people) of the website's traffic was from the U.S., which was deemed a substantial number; (3) the activity violated the plaintiffs' rights to perform their works publicly and to authorize others to do so; and (4) the defendants engaged in contributory infringement by making the streaming available to third parties who would further transmit the broadcasts.<sup>90</sup> The defendants claimed that their acts were permissible under Canadian law, but the court rejected this defense because the plaintiffs sought relief under the U.S. Copyright Act.<sup>91</sup>

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83. *Id.* at \*4.

84. *Id.* at \*5.

85. *Id.* at \*9.

86. *Id.*

87. *Id.* at \*7.

88. *Id.* at \*6.

89. *Id.*

90. *Id.* at \*6-7.

91. *Id.* at \*7.

The court also concluded that the plaintiffs would suffer irreparable harm because the defendants' actions caused the plaintiffs to lose control of the power in their copyrights that were vested by Congress, including the exclusive rights under Section 106.<sup>92</sup> In addition, the court noted the loss of customer good will, which in the Third Circuit is grounds for irreparable harm.<sup>93</sup> Also, establishment of copyright infringement, which the plaintiffs were determined to have done, raises a presumption of irreparable harm in the Third Circuit.<sup>94</sup>

The court then stated that the harm that would occur to the plaintiffs if the defendants were allowed to continue their conduct outweighed the harm the defendants would sustain if their websites were shut down.<sup>95</sup> Damage to the defendants' programming was not considered to be a legitimate harm because the programming was built upon the infringing acts.<sup>96</sup>

Finally, the court concluded that upholding the plaintiffs' copyrights and granting the injunction against the defendants advanced the public interest in "preventing the misappropriation of the skills, creative energies and resources which are invested in the protected work."<sup>97</sup> Thus, the court granted the injunction.<sup>98</sup> Following this ruling, the parties agreed on a settlement, which led iCraveTV to shutdown its website.<sup>99</sup>

The *iCraveTV* decision set the building blocks for defending copyrights against international Internet piracy. Taking a cue from the NFL, leagues in Europe began to take steps to protect their exclusive rights against websites that illegally streamed copyrighted material.

### B. *Union des Ass'ns Europeennes v. Brisco*<sup>100</sup>

The first plaintiff, Union of European Football Associations (UEFA), was the governing body of football in Europe, and the second plaintiff, Sky (who is the parent company of the third plaintiff), was a U.K. company that organized

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92. *Id.* at \*8.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* at \*9 (quoting *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1255 (3d Cir. 1983)).

98. *Id.*

99. Laura Rohde, *iCrave Caves in, Signs out of Court Deal*, COMPUTERWORLD (Feb. 29, 2000), [http://www.computerworld.com.au/article/90520/icrave\\_caves\\_signs\\_court\\_deal/](http://www.computerworld.com.au/article/90520/icrave_caves_signs_court_deal/).

100. *See generally* [2006] EWHC (Ch) 1268 (Eng.).

the Sky satellite television channels.<sup>101</sup> The defendant operated sporting-streams.com, where the defendant captured broadcasts on computers and then streamed them through its website.<sup>102</sup> The defendant's services included streaming UEFA Champions League matches that originally broadcasted on Sky and other channels.<sup>103</sup>

The court's written opinion was short with only a brief analysis.<sup>104</sup> It found that the plaintiffs owned a valid copyright based on their evidence, and the defendant had infringed on those copyrights.<sup>105</sup> The defendant's copying of the plaintiffs' broadcasts, and subsequent public performance of those broadcasts, constituted infringement under Section 20.<sup>106</sup> The object that contained the copyrighted broadcasts was the computer on which the defendant used to capture the broadcasts.<sup>107</sup>

The court then concluded that a preliminary injunction should be issued against the defendant's website based on the evidence in the record.<sup>108</sup> The evidence supported a finding that the "defendants threaten[ed] and intend[ed] to continue with their acts unless they [were] restrained."<sup>109</sup> The defendants were directly involved with the continued streaming of the plaintiffs' copyrighted material and infringement of the plaintiffs' ancillary works, demonstrated by evidence of many matches that had been screened on the defendants' website.<sup>110</sup>

The court granted summary judgment to the plaintiffs and ordered a preliminary injunction because it was obvious that UEFA's rights had been infringed upon for a considerable time.<sup>111</sup> Following this decision, the website was shut down.<sup>112</sup>

While the prior two cases dealt with defendants that illegally streamed copyrighted material through the defendants' websites,<sup>113</sup> the next case addressed

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101. *Id.* at [18].

102. *Id.* at [24]–[25].

103. *Id.* at [26].

104. *See generally id.*

105. *Id.* at [23], [28].

106. *Id.* at [27].

107. *Id.* at [29].

108. *Id.* at [34].

109. *Id.* at [31]–[34].

110. *Id.* at [33]–[34].

111. *Id.* at [37].

112. *UK Court Shuts Down Website Showing Champions League*, TELECOMPAPER (June 13, 2006), <http://www.telecompaper.com/news/uk-court-shuts-down-website-showing-champions-league-520944>.

113. *See Twentieth Century Fox Film Corp. v. iCraveTV*, 2000 WL 255989, at \*2 (W.D. Pa. Feb. 8, 2000); *Briscomb*, [2006] EWHC (Ch) 1268 at [24]–[26].

the issue of liability for a site that only served as an aggregation of illegal streams.<sup>114</sup>

*C. Football Ass'n Premier League Ltd. v. British Sky Broadcasting Ltd.*<sup>115</sup>

The plaintiff, the Football Association Premier League (FAPL), was the governing body for the Barclays Premier League and owned the copyright for recording all Premier League matches.<sup>116</sup> The FAPL was authorized by its member clubs to license broadcasts of Premier League matches.<sup>117</sup> The defendants were the “six main retail internet service providers (‘ISPs’) in the [U.K.]”<sup>118</sup> The plaintiff sought an injunction against the ISPs to prevent the users from accessing the FirstRow Sports website (FirstRow).<sup>119</sup> The FAPL could not establish contact with FirstRow or find out who its operators were<sup>120</sup>—as is commonly the case with websites that engage in illegal streaming. FirstRow had several registered domain names, and the host site was in Portlane, Sweden, which is considered to be a haven for pirate sites.<sup>121</sup> FrontRow’s mailing address was “fictitious.”<sup>122</sup>

FirstRow did not stream the matches itself but, instead, was an “aggregation portal” to streamed broadcasts.<sup>123</sup> An aggregation portal is a list of links.<sup>124</sup> The links led to third-party streamers that were operating on User Generated Content (UGC) websites.<sup>125</sup> The streamer would capture the sports broadcast on his or her computer, and then send the images to a UGC site.<sup>126</sup> The videos would be embedded<sup>127</sup> so the stream was watchable, then sent to FirstRow, who would approve the embedded content and post it for users to stream.<sup>128</sup> The portals

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114. *Football Ass'n Premier League Ltd. v. British Sky Broad. Ltd.*, [2013] EWHC (Ch) 2058, [14] (Eng.).

115. *See generally id.*

116. *Id.* at [1].

117. *Id.* at [8].

118. *Id.* at [1].

119. *Id.*

120. *Id.* at [21].

121. *Id.*

122. *Id.* at [22].

123. *Id.* at [14].

124. *Id.*

125. *Id.* at [15].

126. *Id.*

127. *See generally* *How to Embed a Stream or Video on Your Site*, USTREAM, <https://ustream.zendesk.com/entries/22434927-How-to-embed-a-stream-or-video-on-your-site> (last visited May 8, 2015) (an example of the process of embedding videos).

128. *British Sky*, [2013] EWHC (Ch) 2058, at [15].

were organized by sport and time and included Premier League matches.<sup>129</sup> None of the streams came from official, licensed sources, and FirstRow did not have permission from the FAPL to engage in this activity.<sup>130</sup>

FirstRow received almost ten million visitors worldwide in April of 2013, alone.<sup>131</sup> The website made money through advertising and affiliation revenues.<sup>132</sup> The streamers could add their own advertisements to their streams, which created revenue for them, as well.<sup>133</sup>

The court began its analysis by first determining that the plaintiffs' copyrights in the broadcasts and the claimed artistic works contained in the feeds were valid before examining jurisdiction.<sup>134</sup> The court then established jurisdiction under Section 97A of the Copyright, Designs and Patent Act 1988.<sup>135</sup> This section allows a court to issue an injunction against service providers if the providers have actual knowledge of another using their services to commit copyright infringement.<sup>136</sup> The court reviewed four factors in its determination that jurisdiction existed: "(1) the [d]efendants [were] service providers[; (2)] users and/or the operators of FirstRow infringe[d] FAPL's copyrights[; (3)] . . . users and/or the operators of FirstRow use[d] the [d]efendants' services to do that[; and (4)] . . . [d]efendants ha[d] actual knowledge of this."<sup>137</sup> The court found that the defendants were service providers due to precedent.<sup>138</sup>

Next, the court determined that FirstRow infringed on the plaintiff's copyrights.<sup>139</sup> The court examined whether there was a "communication" under Section 20, which entailed asking three questions:

- i) Is there a communication of copyright works by way of electronic transmission?
- ii) Is there a communication to a new public, . . . which was not taken into account by the authors of the protected works when they authorized their communication to the original public?
- iii) Does the act of communication to the public take place in

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129. *Id.* at [14].

130. *Id.* at [16], [19].

131. *Id.* at [17].

132. *Id.* at [18].

133. *Id.*

134. *Id.* at [13].

135. *Id.* at [24]–[26], [51]–[52].

136. Copyright, Designs and Patents Act 1988, 1988, c. 48, § 97(A) (U.K.).

137. *British Sky*, [2013] EWHC (Ch) 2058, at [24].

138. *Id.* at [25].

139. *Id.* at [47].

the UK? If the communication originates from outside the UK, [the answer] depends on whether it is targeted at the public in the UK.<sup>140</sup>

First, the court concluded that there was a communication of copyrighted works by way of electronic transmission after reviewing an ECJ decision that held that any retransmission of a terrestrial television broadcast via the Internet constituted a communication.<sup>141</sup> It further cited an ECJ decision that determined that there was “no need to show that the ‘public’ to which the re-transmission is communicated is any different from the public to which the original transmission was addressed.”<sup>142</sup> The court therefore declined to address this issue.<sup>143</sup>

Second, the court found that FirstRow’s streaming was a communication under the meaning of Section 20 because “the works [were] made available by electronic transmission in such a way that members of the public may access the recordings from a place and at a time individually chosen by them.”<sup>144</sup> FirstRow was responsible for the communications, despite not being the original source of the streamed sports events, because the site’s operators actively intervened by inviting and aggregating the streaming links.<sup>145</sup>

Lastly, the court concluded that FirstRow communicated to the public because the works were aimed at all people in the U.K.<sup>146</sup> A court must consider four factors to determine whether there was a communication made to the public: (1) the public is an “indeterminate number of potential recipients”; (2) “the cumulative effect[s] of making the works available to potential recipients should be taken into account”; (3) the number of people that have access to the work is relevant; and (4) it is irrelevant whether the communication is achieved through one-on-one means, as a large number of people can still have access at the same time in that way.<sup>147</sup> The retransmissions in this case were aimed at all the residents of the U.K. with an Internet connection, which is an indeterminate amount of potential recipients.<sup>148</sup> Also, the FirstRow websites were in the English language; there were advertisements for companies located in the U.K.; a large

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140. *Id.* at [31].

141. *Id.* at [33].

142. *Id.* at [36].

143. *Id.*

144. *Id.* at [38].

145. *Id.* at [42].

146. *Id.* at [46].

147. *Id.* at [32–34] (citing *ITV Broad. Ltd. v. TVCatchup Ltd.*, [2013] E.C.R.-0000, [32]–[34] (Eng.)).

148. *Id.* at [34], [44] (citing *ITV Broad. Ltd. v. TVCatchup Ltd.*, [2013] E.C.R.-0000, [35]–[36] (Eng.)).



number of competitions popular with U.K. audiences were on the site, between 12% and 13.7% of FirstRow's traffic was from the U.K.; and FirstRow was discussed on forums and blogs popular within the U.K.<sup>149</sup> This evidence, taken together, showed an intent on the part of the FirstRow's operators to communicate to the U.K.<sup>150</sup>

The third and fourth elements for the injunction were satisfied because the operators of FirstRow used the defendants' services to infringe on the plaintiff's copyrights,<sup>151</sup> and the defendants had knowledge of this based on the fact that the FAPL sent letters to the defendants, presented as evidence that the FAPL brought before the court.<sup>152</sup> Finally, the court concluded that the interests of the FAPL in enforcing its copyrights outweighed the rights of the users of FirstRow's websites, who can watch the sporting events through legal means instead.<sup>153</sup> Thus, the court granted the motion to prevent users from accessing FirstRow through the defendants' services.<sup>154</sup>

#### V. A COMPARISON OF THE NATIONS' APPROACHES

*iCraveTV*, *Briscomb*, and *British Sky* employed similar approaches in an attempt to protect the copyrights of the sports organizations. Courts have taken broad approaches to jurisdiction and public performance in evaluating copyright infringement claims by extending extraterritoriality based on the access of the websites to the citizens in each jurisdiction. However, there were some subtle differences in how each court outlined their approach. Also, the *British Sky* court's ruling had much broader implications than either *iCraveTV* or *Briscomb*.

##### A. Similarities in the Courts' Approaches

Jurisdiction and public performance have become common issues in copyright infringement lawsuits by sports organizations when it comes to Internet piracy, given that pirate websites have been set up all over the world, yet are accessible to many citizens of both the U.K. and U.S. In all three cases, the courts extended jurisdiction over defendants from other countries using broad applications of the courts' respective approaches towards extraterritoriality.<sup>155</sup>

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149. *Id.* at [45].

150. *Id.* at [46].

151. *Id.* at [51].

152. *Id.* at [52].

153. *Id.* at [59].

154. *Id.* at [60].

155. *Twentieth Century Fox Film Corp. v. iCraveTV*, 2000 WL 255989, at \*2-5 (W.D. Pa. Feb. 8, 2000); *British Sky*, [2013] EWHC (Ch) 2058, at [47]; *Union des Ass'ns Europeennes v. Briscoomb*, [2006] EWHC (Ch) 1268, at [29], [39] (Eng.).

In *iCraveTV*, the court determined that a public performance occurred because of how the operators of the iCraveTV website availed their infringing activity to the U.S. public and its laws.<sup>156</sup> The court in *British Sky* took a similar approach in its analysis of communications to the public.<sup>157</sup> It pointed out that FirstRow made infringing broadcasts available to the U.K. public who would not have been entitled to view them otherwise.<sup>158</sup> The *Briscomb* court seemed to use an abridged version of *British Sky*'s analysis because the court did not find a detailed analysis necessary.<sup>159</sup> It simply concluded that there was evidence that "a good many live matches" had been infringed.<sup>160</sup> These decisions and analyses imply that any website in the world that can be accessed by citizens in the U.S. or U.K., and have content that could be rationalized as targeting the viewership of those citizens, could potentially be within the jurisdiction of courts in the U.S. and U.K.

Next, the public performances or communications were the key parts of the copyright infringement analysis for all three courts to establish that the plaintiffs would have a likelihood of success on their claims based on the merits.<sup>161</sup> iCraveTV,<sup>162</sup> SportingStream,<sup>163</sup> and FirstRow's<sup>164</sup> websites all hosted streams of professional sports events. iCraveTV and SportingStream captured the streams themselves, which led the courts to a much more straight-forward analysis for infringement.<sup>165</sup> At that point in the analysis of both cases, each court noted the sheer amount of infringement that occurred and the device through which the infringement was possible.<sup>166</sup>

### *B. Differences in the Courts' Approaches*

There were some subtle differences in the jurisdiction and public performance analyses between the U.K. and U.S. with regard to additional factors

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156. *Twentieth Century Fox Film Corp.*, 2000 WL 255989, at \*3.

157. See *British Sky*, [2013] EWHC (Ch) 2058, at [44] (citing *ITV Broad. Ltd. v. TVCatchup Ltd.*, [2013] E.C.R.-0000, [35]-[36] (Eng.)).

158. *Id.* at [44]-[45].

159. *Briscomb*, [2006] EWHC (Ch) 1268, at [28], [34].

160. *Id.* at [34].

161. *Twentieth Century Fox Film Corp.*, 2000 WL 255989, at \*2, 7; *British Sky*, [2013] EWHC (Ch) 2058, at [33]-[34]; *Briscomb*, [2006] EWHC (Ch) 1268, at [27]-[28].

162. *Twentieth Century Fox Film Corp.*, 2000 WL 255989, at \*2.

163. *Briscomb*, [2006] EWHC (Ch) 1268, at [24].

164. *British Sky*, [2013] EWHC (Ch) 2058, at [14].

165. See *Twentieth Century Fox Film Corp.*, 2000 WL 255989, at \*3-5; *Briscomb*, [2006] EWHC (Ch) 1268, at [24]-[30].

166. *Twentieth Century Fox Film Corp.*, 2000 WL 255989, at \*7; *Briscomb*, [2006] EWHC (Ch) 1268, at [33]-[34].

that were considered in the cases. The analysis in *British Sky*, much like the court in *iCraveTV*, looked at factors such as the amount of people that visited FirstRow from the U.K. (between 12% and 13.7% of FirstRow's traffic in *British Sky*<sup>167</sup> versus U.S. visitors comprising 45% of iCraveTV's traffic in *iCraveTV*<sup>168</sup>) and the fact that the website was in the English language.<sup>169</sup> However, the court in *British Sky* considered these factors in the actual jurisdiction analysis,<sup>170</sup> while the court in *iCraveTV* only mentioned the factors after establishing that it had subject matter jurisdiction.<sup>171</sup> *iCraveTV*'s analysis for subject matter jurisdiction only looked at whether the copyright infringement occurred in the U.S.<sup>172</sup> Only later did the court explain the factors that led it to the conclusion that public performance occurred.<sup>173</sup> As noted earlier, the *Briscomb* court noted only the evidence of many matches being infringed<sup>174</sup> and, thus, did not go into a more detailed analysis regarding the actual number of U.K. viewers or the presentation of the SportingStream website.<sup>175</sup>

Next, the *British Sky* court's analysis for public performance based on the merits was forced to take on a different form from *iCraveTV* and *Briscomb*. FirstRow only aggregated streams from other sources, rather than capturing the broadcasts on its own.<sup>176</sup> The *British Sky* court was therefore forced to examine the issue closer than in *Briscomb*, which could explain the difference in the level of detail given between the two U.K. cases. *British Sky* was entering relatively uncharted territory in facing an aggregate portal of pirate activity.<sup>177</sup> Conversely, the *Briscomb* court dealt with a pirate site that hosted the pirated material itself,<sup>178</sup> which led the court to conclude a straightforward analysis.<sup>179</sup> The *British Sky* court found that FirstRow was still liable for the contact of other websites, due to active efforts in aggregating and promoting the infringement,<sup>180</sup> so the end result was similarly satisfactory for the FAPL as it was for the NFL

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167. *British Sky*, [2013] EWHC (Ch) 2058, at [45].

168. *Twentieth Century Fox Film Corp.*, 2000 WL 255989, at \*6.

169. *Id.* at \*6-7; *British Sky*, [2013] EWHC (Ch) 2058, at [45].

170. *British Sky*, at [45].

171. *Twentieth Century Fox Film Corp.*, 2000 WL 255989, at \*5-6.

172. *Id.* at \*3.

173. *Id.* at \*7.

174. *Union des Ass'ns Europeennes v. Briscoomb*, [2006] EWHC (Ch) 1268, [34] (Eng.).

175. *See id.*

176. *Football Ass'n Premier League Ltd. v. British Sky Broad. Ltd.*, [2013] EWHC (Ch) 2058, [14] (Eng.).

177. *Id.*

178. *Briscomb*, [2006] EWHC (Ch) 1268, at [24]-[26].

179. *See id.* at [34].

180. *British Sky*, [2013] EWHC (Ch) 2058, at [42].

and UEFA, despite a slightly different set of facts.

The *British Sky* decision took copyright protection a step further than *iCraveTV* and *Briscomb*. The decision led the ISP defendants to block the Internet Protocol (IP) address that FirstRow had used for its websites.<sup>181</sup> Each IP address can potentially contain many websites, as opposed to just one.<sup>182</sup> On the one hand, this can help in combating the issue of pirate websites having multiple domains to evade being shut down.<sup>183</sup> Conversely, this has the effect of banning any other website with the same IP address, even sites that are perfectly legal.<sup>184</sup> By banning IP addresses, *British Sky* displayed the great lengths the U.K. will go to protect its sports organizations' copyrights and keep out pirate websites.<sup>185</sup>

## VI. THE EFFECTS AND FUTURE IMPLICATIONS OF THE LITIGATION ATTEMPTS TO LIMIT PIRACY

The plaintiffs in *iCraveTV* and *Briscomb* took the conventional approach when attempting to deal with illegal streaming sites, which is to enjoin the operators from continuing to run their sites, normally leading to the websites being seized and shutdown.<sup>186</sup> In *iCraveTV*, the mere pressure of continued litigation was enough to convince the site's founder to cease his operations despite his contention that his actions were legal under Canadian law.<sup>187</sup> However, as the technology advanced and the operators of these sites became craftier, copyright holders, such as the FAPL, had to get more creative in their defense of their intellectual property. The FAPL could not locate the operators of FirstRow, so they asked the court to take the extreme measure of forcing the ISPs to block

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181. Kelly Fiveash, *Own Goal! 100s of Websites Blocked After UK Premier League Drops Ball*, THE REGISTER (Aug. 15, 2013), [http://www.theregister.co.uk/2013/08/15/site\\_blocking\\_after\\_court\\_orders\\_against\\_sites\\_illegally\\_serving\\_copyrighted\\_material/](http://www.theregister.co.uk/2013/08/15/site_blocking_after_court_orders_against_sites_illegally_serving_copyrighted_material/).

182. *Id.*

183. See Andrew Rettman, *EU Hosts Majority of 'Notorious' Pirate Websites*, EUOBSERVER (Feb. 13, 2014), <http://euobserver.com/justice/123119>; see also Nathan George, *The Pirate Bay Changes Domain to Stay Ahead of the Law*, T3, <http://www.t3.com/news/the-pirate-bay-changes-domain-to-stay-ahead-of-the-law> (last updated Dec. 15, 2013) (the Pirate Bay, a file-sharing service, is being forced to take great lengths—including jumping its host site from country to country—in order to continue operating due to the being shut down by the host countries).

184. Fiveash, *supra* note 181.

185. See *British Sky*, [2013] EWHC (Ch) 2058, at [59]–[60].

186. Flint & Heinzel, *supra* note 1; Paul Gershlick, *Champions League Football Matches Broadcast over the Internet without Permission Infringed UEFA's Copyright – UEFA v Briscomb*, High Court, MATTHEW ARNOLD & BALDWIN LLP (June 1, 2006), <http://www.mablaw.com/2006/06/champions-league-football-matches-broadcast-over-the-internet-without-permission-infringed-uefas-copyright-uefa-v-briscomb-high-court/>.

187. Admin, *iCraveTV Down, But Not Out*, GEEK (Mar. 1, 2000), <http://www.geek.com/news/icrave-tv-down-but-not-out-566318/>.

the entire IP addresses of the website's source.<sup>188</sup>

### A. *The Effects of Banning IP Addresses*

The ISPs did not appear to put up much of a fight against the proposed order, but blocking entire IP addresses has consequences for the ISPs' customers. For example, hundreds of legitimate websites were blocked in the U.K. as a result of the *British Sky* court's order to ban the IP address where FirstRow was located.<sup>189</sup> This is a huge problem, as the court inadvertently prevented its own nation's citizens from accessing sites that they should legally be able to. Generally, the European ISPs have stood against this type of sanction because it has been argued that such a measure would interfere too much with the ISPs' customers, and that the current system had been effective thus far in balancing the rights of the copyright holders and ISP customers.<sup>190</sup> Given the repercussions of *British Sky* on U.K. Internet users, the European ISPs' fear appears to be justified.

There is evidence that a policy in the U.S. that would closely follow the *British Sky* court's decision would receive significant backlash.<sup>191</sup> The U.S. recently attempted to implement legislation titled the U.S. Stop Online Piracy Act (SOPA) that would have allowed ISPs to take similar measures as the *British Sky* court did.<sup>192</sup> However, SOPA was met with a great deal of resistance, leading its main supporter, the aforementioned Representative Lamar Smith, to withdraw the provision from the bill.<sup>193</sup> Currently, there is no concrete case law in the U.S. similar to *British Sky* for sports organizations to follow if they chose to pursue the route of blocking access to the pirating sites through the ISPs. Instead, U.S. ISPs have taken to other means to fight Internet piracy.

### B. *The Six-Strike System as an Alternative Means of Combating Piracy*

The latest measure the U.S. ISPs have taken is starting to police its users by punishing those who have been found to illegally possess pirated copyrighted material in a "six-strike" system.<sup>194</sup> This system attempts to punish users rather

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188. *British Sky*, [2013] EWHC (Ch) 2058, at [1], [21].

189. Fiveash, *supra* note 181.

190. Zack Whittaker, *EU Anti-Piracy Law Overhaul Under Attack; ISPs Warn Against Site Blocking, Censorship*, ZDNET (Apr. 15, 2013), <http://www.zdnet.com/eu-anti-piracy-law-overhaul-under-attack-isps-warn-against-site-blocking-censorship-7000014023/>.

191. Grant Gross, *SOPA Author to Remove ISP Blocking Provision*, MACWORLD (Jan. 14, 2012), [http://www.macworld.com/article/1164827/sopa\\_author\\_to\\_remove\\_isp\\_blocking\\_provision.html](http://www.macworld.com/article/1164827/sopa_author_to_remove_isp_blocking_provision.html).

192. *Id.*

193. *Id.*

194. Ernesto, "Six Strikes" Anti-Piracy Scheme Starts, with Mystery Punishments, TORRENTFREAK

than attacking the pirates.<sup>195</sup> However, the coordination among the ISPs seems to be lacking, as they cannot seem to decide on what punishment to levy on users.<sup>196</sup> The punishments towards users range from blocking specific sites to slowing the Internet connections of offenders.<sup>197</sup> However, there is no threat to permanently disconnect users.<sup>198</sup>

These measures appear to lack the teeth of the *British Sky* decision because the punishments toward users are rather soft in nature and do little to punish the pirate websites.<sup>199</sup> A recent study revealed that similar systems in five other countries (France, New Zealand, Taiwan, South Korea, and the U.K.) had little effect on the users' propensity to visit piracy sites.<sup>200</sup> The U.S. system has also failed thus far.<sup>201</sup> The Pirate Bay, one of the most popular piracy sites in the world, has received a significant increase in monthly traffic from U.S. users since the implementation of the six-strike system.<sup>202</sup> The uptick in traffic to piracy websites shows that U.S. Internet users are not intimidated by the six-strike system. And if the users are not intimidated, why would the new system concern the pirate sites themselves?

Rick Cotton, head of the U.S. Chamber of Commerce's anti-counterfeiting and piracy department, painted a more optimistic picture of the system a full two years after it was enacted.<sup>203</sup> He claimed that the system was finally working at peak capacity, which has led to "an enormous fall-off when people get the first notice[.]"<sup>204</sup> This contention that piracy has been reduced, however, was not substantiated with any evidence.<sup>205</sup> So whether the amount of piracy has declined remains unclear, and whether the system is having any effect is even less clear. If the system is not effective, either the punishments to users must become harsher, such as permanent disconnection, or the system must shift

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(Feb. 25, 2013), <http://torrentfreak.com/six-strikes-anti-piracy-scheme-starts-130225/>.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *See generally id.*

200. Karl Bode, *Study: Anti-Piracy Warning, "Education" Systems Aren't Working*, DSLREPORTS (Sept. 11, 2013), <http://www.dslreports.com/shownews/Study-AntiPiracy-Warning-Education-Systems-Arent-Working-125749>.

201. Ernesto, *Six-Strikes Fails to Halt U.S. Pirate Bay Growth*, TORRENTFREAK (Sept. 3, 2013), <http://torrentfreak.com/six-strikes-fails-to-halt-u-s-pirate-bay-growth-130903/>.

202. *Id.*

203. *Six Strikes Plan to Eliminate Piracy Finally Operating at 'Full Capacity'*, RT USA (Apr. 12, 2014), <http://rt.com/usa/six-strikes-anti-piracy-underway-036/>.

204. *Id.* (emphasis omitted).

205. *See id.*; Brad Reed, *Advocates Call 'Six Strikes' Anti-Piracy Policy Huge Success Despite Total Lack of Evidence*, BGR (Feb. 26, 2014), <http://bgr.com/2014/02/26/six-strikes-anti-piracy-policy/>.

back to targeting the pirate websites instead.

## VII. CONCLUSION

Internet piracy of sports broadcasts is an increasing problem that infringes on the copyrights of numerous sports organizations, which hurts their ability to reap the rewards of success. Courts have taken different measures in an attempt to protect these organizations, from the conventional approaches in *iCraveTV* and *Briscomb* of shutting down the websites with the infringing activity, to the extreme measures taken in *British Sky* where an entire IP address was blocked from being accessed by U.K. users. None of the legal remedies have been entirely effective thus far, as the traditional method only takes care of one or two websites at a time, while *British Sky*'s method removes too many websites, as it may incidentally ban access to perfectly legal websites.

The six-strike system implemented by the U.S. ISPs to combat Internet piracy was doomed from the start because it did little to punish the users that were infringing copyrights and nothing to punish the owners of the pirate websites.<sup>206</sup> The public is not interested in accepting stricter laws and penalties for online piracy and has rebuffed such proposals.<sup>207</sup> Thus, there seems to be no concern over the U.S. dragging its feet on dealing with the Internet piracy issue. The six-strike system was implemented over two years ago, and there seems to be no push to upgrade or change a system that has been a failure thus far.<sup>208</sup> The U.K., however, has been much more progressive and productive in shutting down the piracy sites.<sup>209</sup> The U.K.'s methods may be too extreme, especially because it takes down innocent websites along with the infringing sites.<sup>210</sup> However, if the U.S. is serious about protecting the copyrights of its sports organizations (among other copyright holders), it can look to the U.K. as a start for a new approach to combat online piracy. Until then, sports organizations could potentially lose value in their copyrights as users continue to watch broadcasts through illegal means.<sup>211</sup>

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206. Ernesto, *supra* note 194.

207. See Gross, *supra* note 191.

208. See Bode, *supra* note 200.

209. See Rich, *ISPs Blocking Piracy Sites Soon to Happen in U.S.?*, SOIA (Dec. 21, 2013), <http://www.saveourindustriesact.org/archives/88>.

210. Fiveash, *supra* note 180.

211. See *Piracy of Live Sports Broadcasting*, *supra* note 2, at 2 (statement of Rep. Henry C. Johnson, Jr., Member, Comm. on the Judiciary).