

Down Scope!

By Reg P. Wydeven
May 24, 2015

The last few weeks I wrote about the legal fallout from the Floyd Mayweather, Jr. and Manny Pacquiao title fight. The legal issues involved ticket sales to the weigh-in, class-action lawsuits brought by disgruntled fans who felt they didn't get their money's worth because Pacquiao failed to disclose a shoulder injury, and a defamation suit by Mayweather's ex-girlfriend for claiming she was on drugs during the altercation that led to his arrest and incarceration for domestic violence.

But that's just the beginning. Despite bringing in over \$300 million from pay-per-view revenues from more than 3 million viewers, promoters feel they should have brought in more money because tons of fans watched the fight for free.

Illegally viewing a prize fight is nothing new. Back in the early 1990s, I'm sure I watched some of Mike Tyson's fights without ordering the pay-per-view. One of my buddies had a 'cheater box', or an electronic gizmo that you hooked up to your cable box that descrambled signals.

Well, in today's modern technological world, watching without paying is easier than ever before.

Instead of descrambling signals, fans just aim their cell phones at the fight itself or at the TV showing the pay-per-view and they are able to broadcast the match over the Internet.

Prior to the Mayweather-Pacquiao fight, I had never heard of the Periscope app. Owned by Twitter, the app allows users to live-stream whatever they want on the web. It's like Skype, except you have the Internet on the other end instead of one user. Sort of like a 'live' YouTube.

Experts estimate that hundreds of viewers used Periscope, or Meerkat, a similar app out of Israel, to stream the championship fight while watching it on TV. There was also apparently at least one user broadcasting from inside the arena. On the other end, however, tens of thousands of users watched the fight from the pirated broadcast. A writer from the tech site Mashable.com reported that one stream she was watching had over 10,000 viewers alone.

Fearing this, Pacquiao's promoter, Top Rank Boxing, along with Mayweather Promotions, and the fight's broadcasters, HBO and Showtime, sued HDBoxing.net, a website that announced its intention to stream the fight for free live. The court granted the companies' request by issuing a temporary restraining order preventing them from doing so. The promoters and the cable networks are now game-planning as to their next legal move to deal with the fight's hijackers.

On their end, Periscope warned users not to broadcast the fight. In addition, they promptly shut down over 30 streams after receiving 66 reports from rights holders during the fight. A spokesperson for Twitter, Periscope's parent company, complies with the Digital Copyright Act. "We respect intellectual property and are working to ensure there are robust tools in place to respond expeditiously," the spokesperson said. "Broadcasting content that is protected under copyright is a clear violation of our content policy."

And that's HBO, Showtime and the fighters' promoters' problem. Periscope and Meerkat provide a legal service; if users utilize the company's app for illegal means, it's hard to fault the companies for that. They are simply required to shut down bootleggers promptly when alerted to them and discourage users from committing piracy. That means the boxers' camps will have to track down individual users.

Movie studios are also understandably concerned about using these apps to broadcast films.

Disney is hoping a solution is found before July of 2017 when 'Pirates of the Caribbean: Dead Men Tell No Tales' is released. The studio does not want anyone pirating their movie about pirates.

This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2015 McCarty Law LLP. All rights reserved.