

DECEMBER 2015

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The Sports Industry 2015: A Year of Unprecedented Landmark Change

We could not let the dust settle on 2015 without recapping the monumental upheaval the sports industry has experienced this year. Not since Rupert Murdoch unearthed sport as a commercial “battering ram” for distribution platforms in his address to the News Corp AGM in 1996 and the English Premier League consummated its first-ever deal with Sky in 1992, have we arguably witnessed such transformational acceleration as in 2015.

As we see it, 2015 experienced four major transformational influences neatly dividing into two distinct and colliding themes. The first theme centres around disruptive, positive change in the fast growing global consumption of sport and media proliferation. The second, somewhat less positive perhaps, focuses on the dramatic, highly public rooting out of corruption and impropriety in sports governance and the increasing menace of media piracy.

Theme 1: Consumption and media - The global conquest

Chapter 1: Internationalisation of sports: An accelerating phenomenon

The global market for professional sports is now estimated to be worth a staggering \$145 billion per annum according to expert analysts, with a growth rate of 3.7%. It also seems that sports content is becoming ever more ubiquitous. The public's appetite for varied sports content is becoming insatiable and truly global. It is transcending the parochial, traditional geographic territories within which certain sports were played.

Rights holders seeking to tap into this global phenomenon are looking with increasing guile to take their properties outside their traditional hinterlands.

Perhaps the pioneers were the NFL and the NBA, who have been hosting regular-season games in Europe for some years now. Likewise, English Premier League football clubs have increasingly travelled far and wide around the globe for pre-season tournaments, driven it seems as much by commercial opportunities, as by an opportunity to meet first hand their international fan base.

However, in 2015 it seems this trend has exploded to a whole new level. First, the NFL has signed deals with English stadia owners, Wembley and Tottenham Hotspur at its new stadium, that will see both of these venues host at least two games per year (at Wembley until 2020 and at Tottenham's new ground from 2018 for 10 years). This would mean that, by 2020, the Jacksonville Jaguars would have played eight years in a row in London. In October next year, Twickenham will also host an NFL game.

There has even been speculation of an NFL franchise relocating to London or one day the Super Bowl being held there.

Similarly, the NBA has continued to host pre-season games in cities such as Milan, Madrid, Shenzhen and Rio de Janeiro, with rumours of a future NBA European Conference persisting, driven we suggest in part by the huge popularity of its annual regular season game in London.

Other sports have also been following this trend, particularly in a trans-Atlantic fashion: the All Blacks played their first match at Soldier Field, Chicago to a sell-out 62,000 crowd last year; Premiership Rugby announced its first regular season game to be played outside England at the Red Bull Arena, New York next March; we recently witnessed Irish hurling at Fenway Park, Boston; and cricket's All-Star Series in New York. Finally, there is also the continuing pattern of cross-border partnerships and investment - Manchester City and the New York Yankees, Seattle and Saracens, and most recently the announced investment by Chinese consortium, China Media Capital, in City Football Group.

2015 has also been the year when a new disruptive trend to established thinking surfaced into the glare of the sports world's vision; the spectating of "sport" played out on electronic media, in other words "eSport". In 2015, according to Newzoo, it is estimated that there were 220 million eSport viewers, over half viewing more than once per month. They also predict that eSports revenues will grow to in excess of an eye watering \$3 billion in 2020.

Chapter 2: Media Proliferation: Bonfire of the Technologies

Although sports media rights remain one of the last sacred tenets of "live" broadcasting, consumption of content by sports fans has been changing for a while. However, this has again seemingly been taken into a new paradigm in 2015. The way sports fans engage with their clubs, stars and sport is unrecognisable from not that long ago, due to the proliferation of new technologies, technology convergence and social media.

First, premium sports content today is acquired primarily by conglomerate media businesses, not technological silos often unable to leverage content fully in a multi-platform environment of yesteryear. "Triple" and "quad" play has commonly been the *lingua franca* of 2015.

Sky and BT's battle in the UK for supremacy in the sports broadcast market seems to reflect this. For example, BT's foray into sport, starting initially with its £738 million investment in English Premier League content (two packages and first picks), was to provide a "battering ram" for its own triple play package - BT Sport, BT Telephony and BT Broadband.

What one might describe as the traditional broadcasters are fighting back with new strategies. One of the more remarkable and groundbreaking deals in 2015 was Discovery's full acquisition of Eurosport shortly after Eurosport's acquisition of the all platform Europe wide Olympic content rights from the IOC to the 2018-2024 Summer and Winter Games cycle.

Internet businesses are also deepening their presence as viable alternatives to traditional platform distribution methods. The Wembley game in England this October between the Buffalo Bills and Jacksonville Jaguars was live-streamed internationally for free by Yahoo. Yahoo reported that it had 33.6 million total views and 33% of views were outside of the US. The NFL is reportedly interested in providing such a package on a regular basis for its Thursday night games.

The pace of change is frenetic. In 2010, smart phones apparently accounted for just 19% of all mobiles sales. Just three years later, we are told a staggering 1 billion units were sold. There are reports that smart phone sales increased worldwide by 13.5% in the second quarter of 2015.

We have also read that there were 35.6 million tweets during last year's FIFA World Cup semi-final between Brazil and Germany, which Twitter tweeted was the most-discussed single sports game ever on Twitter.

Second, new technologies are revolutionising both the quality and bandwidth available to fans across the globe. According to research, 60% to 70% of new television sets are 4K or Ultra HD and 80% to 90% of viewing sport still occurs on that platform. BT, for example, is running an Ultra HD service for its BT Sport Europe channel.

Cloud technology has introduced itself into the fray. It seemingly offers the potential to cut production cost and enable faster delivery to more channels, with a corresponding increased monetisation of content.

Third, as mentioned above, fans' engagement with sport through media and technology has been revolutionised. Social media is providing an intriguing, disruptive backdrop. Sports rights owners are grappling with how to engage with it and, therefore, their fans, whilst not undermining the value of rights they own.

This year saw the acquisition of Periscope by Twitter, the now well known live streaming video app, which allows users to choose to broadcast a live stream publicly or to certain users only. A similar technology is Meerkat. For both of these, viewers can comment, see how many are viewing and can indicate their approval by "likes" or "hearts". Vine is yet another social media technology platform owned by Twitter, which is used for sharing sports related content.

So whilst social media platforms expand the traction, brand and reach of sport as fans engage with friends, other fans, teams and individual athletes, by enabling the uploading of content they can also risk devaluing the rights sports owners own and exploit. This leads to a complex balancing act for rights holders with some difficult questions to answer. What should be encouraged or allowed? What is unlawful? When is it right to take action and against whom?

To respond to the challenge, most rights holders have strict ticketing and enforcement policies restricting reporters and fans from creating live broadcasting footage of matches, players or backstage action. For example, the NBA's and NFL's ticketing conditions and press passes contain strict policies restricting these kinds of activities. Manchester United recently prohibited fans from bringing iPads into its stadium.

On the other hand, we are witnessing rights holders trying to take control of the social media conversation. The All England Lawn Tennis and Croquet Club reportedly used Periscope during Wimbledon 2015, whilst banning spectators from doing so. MLB has also received positive press coverage by attempting to get in front of the curve by setting up MLB Advance Media to exploit the MLB's online opportunities. It created MLB TV and the "AtBat" mobile app, which enable live stream viewing on computers and mobiles. This has, apparently, been very successful with significant subscriber numbers and corresponding revenue generation.

MLB is not alone in providing successful fan engaging content for the digitally savvy social media generation. "NBA League Pass" and the "NFL Now" app are two more illustrations. In November, Verizon was publicly announced as the Official Wireless Service Provider of the NBA, WNBA, NBA Development League and USA Basketball which includes go90 (accessible by mobile) providing highlights (which fans can share via various platforms), original and exclusive content and NBA League Pass access to out-of-market live games.

It is also interesting to note the trend of Wi-Fi build out in new stadia. For example, it is reported that the Levi Stadium (the San Francisco 49ers new home) not only provides four times greater bandwidth than the NFL requirement for 2015, but the upload speeds have been prioritised over the download speeds. If correct, that seems to suggest there is a focus on helping the social sharing of the live experience in the stadium.

Theme 2: Waving Goodbye to Corruption and Piracy?

Chapter 1: The corruption and piracy terminators

The first lightning bolt in this theme was, of course, one of the world's highest profile prosecuting agencies, the US Department of Justice, initially serving indictments on 14 FIFA officials, after a three-year FBI enquiry (16 additional FIFA officials were indicted on 3 December). FIFA has suspended both Sepp Blatter and Michel Platini and the

Swiss authorities have accused Sepp Blatter of criminal mismanagement or misappropriation. This widened to allegations of corruption in relation to the award of the 2006 FIFA World Cup in Germany. Soon after, the German Football Association's headquarters were raided by the German tax authorities.

Outside of the football world, allegations of impropriety and cheating are engulfing athletics following the revelations regarding alleged systemic cheating by doping by the Russian Athletic Federation, which has led to its suspension by the IAAF. This has been followed by allegations of impropriety over the award of an IAAF World Championship.

Sports have long been considered 'too big to fail' and self-governance has been accepted as the preferred model, recognised in Europe by the Nice Declaration due to the 'specificity of sport' and principally the need to be free from political interference. Whilst the tenets for this model may still be sustainable, investigatory agencies and prosecutors around the world are now zealously pursuing those sports administrators it suspects of corruption.

The sense is that, with continuing investigations and scrutiny by the authorities in an increasing number of jurisdictions, the unveiling of the true extent of corruption in sports is by no means done. The scope of many countries' anti-bribery, anti-corruption and money-laundering legislation is broad and, for example, the jurisdiction of the Serious Fraud Office in the United Kingdom may be triggered simply by the proceeds of a crime passing through a London bank account.

Authorities investigating corruption in sport are now probably following the trail of money, through governing bodies, sponsors, broadcasters and agents until the full picture is revealed.

Chapter 2: Piracy on the streaming seas

The first tablet in biblical times exhorted people not to steal, yet today's tablets provide the very means for doing so. In 2007, illegal downloads of music repeatedly cost that industry over \$12.5 billion annually; if it is not careful, perhaps sport might be in danger of experiencing a similar bombshell.

One of the largest sports streaming indexing sites (sites which provide users with an index of links to illegal streams) is estimated to generate annual revenues of between \$8 million to \$15 million. It was reported that the English Premier League loses millions of pounds each season due to illegal streams and last season blocked around 45,000 unauthorised streams, an increase of 50% from only three years ago.

It seems that online "pirates" can be divided into three categories:

- *"Business" Pirates* - those that set up a business to engage in media piracy. It is generally fairly easy for them to establish their business from a technological point of view and, from a legal point of view, to place themselves in jurisdictions (their domains, ISP subscription and servers) where legal regimes take a lighter view regarding recognition and enforcement of copyright and where they may not be easy to trace.
- *"Indexing" Sites* - which provide the online world with an index of illegal streams available to view sports content.
- *"Social Media Sharing"* - the uploading of clips of TV footage from fans watching in their armchairs at home or videos recorded from fans at the stadium.

There are practical and legal difficulties in taking action against those involved in each of these categories.

For those copying broadcast footage, while the issues of copyright ownership and infringement in say the UK and US are easier to identify and prove, there are clearly practical and jurisdictional issues in seeking to enforce the law. We say "easier" as the legal position is not cut and dried, particularly for the social media sharing category. For example, in the UK, to what extent can alleged infringers claim a clip they uploaded was not "substantial" (the threshold for copying copyright content to be infringing) or is exempted from infringement as "fair dealing"?

In any event, where infringers are individuals on social media, there are serious hurdles (PR, practical and legal) to address in taking action, as the music industry discovered.

One important area for rights holders is the role of ISPs in tackling piracy. In essence, both in the US and Europe, ISPs are obliged to act when they have specific knowledge of infringing material, requiring ISPs to remove or disable infringing content "expeditiously" once it is aware of it. "Expeditiously" is not the clearest (or most helpful) of terms in a sporting context where real time streaming is generally the most valuable.

That said, the level of involvement of ISPs in the issue is significant, illustrated by Twitter's transparency report for January to July 2015 revealing almost 14,700 Digital Millennium Copyright Act (DMCA) takedown notices, an 11% increase on the previous six month period (material apparently being removed in 67% of those cases).

To their credit, ISPs, particularly the best known, have shown a willingness to engage with the sports rights owning community to try and rectify the piracy problem. So amongst the anti-piracy armoury, at least one ISP allows copyright owners to take down material, where the original work has been compared against the upload and the upload has been found to be infringing. This supports the other technological weapons in the anti-piracy arsenal such as fingerprinting and forensic watermarking to identify original media content.

2016: The year for continued globalisation and regulatory and governance upheaval?

So now gazing into our crystal ball to identify the likely major issues for 2016.

We see both of the above themes continuing a pace. For theme 1, more sports content globally, more innovative rights deals, greater media involvement and investment in sport.

For theme 2, greater legal and structural change, particularly arising from:

- The ongoing corruption investigations and charges, and consequences for sport and its governance. Although it may be too late to prevent the consequences of any historical impropriety, 2016 is likely to be the year when any organisation involved in the sports industry, whether as a rights holder, agent, sponsor or broadcaster will look very carefully at its market practices, governance structure, and policies and procedures (particularly around tendering and bidding for rights and events).
- For some, we may well see a systematic overhaul of these structures, policies, procedures and practices. We also foresee organisations engaging in far greater levels of due diligence investigation when they are engaging, doing business or associating with third parties to try and prevent 'guilt by association' and, much more importantly, guilt in the eyes of the law.
- The escalation of the battle against media piracy and the harmful side of social media (often also referred to as "piracy"). We predict we may well see greater involvement and co-operation with ISPs to try and overcome the practical and legal difficulties in dealing with media piracy; and
- Changes to the content distribution landscape in Europe, driven by the European Commission's Digital Single Market strategy.

The Digital Single Market is the final key development for 2016, eagerly awaited by the industry. With this initiative, the Commission is seeking to enact its grand vision of a Europe in which '*individuals and businesses can seamlessly access and exercise online activities...irrespective of their nationality or place of residence*'.

Of most significance for those invested in the sports media rights industry appear to be the Commission's proposals on cross-border portability and the prevention of 'unjustified geo-blocking'. On December 9, the European Commission published two documents, dealing with copyright and portability.

The first document, the Communication, is not a legally binding instrument and is an expression of the European Commission's plans towards a modern, more European copyright framework. It sets out legislative proposals for adoption in Spring 2016 and the most pertinent here are:

- enhancing cross-border distribution of TV and radio programmes online, following the review of the Satellite and Cable Directive; and
- supporting rights holders and distributors to reach agreement on licences allowing for cross-border access to content (including cross-border requests from other EU states). It will consider the role of mediation or similar alternative dispute resolution mechanisms in this regard.

The Commission proposes a gradual approach and acknowledged the need to balance its objective of full cross-border access for all types of content with markets being ready to react to change and ensuring viable financing models for those primarily responsible for content creation.

Furthermore, to fight piracy, the Commission is speaking to parties and hopes to create a 'follow the money' system based on self regulation by Spring 2016. It suggests that Codes of conduct could be backed by legislation.

The second document is a step ahead of a Communication and is a draft regulation on cross border content portability. The aim is for the draft to be approved in 2016 so that it can enter into force in 2017. The draft provides that:

- subscribers must be able to access and use online content services that they are entitled to in their home EU country when they are temporarily in another EU country. This only applies to online content services which subscribers pay for or (if they are free) those that verify the subscriber's EU home country.
- access to and the use of the service is deemed to occur only in the subscriber's home EU country, even when the subscriber is temporarily in another EU country. This is a legal fiction and means that contracts will not have to be renegotiated.
- contractual terms prohibiting/limiting cross-border portability will be unenforceable.

Conclusion

So, each of:

- the ubiquitous globalisation of all sport as a prime means of entertainment, supported by a whole plethora of different and growing distribution methods;
- those distribution methods acting as a "battering ram" for new world conglomerate media businesses;
- an environment of zealous prosecution leading to the likely overhaul of the traditional governance structures; and
- growing media piracy,

were behind 2015 being a pretty transformational moment in time for sport.

Having experienced this and the exposure of the ills of the industry and technology in 2015, 2016 promises to be the year when the transformation continues to flourish and these ills are dealt with. Our details are above!

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