

Spotlight on Slingbox

BY VERED YAKOVEE AND SHAUN CROSNER

Since its inception in 2005, the Slingbox has presented novel legal questions regarding the rights of sports broadcasters. Today, due to its popularity and growing presence, the question is no longer whether the Slingbox should be used, but, rather, how it should be used. Various rights holders have reacted differently to Slingbox technology, with the NHL and MLB being polar opposites: the NHL is the first major league to collaborate with Sling, MLB is its fiercest opponent, and the NBA and NFL fall somewhere in between. Meanwhile, the Slingbox is evolving from a techie-only toy to a potentially mainstream device—it has already partnered with DIRECTV to provide services in connection with NFL games. And DIRECTV's main competitor is now poised to purchase Sling's corporate parent.

The Slingbox is a device about the size of a deck of cards that allows consumers to remotely view their television's cable or satellite programming from any computer having a broadband Internet connection. It is produced by Sling Media, Inc. ("Sling") of San Mateo, California, and is sold by online retailers like Amazon.com and Target.com or by national chains such as Best Buy, CompUSA, Circuit City, and PC World for anywhere between \$150 and \$250.

In essence, the Slingbox allows a broadband Internet connection to function as an infinitely long set of audio/video cables. It plugs into any video source at home such as a television, cable or satellite box, DVD player or VCR, or a digital video recorder and relays that video source's output over an Internet connection to any computer in the world running Sling Media's software. For now, Sling has limited its own functionality to allow only one computer at a time to receive a Slingbox video stream.

SlingPlayer, the software that makes this technology possible, is compatible with any computer with broadband capabilities, including both PCs and Macs. Newer versions of SlingPlayer also work with mobile devices like smart phones and pocket PCs. Furthermore, while the source television and remote device must be tuned to the same channel at all times,

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SlingPlayer software allows users to change channels from their remote location. Thus, from anywhere in the world, a user watching from his or her computer can switch back and forth between live feeds of their favorite team's game and local news coverage from their hometown.

While Slingbox no doubt appeals to its hundreds of thousands of users, the technology has drawn the ire of some high-profile content providers in the entertainment industry. HBO, for one, has openly questioned Slingbox's legality. At a 2006 Las Vegas panel, HBO CTO Bob Zitter suggested that Slingbox violated copyright laws. "Content owners don't like it," Zitter said, "because they think it violates their copyrights."¹ Capitol Broadcasting president Jim Goodman has echoed Zitter's comments.

When asked about Slingbox in a 2006 interview with *Broadcasting and Cable* magazine, Goodman said, "I can't believe that hasn't been stopped already."²

Concerns over copyright infringement might land Sling Media, Inc. in court. While Sling would argue its technology is innocuous, it has raised copyright infringement issues, as echoed above. For instance, while the technology allows HBO subscribers to watch their favorite programming from remote locations, it also allows those individuals to transmit content to the computer of a friend or family member who has not paid for it.

Still, Sling maintains that it functions within the fair use limitation to copyright exclusivity.³ Indeed, content providers would not blink an eye if a paying customer invited friends and family into their home to watch television. Moreover, television watchers have for decades been able to record a VHS tape of their favorite show and view it whenever—and wherever—they want. Such practices are protected under the laws of fair use, which generally allow purchasers of content to use the content in noninfringing ways without asking for permission from content providers. Still, the fair use doctrine has its limits. And Sling presents technological capabilities not contemplated by an analogy to VHS.

Some content providers contend that Sling technology violates their rights and their existing broadcast agreements. For example, MLB has national, regional, and, with its recent Extra Innings package, online broadcast agreements with various entities.⁴ The League's interactive media division, MLB Advanced Media (BAM), has vocally opposed the Slingbox, even trying, albeit unsuccessfully, to obtain licensing fees from Sling Media in 2006.⁵ Among the major leagues, MLB is the technological and revenue-sharing leader in making its own content available online. Its BAM division, with its Extra Innings package, generates approximately \$400 million in revenue and attracts more than 50 million visitors per month—with revenue equally shared among teams.⁶

MLB contends that the Slingbox technology runs roughshod over BAM's operations. Former BAM vice president George Kliavkoff, now chief digital officer at NBC, crystallized the league's stance on the technology in a recent interview. "I'm no longer with the league and can't speak on its behalf," Kliavkoff told *The Hollywood Reporter, Esq.* in May, "but the threatening part about Slingbox is it allows (viewers) to circumvent geographical boundaries written into broadcast rights deals. And if a league can't protect the rights they (sell), that doesn't bode well for future contracts. . ."

Still, as top executives from Sling Media have long asserted, local distributors should think twice before denouncing the Slingbox. The technology, while forcing local distributors to relinquish some of their regional control, allows more eyes to view commercials, which might translate into larger profits for local distributors selling advertisement space. "We're allowing more people to see more baseball," Sling Media CEO Blake Krikorian told *Sports Business Journal*, "with all the same commercials, and stay connected to their teams."⁸

Krikorian's comments might explain why some sports leagues have embraced Slingbox's technology. The technology, Sling contends, makes it easier for sports fans to follow their favorite teams, thereby strengthening the relationship between sports leagues and their fans. Indeed, NBA Commissioner David Stern invited Sling Media to the NBA Technology Summit to present the product in 2006.⁹

The NHL, however, is the first major league to actually partner with Sling. With its inaugural season currently underway, NHL content is distributed via Clip+Sling technology, which allows Slingbox owners to create short video clips from content on their device and e-mail the clips to anyone—even recipients who do not own a Slingbox themselves.¹⁰ Essentially, Slingbox owners can create their own highlight reels using NHL content and send those reels or individual clips to countless recipients. The NHL

and Sling share in the revenue, most of which is generated through advertisements connected to the shared content.

While the NFL does not contract with Sling, its content was the next of the major leagues to be available to consumers via Sling technology. Sling partnered with DIRECTV, which now offers Supercast to its Super Fan customers, i.e., those who purchase every NFL game on a seasonal basis. Supercast allows consumers to view on the Internet any NFL game that it could view at home—whether or not the viewer owns a Slingbox device. Blacked-out games are still not available in certain regions. However, problems may arise if consumers attempt to use Supercast to circumvent the blackout rule. For example, a Supercast viewer might travel outside of his or her home region. Under that scenario, he or she might have access to an online game that is blacked out in the region he or she is visiting. With simple technology, the laptop displaying that game could be connected to a television screen in a residence, or even a business, in circumvention of the blackout rule.

Despite its kinks, the Slingbox and Sling technology appear to be growing in presence, instead of shrinking. In fall 2007, the corporate parent of DIRECTV's main competitor, DISH, announced that it would purchase Sling for \$380 million. With DISH's support and access to local homes for installation purposes, Sling's sales have the potential to increase exponentially.

Still, even as some sports leagues begin to team with Sling, the debate over the technology's legality is unfinished business.

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1. <http://www.ft.com> (posted Dec. 27, 2006).

2. *Goodmon: Stop the Slingbox* (Feb. 5, 2006), available at <http://www.broadcasting-cable.com/article/CA6304972.html> (last visited Aug. 2, 2007).

3. *Id.*; also 17 U.S.C.A. § 107. However, a detailed discussion of the fair use doctrine is outside the scope of this article.

4. For a brief overview of Slingbox's impact on broadcasting, see *The Technology Liberation Front: The Slingbox, Space-Shifting and the Future of Broadcasting* (Feb. 6, 2006), available at <http://www.techliberation.com/archives/033067.php> (last visited Aug. 2, 2007).

5. *Sling and a Miss: Major League Baseball May Disagree, but a Device That Gives Fans More Ways to Watch Games Is a Good Thing*, L.A. TIMES, June 8, 2007, at A28.

6. Steven Levy, *Covering All the Online Bases*, ENTER., at E08 (June 25, 2007).

7. *Sports Leagues' Slingbox Opposition Highlights New Game of Content Control* (May 30, 2007), http://www.hollywoodreporteresq.com/thresq/ip/article_display.jsp?vnu_content_id=1003591840.

8. *Id.*

9. CNET News.com, *MLB Aims Brushback Pitch at Slingbox* (June 1, 2007), http://news.com.com/MLB+aims+brushback+pitch+at+Slingbox/2100-1030_3-6187915.html (last visited Aug. 2, 2007).

10. Eric Fisher, *Slingbox Deal with NHL May Shift Dialogue with Other Sports*, SILICON VALLEY/SAN JOSE BUS. J. (June 18, 2007).