

Music Lessons: Football finance and live streaming

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The perilous state of English Premier League football club finances may lead to the conclusion that the current threat to future revenues posed by the free to access broadcast of Premiership matches on live-streaming web-sites over the internet may be the last straw in tipping most clubs in the EPL into bankruptcy (with half already 'technically insolvent'). However, given that exponential growth in television rights revenues in English Premiership football since 1992 fuelled equally rapid inflationary pressure within the EPL, it is not clear just how much English football benefited during the boom years. Also, given the limited likelihood of success in preventing free access to EPL games online it would be sensible to adapt to post-monopoly conditions rather than relying on an unsustainable suspension of competition. This brief article draws upon lessons from the recent history of the recording industry and its failure to adapt. It also highlights how recent policy and legislation designed to support existing digital media monopolies has in fact only promoted new forms of free circulation.

The advent of the compact disc (CD) in 1982 began a 'digital revolution' in the distribution of recorded music. The period from 1982 to 1999 saw an unprecedented boom in recorded music revenues (Sandell 2008) as prices rose, costs fell, and sales increased with reformatting and expanded markets (David 2010). Each CD was effectively a digital master copy enabling subsequent digital reproduction. This was not considered a serious threat until the advent of cheap CD burners in 1996 (Krueger 2004; Krueger and Connolly 2006), but it was the development of internet based sharing of digital music files in 1999 that really turned the digital revolution from feast to famine, at least for the recording industry who had done so much to develop and promote it. Since 1999 each attempt to legally prohibit file-sharing has provoked a new generation of software to bi-pass the regulation (David 2010). Napster's central server model was replaced by one, then another generation of peer to peer distribution that excluded the service provider from liability. Legal attack on uploaders led to peerS to peer torrent software where no one uploader supplies the copy and the downloader compiles a copy from multiple sources. Legal targeting of downloaders has led to the development of streaming services which allow the user to watch/listen without making a copy as such. It is such streaming software that is currently threatening football television rights holders.

Just as it took 17 years (from the birth of the CD to that of Napster) for the digital revolution to move full circle, so with English football the digital rights 'profit boom' that started with Sky and the birth of the EPL in 1992 turned negative in 2009 with the bankruptcy of Setanta (Sky's much less powerful rival in relation to EPL rights). Setanta had overestimated the number of subscribers it would attract. Fewer people were willing to pay than market analysts had predicted (Giulianotti and Robertson 2009). The existence of free alternatives was central to this (Birmingham and David 2010). In the period from 1992 to 2009 the amounts paid by Sky and others for packages of EPL matches rose rapidly (Deloitte 2009; Harris 2009). With only limited all-seater capacity within grounds ticket prices rose as demand outstripped supply. Similarly, controlling access to television viewing through subscription payments allowed prices to rise steadily in the 1990s and early 2000s for as long as

alternative forms of access were unavailable or unattractive. However, the presumption that football fans would not follow the lead set by music fans, either because they were more law abiding, more loyal, less computer literate, or because the technology was not as well developed for streaming live television relative to that needed to digitally record, compress and distribute music, have all proven unfounded as the volume people watching live-streamed EPL matches has grown in the last few years (Birmingham and David 2010).

Live streaming is in many ways the technical outcome of all previous attempts to prohibit earlier forms of free-circulation sharing software. As was pointed out above, each attempt to target one element within the sharing circuit (the uploader, the software provider and the downloader) led to more sophisticated forms of sharing that bi-passed the frames of legal regulation. In the case of live-streaming, attempts to prosecute channel providers have failed when attempts have been used to deploy existing laws. Napster was successfully prosecuted for contributing to acts of infringement and for its inability or unwillingness to remove copyright infringing content. Its claim that it was just a service provider like a postal service and not a content provider with editorial responsibility was rejected (David and Kirkhope 2004). The same defence was used successfully by later file-sharing software providers whose software allowed sharers to exchange peer to peer independently of the software provider's central server (David and Kirkhope 2006). The successful prosecution of The Pirate Bay (TPB) in 2009 (David 2010) was based on this 'tracker site' enabling downloaders to locate streams of uploaders. TPB was found guilty of direct involvement in acts of copyright infringement, as it helped sharers locate other sharers of particular files. Legal challenges to live-streaming channels face a significantly different situation. Channels such as Justin.TV (Birmingham and David 2010) actively seek to work with copyright holders and where Napster and TPB refused to regulate what users circulated via their services Justin.TV invites copyright holders to bring to their attention any instances where one of its channels is streaming material that a copyright holder believes to be in breach of its legal monopoly. It is however, in the nature of such live-stream broadcasts that by the time any such notification is made and investigated the event in question is over and the channel ceases to broadcast. Attempts by the EPL to legally prohibit Justin.TV from streaming 'its' games have failed because Justin.TV is not required to censor in advance what it does not know will be screened and as long as it acts after the event it remains within the law.

While the 2010 UK Digital Economy Act establishes wide-ranging new powers to regulate the internet, the appointment of a censor to vet material before it can be placed on the internet is not amongst them. Despite reasonable anxiety over the Act's implications for privacy and free expression it will not prevent the free global circulation of live-streams. Just as with all previous legislation designed to curb sharing, powers designed to target those copying files will most likely increase the use of streaming as this does not involve the viewer making a copy (just viewing), which makes it legally and technically harder to identify.

In addition, the policy of forcing the UK population to switch from analogue to digital television in 2009 removed the barrier between live-streaming on a computer and higher TV image size and quality. Legislation and policy have thereby inadvertently conspired to integrate television and internet platforms, paralleling the way the MP3 compression format allowed the integration of digital music recording with internet distribution. What was designed to serve commercial distribution models has (in both cases) intensified sharing potential. As the expansion of internet access in the UK (Dutton et al. 2009) has outpaced the expansion of digital television subscriptions

(Giulianotti and Robertson 2009) the number of football fans who can afford subscription television but who cannot access to the internet will continue to dwindle.

Responses to such changes have been varied. In England the EPL and the FA have adopted a tough stance (Scudamore 2009). In the United States various sporting leagues offer their own live-streaming services at a discounted price (relative to television subscriptions) (Birmingham and David 2010). Some European football clubs run their own internet/television subscription services. Where the legal prohibition route has been unsuccessful it remains to be seen how successful other strategies will be. However, if technical and legal strategies of prevention or prohibition offer little chance of success, attempts to maintain an existing customer base with improved services and higher image quality at least offers some scope. As previous policies, laws and strategies designed to eliminate digital sharing have only encouraged what they sought to restrict, commercial broadcasters will need to compete on the basis of increased quality rather than monopoly and clubs/leagues will have to retain and work with the loyalty of fans to retain their willingness to pay. With half of EPL clubs technically insolvent (Mihir 2010) digital TV rights monopolies and the money they generated do not appear to have benefited fans or clubs, even whilst some players' and agents' incomes rose. It is questionable whether legislation and policy should seek to protect existing copyright monopolies from technical innovation and the choices such innovations enable. Firstly such prohibitions do not work, and so are a waste of time and money. Secondly a successful clamping down on the internet presents no overall social benefits. Maintaining strong copyright monopolies would require pre-vetting all internet content and would only affect the relative amount some people have to pay and that others get paid, rather than generating any additional wealth or advantage. At the same time such a policy, if it could be implemented, would have very significant negative consequences for human rights and technical innovation.

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