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# Copyright Implications of Live Streaming Apps

BY [ZACHARY GROSSMAN](#) / ON APRIL 26, 2016

One area of the law that is sure to be a hotly contested issue in the near future is copyright infringement through the use of mobile live streaming applications.<sup>[1]</sup> The two most popular mobile live streaming applications are Meerkat,<sup>[2]</sup> and the Twitter-owned Periscope.<sup>[3]</sup> These two applications allow users to point and shoot their mobile devices and cast a live stream for millions of people around the world to see. While these applications can be used to live stream all kinds of entertaining footage, certain uses of the apps have come under fire as potentially illegal.<sup>[4]</sup> Some experts fear that “[i]n a single live stream, you might show someone else’s copyrighted creative work, illegally invade their privacy, violate their right of publicity...or even all three!”<sup>[5]</sup>

One primary example of potential copyright infringement took place during the much-heralded boxing match between Manny Pacquiao and Floyd Mayweather Jr.<sup>[6]</sup> With Periscope still a relatively new service and the power of its reach not yet well known, the application delivered quite possibly the biggest blow of the night.<sup>[7]</sup> With pay-per-view costs hovering at or around one hundred dollars, many curious viewers tuned into an estimated sixty-six Periscope feeds live streaming the match, saving themselves the one hundred dollars, while costing the networks, promoters, advertisers, the fighters, and other rights holders a lot more.<sup>[8]</sup> The uptick in traffic on the fairly new to market Periscope leads many to believe that this would result in a highly litigious battle.<sup>[9]</sup> Quite ironically, several minutes prior to the fight, HBO’s own boxing Twitter account, which boasts over four hundred thousand followers,<sup>[10]</sup> used Periscope to live stream backstage footage of the participants and provide exclusive online content.<sup>[11]</sup> Specifically, the tweet said “LIVE on #Periscope: Inside @MannyPacquiao room #MayPac LIVE now” followed by a URL<sup>[12]</sup> leading to the Periscope live stream.<sup>[13]</sup> Certainly, the picture one receives via periscope is substandard to what they may receive from inside the arena or on a sixty-inch high definition television, however, it’s a small price to pay, or not pay, to access the footage for free or on the go.<sup>[14]</sup> This day in age a somewhat subpar picture quality is something that millions of people are used to, as convenience trumps quality when it comes to consuming content from the palm of one’s hand. In what appeared to be a nod of approval of mass piracy, then Twitter CEO Dick Costolo summed up the night in fewer than one-hundred-forty characters tweeting, “[a]nd the winner is. . . @Periscopeco.”<sup>[15]</sup>

Title 17 of the United States Code governs copyright laws in the United States.<sup>[16]</sup> Broadly speaking, six exclusive rights are granted to those owning copyrighted works.<sup>[17]</sup> To prove that mobile live streams of televised programming constitute copyright infringement, rights holders would have to prove that their program is an “original work of authorship”<sup>[18]</sup> that is granted the previously mentioned exclusive rights. Having done that, they would need to

prove that one or more of those rights were infringed through one's periscope stream, and survive any claims of defense such as the fair use defense.<sup>[19]</sup>

Lastly, in order to succeed in proving copyright infringement, the rights holders would have to survive the safe harbor provided for service providers through the Digital Millennium Copyright Act.<sup>[20]</sup> Essentially, the Act provides immunity for service providers that act quickly to remove potentially infringing content broadcast through their service by their users at the request of the rights holders.

The copyright battle over mobile live streaming can quickly become this decade's version of the music streaming battle that unfolded in the early 2000s.<sup>[21]</sup> However it unfolds, it is sure to be an interesting area of the law surrounding emerging technologies and definitely something to keep an eye on.

<sup>[1]</sup> David C. Wells, *Live-Streaming Apps Are at the Center of a Legal Controversy. Here's Why*, Texas Freelance Association (Nov. 10, 2015), <https://texasfreelance.org/live-streaming-apps-are-at-the-center-of-a-legal-controversy-heres-why/>.

<sup>[2]</sup> <http://meerkatapp.co>.

<sup>[3]</sup> <https://www.periscope.tv>.

<sup>[4]</sup> Glenn Peoples, *The Meerkat Minefield: Legal Issues With Live-Streaming Apps*, Billboard (Mar. 30, 2015), <http://www.billboard.com/articles/business/6516936/meerkat-periscope-legal-issues-live-streaming-apps>.

<sup>[5]</sup> Kerry O'Shea Gorgone, *Live Streaming with Meerkat & Periscope: A Marketer's Legal Checklist*, Kerry Gorgone (May 18, 2015), <http://www.kerrygorgone.com/meerkat-periscope-checklist/>.

<sup>[6]</sup> Scott Christ, *Mayweather vs. Pacquiao 2015 results: Floyd Mayweather stays undefeated with decision win*, SBNation (May 3, 2015, 1:16 AM), <http://www.sbnation.com/2015/5/3/8538757/pacquiao-vs-mayweather-fight-results-unanimous-decision>.

<sup>[7]</sup> Sam Thielman, *Periscope Delivers Blow to Pay-Per-View in Mayweather v Pacquiao Fight*, The Guardian (May 4, 2015) ("By the time anybody from Twitter is able to bust a user for piracy via the traditional takedown notice . . . the damage will already be done."), <http://www.theguardian.com/technology/2015/may/04/twitter-periscope-winner-mayweather-pacquiao>; Jose Pagliery, *Mayweather-Pacquiao fight made Periscope the new Napster*, CNN Money (May 4, 2015, 4:05 PM),

<http://money.cnn.com/2015/05/04/technology/live-stream-mayweather-pacquiao/>; Yoree Koh & Joe Flint, *Mayweather-Pacquiao Boxing Match Shows Might of Live-Streaming Apps*, Wall St. J. (May 4, 2015, 10:37 PM), <http://www.wsj.com/articles/mayweather-pacquiao-boxing-match-shows-might-of-live-streaming-apps-1430793440>.

[8] Richard Sandomir, *Periscope, a Streaming Twitter App, Steals the Show on Boxing's Big Night*, N.Y. Times (May 4, 2015), [http://www.nytimes.com/2015/05/05/sports/periscope-a-streaming-twitter-app-steals-the-show-on-boxings-big-night.html?\\_r=1](http://www.nytimes.com/2015/05/05/sports/periscope-a-streaming-twitter-app-steals-the-show-on-boxings-big-night.html?_r=1).

[9] David Pierson & Paresh Dave, *Cable Took the Hardest Blow in the Mayweather-Pacquiao Fight*, LA Times (May 5, 2015), <http://www.latimes.com/business/la-fi-periscope-streaming-20150505-story.html>.

[10] HBOboxing (@HBOboxing), Twitter (last visited Feb. 2, 2016, 8:30 AM), <https://twitter.com/HBOboxing>.

[11] Arjun Kharpal, *Mayweather-Pacquiao: Periscope 'Won By Knockout'*, CNBC (May 4, 2015, 3:49 AM), <http://www.cnbc.com/2015/05/04/mayweather-pacquiao-live-streaming-app-periscope-won-by-knockout.html>.

[12] URL stands for Uniform Resource Locator and references an address on the internet, also commonly referred to as a Link; see *What Is a URL?*, Oracle (last visited Feb. 2, 2016, 8:33 AM), <https://docs.oracle.com/javase/tutorial/networking/urls/definition.html>.

[13] HBOboxing (@HBOboxing), Twitter (May 2, 2015, 7:08 PM), [https://twitter.com/HBOboxing/status/594684887199682560?ref\\_src=twsrc%5Etfw](https://twitter.com/HBOboxing/status/594684887199682560?ref_src=twsrc%5Etfw).

[14] Andrew Wallerstein, *Periscope Piracy Sets Up Grudge Match: Hollywood vs. Twitter*, Variety (May 3, 2015, 7:44 AM), <http://variety.com/2015/digital/opinion/periscope-piracy-sets-up-grudge-match-hollywood-vs-twitter-1201486298/>.

[15] Dick Costolo (@dickc), Twitter (May 2, 2015, 9:50 PM), <https://twitter.com/dickc/status/594725651854139392>

[16] Copyright Act, 17 U.S.C. §§ 101-1332 (2010).

[17] 17 U.S.C. §106 (2002).

[18] 17 U.S.C. §102 (2010).

[19] 17 U.S.C. §107.

[20] 17 U.S.C. §512.

[\[21\]](#) Metro-Goldwyn-Mayer Studios Inc. v. Grokster, 545 U.S. 913, 929-30 (2005).

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