

## Audiovisual rights in sports events An EU perspective

### SUMMARY

Premium live sports content attracts large audiences, drives TV subscriptions upwards and generates advertising for broadcasters, particularly in an increasingly diversified media landscape. With no foreseeable end to the rush for premium sports rights over a handful of major sports events, the dramatic intensification of competition in the past 20 years has led to a steep increase in the pricing levels of audiovisual rights. In 2009, EU broadcasters spent around €5.8 billion on the acquisition of rights, representing nearly 17 % of their total €34.5 billion programming spend.

Although sports events do not qualify as works of authorship, the audiovisual recordings of such events enjoy copyright protection and entitle rights-holders of the first fixation of the event to the right of reproduction, distribution, rental and communication to the public.

In this context, the regulatory framework under which audiovisual sports rights agreements are negotiated in the EU features two predominant models – the joint selling of rights, where rights are sold by specially created associations on behalf of sports clubs, and exclusivity – a model referring to territorial exclusivity over the exploitation of audiovisual rights.

In spite of the prominence of the latter model, the Audiovisual Media Services Directive contains two provisions that curb the restrictive allocation of rights, making it possible to freely receive information about events of major importance for society and enabling the public to have access to short extracts within general news programmes.

The ongoing revision of the Audiovisual Media Services Directive does not currently envisage any changes to these provisions.



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## Background

The market for global sports rights [reached](#) nearly €19 billion in 2014. This, however, has not always been the case. Between the 1950s and the mid-1980s, the limited number of sports events broadcasts kept the prices for their retransmission down.<sup>1</sup> At that time, sports organisers received no or very little compensation from broadcasters.<sup>2</sup> However, things started to change in the late 1980s-1990s, spurred by the progressive liberalisation of European broadcasting markets and technological developments. The number of actors on the demand side soared exponentially. As a result, public broadcasters faced increasing competition from cable, satellite, and telecommunications operators. The intensification of competition in the presence of a stable number of major sports events transformed the sale of sports audiovisual rights<sup>3</sup> into a lucrative business capable of attracting substantial sums of money.

What is more, the convergence of transmission techniques and media services has led to a profound change in the way sports content is marketed and transmitted to consumers. Apart from a TV set, consumers are increasingly using a range of Internet-connected devices, namely PCs, tablets and smartphones, to watch sports.

In its White Paper on Sport ([2007](#)), the Commission recognised the crucial role of audiovisual rights as the primary source of income for professional sport in the European Union (EU). However, with regard to diversity of opinion and the right to information, European law contains instruments to curb the restrictive allocation of audiovisual rights and enable the public to freely receive information about important events.

## Legal rights in sports events

Property rights (determining how a resource is used and owned), intellectual property rights (granted over creations of the mind and protected by copyright law), and audiovisual rights (regulating recordings and broadcasts) are the main type of rights linked to sports events.

### Ownership

The owner or beneficiary of ownership rights is typically the sports event organiser. However, EU law does not define the concept of 'organiser' and the national regulations on this subject differ, sometimes quite substantially. Except for a few EU Member States that have adopted specific laws on sport – such as [France](#) – most lack a clear concept regarding the ownership of the rights attached to sports events or a definition of 'sports events organiser'. In practice, sports events are owned by a number of parties with individual and collective rights in connection to the event, and the rights of the event's owner are limited.

In [general](#), for a series of regular sports events involving members of a federation or league (for instance, a professional football league), the home club is considered to be the organiser of the event, since it bears the organisational and financial responsibility. For regular national or international one-off events organised by a federation, the clubs or teams participating in the event are sometimes considered co-organisers, due to the economic investment they have provided upstream.

### House rights

Most sports events take place in specific venues over which the sports organisers have either [ownership](#) or exclusive-use rights. This type of exclusivity comes with the power to exclude unauthorised individuals or media from the venue. Entry is usually subject to specific contractual conditions and serves as an important legal instrument of protection for sports organisers. While the scheme has not been explicitly recognised by the courts in all EU Member States, it most likely exists and is enforceable everywhere in the EU.

More importantly, since the organiser is granted exploitation rights – allowing rights-holders to derive financial reward from the use of protected works by others – determining who will be fulfilling this function is crucial. Once this is done, each set of national regulations establishes how these rights may be transferred – usually under civil law agreements – regardless of whether organisers own broadcasting rights for copyright works and/or the right to broadcast sports events (for cases where sports events are not considered as works, see below).

### Copyright protection

Copyright is territorial (see box). In other words, there is no harmonised approach to [copyright](#) law at either EU or international level. The common principles of copyright law in the national legislations of EU Member States require the existence of an original form of expression to be present for it to qualify as a work of authorship. Therefore, sports events do not qualify as such works, due to the absence of any original form of expression, the unpredictability of their execution, and the lack of a script in relation to games or competitions.

The Court of Justice of the European Union (CJEU) confirmed this interpretation in 2011 in its [judgment](#) for the Premier League cases (also known as the Murphy case). Nevertheless, the Court offered EU Member States the possibility to grant some type of protection to sports events with a 'unique and original' character. Consequently, some Member States, such as Bulgaria, France, Greece, Hungary, Italy and Romania, have created special forms of protection for sports event organisers in their domestic sports laws.<sup>4</sup>

Since sports events do not constitute works of authorship, athletes cannot, in principle, be considered as performing artists whose neighbouring rights (see box) could be transferred to the event organisers, except in some specific sports that include choreographed moves performed to a piece of music (for instance, a synchronised swimming competition). However, it is worth noting that certain Member States, such as [Italy](#) and [Germany](#), grant special neighbouring rights to sports events' organisers.

### Rights attached to the recording and broadcasting of sports events

Audiovisual rights are exclusive rights and [include](#) the first fixation of the recording, its reproduction, distribution, rental and communication to the public.

Although sports events do not in themselves qualify as works of authorship, this is usually not the case for the audiovisual recordings of such events, which can fairly easily achieve the (modest) levels of originality required to qualify for copyright protection. The audiovisual recording of a sports event commonly features a large number of cameras aiming to capture not only the most important aspects of the event, but also the smallest details. In some cases, cameras can be located on helicopters, drones, or, as in the case of Formula 1, on competing cars. Added content, such as 3D animations indicating whether a football player is off-side, can also be blended with the recording. The resulting

#### The principle of territoriality

The territoriality of copyright is enshrined in Article 5 of the [Berne Convention](#) and it was confirmed as a core principle of EU copyright law by the CJEU in its 2005 [Lagardère ruling](#). In practice, each EU country grants and recognises copyright protection in its own territory by virtue of its national legislation. As a result, copyright is acquired and enforced separately by each of the 28 Member States.

#### Neighbouring rights

The rights granted to persons other than the authors, who are involved in the dissemination of copyrighted works, are called neighbouring rights. They cover three main categories of beneficiaries: performers, producers and broadcasting organisations.

audiovisual product is therefore considered to be an original creation. Indeed, national legislations (with the notable exception of Sweden) and EU case law recognise these recordings as works of authorship.

In professional team sports, national audiovisual rights are generally held by the relevant league. In contrast, in individual competitions, such as tennis tournaments and boxing matches, the event organisers are usually the ones who exploit the audiovisual rights. The entity that organises the transmission of the recording to the public is usually referred to as a 'broadcasting organisation', even though a clear international or EU-wide definition is lacking. In the case of sports events, the broadcasting organisation can be the club or a federation. Alternatively, it can be an entity that operates as a professional broadcaster and has acquired the exclusive right to broadcast the sports event.

Broadcasting organisations enjoy neighbouring rights protection for the transmission of their broadcast signals for public reception. These signals are protected by a neighbouring right that operates independently of any copyright attached to the content of the signal.<sup>5</sup> In other words, the neighbouring right exists even in the absence of any copyright on the content carried by the signal.

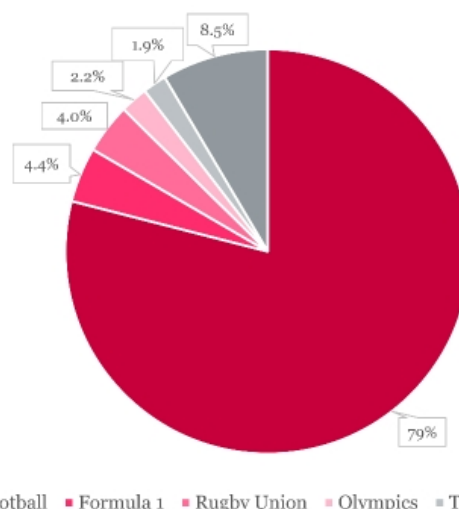
### The marketing of audiovisual sports rights

The European Commission has repeatedly recognised the key importance of premium sports content, as well as premiered films, for acquiring top positions in the European pay-TV markets.<sup>6</sup> However, over-the-top (OTT) content providers such as Netflix have been increasingly successful in [offering](#) extensive film catalogues at an affordable price, to the point that the perceived value of the film content value of pay-TV operators has come under pressure. The large amounts offered by pay-TV operators for premium sports content [underscore](#) its importance as a fundamental sales driver for pay-TV subscriptions. The fact that pay-TV operators in various European markets experienced a significant fall in subscriber numbers after losing the rights they held to broadcast premium sports content is a case in point. Indeed, German pay-TV operator Premiere lost 42 % of its market value and part of its subscriber base after announcing that it had failed to secure the rights for the Bundesliga in December 2005, while the new Bundesliga rights owner Unity/Arena attracted over 900 000 subscribers in just a few months.<sup>7</sup>

Importantly, what increases the value of sports programmes is the fact that they are [believed](#) to be 'advertising-friendly' because of their real-time consumption. In contrast, other programmes can be recorded and watched at a later time, with the possibility of skipping through the advertisements instead of watching them. This gives live transmission of sports events a substantial competitive advantage over traditional linear services, as it can boost the sale of pay-TV subscriptions.

However, there is a downside to success. While the demand for premium sports

**Figure 1 - Percentage of total spend on sports media rights in the top five EU markets in 2011**



Data source: Asser Institute, [Study on sports organisers' rights in the EU](#), 2014.

content has grown exponentially over the past 20 years, there are only a limited number of premium sports events capable of attracting large numbers of viewers. Availability of audiovisual rights is further reduced by the fact that media rights contracts are typically concluded on an exclusive basis for a long period of time. The rights are often sold in a large bundle and cover a whole event as well as all modes of exploitation. As a result, media content providers can acquire such content only at a substantial cost. In 2009, EU broadcasters [spent](#) around €5.8 billion on the acquisition of sports audiovisual rights, or nearly 17 % of their total €34.5 billion programming spend.

Although in some Member States other sports, such as ice hockey or basketball, have some prominence, football is by far the most dominant sport in the total spend on sports audiovisual rights in the EU. In 2011, broadcasters in the top five European markets—England, France, Germany, Italy and Spain — spent nearly 80 % of their annual sports rights expenditure on football (see Figure 1).

#### Skyrocketing revenues from audiovisual rights

Olympic audiovisual rights have been the greatest source of revenue for the Olympic Movement for more than three decades. While the broadcast revenue from the Rome Olympic Games in 1960 [amounted](#) to 'just' US\$1.2 million, that from the 2016 Olympic Games in Rio de Janeiro was [estimated](#) to stand at US\$4.1 billion and to [represent](#) 74 % of the Olympic Games' revenues sources.

The same is true for competitions organised by the International Football Association (FIFA). Worldwide revenues from the allocation of audiovisual rights in the FIFA World Cup have increased from €84 million ([France, 1998](#)) to over €2.4 billion ([Brazil, 2014](#)). As can be expected, the amounts paid in the individual national markets vary considerably.

The situation with regard to sports events organised by the Union of European Football Associations (UEFA) strongly reflects national traditions. For instance, while audiovisual rights in the 2009-2010 Champions League season [generated](#) nearly €100 million in some EU Member States (€98 million in Italy, €91 million in Spain, €85 million in Germany) or even considerably more (€179 million in the United Kingdom), the revenues raised in others (€2 million in Ireland and €2.9 million in Belgium) were much lower.

The sale of audiovisual rights has become one of the main sources of revenue for professional sport, together with sponsorship, ticket sales for live sporting events and merchandising. This is particularly true in the case of football, where, over the 2014-2015 period, broadcast revenues across the top five European leagues [increased](#) by 8 % and at €5.8 billion represented 48 % of total revenues.

## Licensing models and practices

### Overview

Live audiovisual rights to national football leagues are mainly accessible to pay-TV broadcasters because of their high cost. Public service broadcasters usually negotiate the joint purchasing of TV rights through the European Broadcasting Union (EBU), which has long-standing agreements with UEFA or FIFA to cover top sports events in European countries.<sup>8</sup>

Similarly, the Olympic Games remained within the remit of public service broadcasters through the EBU for decades. However, 2015 marked a turning point in the Olympic Committee's licensing strategy, with the sale of all TV and multiplatform media rights in Europe for the 2018-2024 period going to Discovery<sup>9</sup> and Eurosport, the aim being to ensure a broader coverage of the Olympic Games. The situation with tennis is similar, even though free-to-air broadcasters still retain some rights in top tournaments through national legislation on events of major importance for society.<sup>10</sup>



Negotiation of the territory in which the broadcast will be distributed is directly linked to the licence fee, as exclusive rights naturally cause the fees to increase. Furthermore, media sports rights may be negotiated as a bundle for one territory or may be divided according to the type of rights and media involved, for instance, for television, mobile or Internet broadcasts. Other key elements in the negotiation of the licensing agreement include the length of the deal, the process for selecting particular games for broadcasting, copyright ownership and sponsorship rights. Media sports rights fall under the following broad categories:

- **live broadcasting:** the most valuable right, since it attracts the highest TV audiences, but interest naturally decreases sharply once the event ends;
- **webcasting:** audiences for live streaming are constantly increasing. Many events are webcast live and in high definition in numerous territories;
- **delayed broadcasts/streaming:** this option still attracts large audiences;
- **packaging of highlights:** this format is very popular with online users who can view their preferred highlights on demand.

### Dominant models

The regulatory framework under which audiovisual sports rights agreements are negotiated in the EU has been structured around the various [decisions](#) emanating from the European Commission — in its capacity as a keeper of [EU antitrust rules](#) — and the national competition authorities, with two predominant models being used: the joint selling of rights and exclusivity.

The **joint selling of rights** is [carried out](#) by associations expressly created for that purpose, which sell the rights on behalf of the clubs. Usually, the rights are bundled in exclusive packages and sold to a single broadcaster in each country. This system prevents clubs from competing in the sale of their rights, but may limit competition between broadcasters, ultimately restricting consumer choice. The European Commission accepts the system in principle, provided certain conditions are respected. Among other things, these include: the use of open and transparent tender procedures, a limitation of the rights' duration (usually not exceeding three years), and the division of the rights into different packages to allow several competitors to acquire rights.

In most cases, the **exclusivity** model refers to territorial exclusivity (that is, the licensee is entitled to exploiting the audiovisual rights in a given territory). However, it may also concern time restrictions (for instance, for a pre-determined period of time), and distribution platforms (that is, selling audiovisual rights separately to different retail platforms). Absolute territorial exclusivity requires the media content provider to ensure that its transmission on a pay and/or pay-per-view basis and by satellite are encrypted; that its digital and analogue terrestrial transmissions do not exceed the boundaries of the territory; and that its transmissions via the internet are [geo-blocked](#) (meaning that access to online content is restricted based upon the user's geographical location).

Alternative strategies include non-exclusive licensing models and consist of the self-exploitation by sports organisers of their audiovisual rights through their own dedicated channels.<sup>11</sup> However, due to the high infrastructure and operational costs, this model remains an exception. Other models rely on the self-exploitation by sports organisers of secondary audiovisual rights on different platforms, including specific highlights or clips of matches.

## Legal framework

### International conventions

The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961 ([Rome Convention](#)) sets the minimum standards of protection for broadcasting organisations. Under the convention, broadcasting organisations enjoy the right to authorise or prohibit the re-broadcasting of their broadcasts, as well as their reproduction and communication to the public, for a term of 20 years as of the end of the year in which the first broadcast took place.

However, important developments in technology and the marketplace have taken place since the convention's adoption and are therefore not addressed by it. Indeed, digital copies of television programmes can be made and transmitted instantaneously around the world. Furthermore, signal theft has become a challenge for broadcasting organisations, which complain that unauthorised use of signals makes it difficult for them to fully exploit expensive content, especially coverage of live sports events.

While the rights of performers and producers were updated in 1996 by the World Intellectual Property Organization (WIPO) [Performances and Phonograms Treaty](#) (Internet treaties), allowing to extend protection to 50 years from the date of the first fixation, [discussion](#) on the updating of the international protection of broadcasting organisations is ongoing. Some elements, such as the inclusion of internet services (for example, 'webcasting') and the concrete scope and duration of rights, remain controversial.<sup>12</sup>

### EU legal framework

#### *EU jurisprudence and competition rules*

CJEU jurisprudence — in particular the [Bosman case](#) — has confirmed that sport itself is subject to Community law, as far as it constitutes an economic activity. In this context, the sale and acquisition of audiovisual sports rights in Europe is subject to EU competition rules, notably the ones prohibiting anti-competitive agreements between parties. [Article 101](#)(1) of the Treaty on the Functioning of the European Union (TFEU) prohibits agreements and concerted practices which may affect trade between EU Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. Article 101(1) explicitly prohibits the following actions:

- directly or indirectly fixing purchase or selling prices or any other trading conditions;
- limiting or controlling production, markets, technical development or investment;
- sharing markets or sources of supply;
- applying different conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- making the conclusion of contracts subject to acceptance by the other parties of additional obligations which have no relation to the subject of such contracts.

That being said, certain actions may benefit from the exemption provided for under Article 101(3) TFEU, if they fulfil the following conditions:

- they contribute 'to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit';
- they neither impose restrictions that 'are not indispensable to the attainment of these

objectives', nor 'afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question'.

The marketing of audiovisual sports rights raises two main competition concerns related to joint selling and territorial exclusivity.

**Joint selling** constitutes a horizontal restriction of competition contrary to Article 101(1) TFEU, but may be covered by the exemption granted under Article 101(3) TFEU in certain cases. Joint selling has become regular practice since three Commission decisions – on the UEFA Champions League (2003), the Bundesliga (2005) and the Premier League (2006) — clarified its legality, based on the fact that joint selling agreements may:

- lead to the improvement of production and distribution by creating a quality-branded league-focused product sold via a single point of sale;
- increase efficiency, as they reduce transaction costs for audiovisual operators and clubs, and respond to broadcasters' demands;
- bring about marketing advantages, such as the branding of league products;
- allow consumers to profit from the benefits deriving from the agreements.

In each of the above-mentioned cases, the Commission required different [modifications and commitments](#) involving, for example, a short duration and a limited scope for exclusive rights, a transparent bidding procedure, retention of sales of certain audiovisual rights by the clubs, a fall-back clause whereby certain unsold rights could revert to the clubs for individual marketing, and a 'no single buyer' rule. This rule is actually a commitment made by the Premier League to ensure that no single bidder would be awarded all exclusive audiovisual rights for live broadcasts.

However, the rule has [raised concerns](#) over the penalisation of viewers. Indeed, its introduction would mean that fans would have to pay at least two subscriptions to be able to watch all of the matches of a particular sports team. Before these decisions were made, the national competition authorities of various EU Member States had prohibited the joint selling of rights on the basis of their national competition rules.<sup>13</sup>

Certain **exclusivity clauses** may also interfere with competition rules. In principle, EU competition law prohibits measures, such as absolute territorial protection, that restrict competition and fragment the EU internal market. However, so far, the jurisprudence and decisional practice concerning territorial exclusivity in the agreements between audiovisual sport rights-holders and media content providers have been [interpreted](#) as

#### European Parliament views on territorial exclusivity and cross-border portability of online content

In a 2016 [resolution](#) on the Digital Single Market Act, Parliament emphasised that the principle of territorial exclusivity remains an essential element of the EU copyright system. Similarly, the EU co-legislator warned against the promotion of mandatory pan-European licences, since this could lead to a decrease in the content made available to users.

In September 2016, the European Commission presented a [legislative package](#) for the modernisation of EU copyright rules. While the Commission did not propose to change the principle of territorial exclusivity, one of the aims of the new regulation will be to facilitate the licensing of rights for online distribution of audiovisual content on a cross-border scale. The proposal is currently being [examined](#) by Parliament.

More recently, in February 2017, the assembly [backed](#) the selling of TV rights on a 'centralised, exclusive and territorial basis'.

Still in February 2017, Parliament reached an [informal agreement](#) with the Council of the EU on the draft [regulation](#) on cross-border portability of online content.

From 2018 onwards, Europeans travelling to another EU country will be able to fully benefit from their subscriptions for online content, such as sports fixtures, music, games or films. Portability will not be restricted in time and will apply to all subscription services content, as well as to free services that have expressed a wish to participate.



allowing such absolute territorial protection.

#### *Neighbouring rights*

In addition to the copyright protection of the audiovisual recording of a sports event provided for in the EU-28 national copyright legislations, the [EU Rental Right and Lending Right Directive](#) grants the producer of the first fixation of the event a neighbouring right. This right lasts 50 years from the date of its first communication to the public and includes the right of reproduction, distribution and making available to the public.

#### **Enforcement of audiovisual sports rights in a digital context**

The strong interest aroused by premium sports content accounts for the substantial volume of illegal streaming. Data [shows](#) that during the 2012-2013 season there were approximately 33 000 unauthorised live streams for the Premier League and about 17 500 for the Bundesliga. The latter is a staggering 647.8 % increase compared to the 2009-2010 season. The quality of the streams is improving rapidly due in part to the widespread availability of low-cost technologies facilitating the illegal retransmission of broadcasts. More worryingly, their use has evolved beyond the home-user to reach commercial premises.

Given the substantial economic investment required for obtaining exclusive licenses for sports events, infringement of intellectual property rights causes considerable harm to rights-holders. In the long run, it also puts at risk the value of those rights and therefore the revenues of sports organisations.

The EU [Directive](#) on the enforcement of intellectual property rights requires all EU Member States to apply effective, proportionate, dissuasive, fair and equitable measures, procedures and remedies against those engaged in counterfeiting and piracy, and seeks to protect the interests of rights-holders in the EU. However, the protection and enforcement of intellectual property rights in sports events is a real challenge. Given that the value of premium sports content lies almost exclusively in live viewing, the opportunity for removing illegal content is (almost) limited to the duration of the sports event.

#### **Limitations to exclusive media rights**

The legitimate interest in holding exclusive rights is sometimes waived in the name of freedom of information. In order to enforce the right to access to events that are considered of particular significance for the public, the EU has established two sets of rules: on events of major importance for society; and on the right to short reporting on events of high interest. The former implies the free-to-air coverage of certain events as identified by EU Member States. The latter responds to specific information needs in news programmes, and entitles any broadcaster to access the highlights of events that are of particular relevance but not necessarily listed. Both sets of rules apply only to linear services and are a restriction to exclusivity.

#### **The broadcasting of events of major importance for society**

The idea for the creation of a list of events of major importance for society was prompted by the European Parliament's Culture Committee (CULT). The triggering factor was German Kirch Group's [acquisition](#) in 1996 of all rights for the 2002 and 2006 Football World Cups. As part of the revision process of the Television without Frontiers [Directive](#) (TVWF) in 1996, CULT issued a [recommendation](#) for second reading suggesting that a binding list of events should be established at EU level and should include Summer and Winter Olympics and World and European Football Cups, notwithstanding the right of EU Member States to expand that list.

While the idea of a binding list was ultimately rejected, the revised TVWF Directive retained the principle of subsidiarity, leaving the adoption of the lists up to each EU country on the basis of the principle of mutual recognition.<sup>14</sup> This provision remained substantially unchanged during the third [revision process](#) of the TVWF Directive, which culminated in 2007 with the endorsement of the Audiovisual Media Services Directive ([AVMSD](#)). The current [revision proposal](#), tabled by the European Commission in 2016, does not envisage any modification of this provision.

In specific terms, Article 14 of the AVMSD stipulates that the events of major importance for society have to be selected in advance by those EU Member States wishing to grant access to them and must respond to specific information needs that are linked to their societal relevance. The European Commission must be notified of any [lists](#) adopted by the EU Member States. In addition, the lists must receive the positive opinion of the [Contact Committee](#) — established to monitor the implementation of the Directive — and be published in the Official Journal of the EU.

The guidelines for the implementation of this provision were provided in an unpublished working document of the Contact Committee<sup>15</sup> and offer four indicators for the assessment of an event of major importance for society, two of which have to be fulfilled for the inclusion of an event in a national list:

- the event and its outcome have a special general resonance and are not simply of significance to those who ordinarily follow the sport or are activity concerned;
- the event has a generally recognised, distinct cultural importance for the population, in particular as a catalyst of its cultural identity;
- the event involves the national team in the sport concerned in a major international event;
- it has traditionally been broadcast free-to-air and has commanded large TV audiences.

As for the definition of what constitutes an event, the CJEU [ruled](#) that the World Cup and the UEFA European Championship must be considered divisible into different matches or stages. In other words, if an EU country considers the final stage of the World Cup or the UEFA European Championship in its entirety as a single event, they must send a justification to the European Commission.

Finally, the transmission rights of the listed events may be bought by an 'unqualified broadcaster' (that is, a pay-TV broadcaster). Article 14(1) of the AVMSD does not pose a restriction on the acquisition of rights, but rather, to their exercise. In this case, the unqualified broadcaster would have to offer the rights to a qualified broadcaster, but the latter would have no obligation to buy the rights. It should be noted that there are no rules addressing this potential conflict in the AVMSD.

### **The case of short news reporting**

The right to short news reporting — defined in Article 15 of the AVMSD — consists of the possibility offered to audiovisual media providers to inform the public during news programmes about events of high interest and is applicable without the submission of a list with pre-agreed events.<sup>16</sup> The assessment is carried out on a case-by-case basis and the short extracts must be limited in their scope. Once access has been ensured, the broadcaster wishing to transmit short extracts must nonetheless respect the following conditions:

- the broadcaster must identify the source of the extracts;
- the extracts can be used solely in general news programmes;
- the use of the extracts in on-demand catalogues is allowed only in the case of deferred

transmission of the same programme originally available on linear services.

These restrictions account for the need to respect the interests of the exclusive rights-holders. Limitations are justified only to the extent that they respond to the fundamental right to information.<sup>17</sup> The details of the actual enforcement of the right to short news reporting are left to the discretion of EU Member States 'in accordance with their legal systems and practices'. This concerns in particular:

- compensation arrangements, which are nonetheless limited to the additional costs directly incurred for providing access;
- the maximum length of short extracts and the time limits regarding their transmission.

The current proposal for a revision of the AVMSD does not envisage any changes to this provision.

## Outlook

Traditionally, the role of ensuring audiovisual access to major sports events has been played by national broadcasters. Up until 2015, the pan-European channel Eurosport had not been active in purchasing rights for premium events. This situation changed, however, with the acquisition of the channel by the US-based Discovery Communications media company, which won the [multiplatform rights](#) to the Olympic Games from 2018 to 2024 for the entire European continent except for the Russian Federation. Since Eurosport falls under French jurisdiction, the provisions of the AVMSD apply. Analysis by the European Audiovisual Observatory [shows](#) that this arrangement accounts for the numerous sublicensing deals with free-to-air broadcasters across Europe, many of which are public service broadcasters.<sup>18</sup>

However, it is not impossible that in the future a company falling outside EU jurisdiction may acquire the rights coming under the lists of major events. Should this happen, and should Articles 14 and 15 of the AVMSD remain unchanged during the revision process, the mechanisms created by this directive could remain inapplicable if the potential rights-holder is based in a country which is not a signatory of the European Convention on Trans-frontier Television.

From a broader perspective, it remains to be seen how the relationship between live premium sports content owners' and global media platforms, such as YouTube, Twitter or Netflix, will evolve in the short run. Practitioners [argue](#) that, at present, the strong demand for live rights from established players keeps pushing rights fees upwards and does not encourage rights-holders to experiment.

The same is true for major alternative platforms, which, despite having substantial resources, are reluctant to get involved without a guaranteed return on investment. And yet, some limited experimentation is already taking place. The US National Football League [broadcast](#) ten Thursday night matches worldwide through Twitter in 2016. However, the [rights](#) to these matches had already been sold to NBC and CBS for US\$450 million per season, which lowered the risk substantially.

### European Parliament report on the implementation of the AVMSD

In its [resolution](#) from 2013, the European Parliament encouraged the Commission, with regard to the next report on the application of the AVMSD, to assess whether EU Member States have implemented the directive in a way that preserves the necessary balance between the principle of freedom of access to information and the protection of rights-holders.

Welcoming the approach taken by the Commission and the European Court of Justice in relation to the interpretation of the AVMSD, Parliament backed the broad interpretation of the term 'events which are regarded as being of major importance for society', including sports and entertainment events that are of general interest, and encouraged EU Member States to draw up lists of such events.

## Main references

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## Endnotes

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- <sup>2</sup> Jean-François Bourg and Jean-Jacques Gouguet, *The Political Economy of Professional Sport*, Edward Elgar, Cheltenham, 2010, p.101.
- <sup>3</sup> Also called 'broadcasting' or 'media' rights.
- <sup>4</sup> See Asser Institute, [Study on sports organisers' rights in the European Union](#), Publication Office of the European Union, 2014, p. 38.
- <sup>5</sup> Lionel Bently, Brad Sherman, *Intellectual Property Law*, Oxford University Press, 2009, p. 86.
- <sup>6</sup> See CVC/SLEC ([Case M.4066](#)) Commission Decision of 20 March 2006, Bertelsmann/Kirch/Premiere ([Case IV/M.993](#)) Commission Decision 4064/89 (1999) OJ L 53/1, Vivendi/Canal+/Seagram ([Case IV/M.2050](#)) OJ C 311/3, para. 19.
- <sup>7</sup> See Asser, *New media and sport*, Springer, 2012, p. 10.
- <sup>8</sup> In 2010, the EBU [secured](#) exclusive media rights in 30 countries for the newly created national team qualifying matches competition, known as European Qualifiers, thus complementing the rights previously acquired to the 2014, 2018 and 2022 FIFA World Cup.
- <sup>9</sup> Discovery has [acquired](#) the exclusive rights, valued at €1.3 billion, across all platforms, including free-to-air television, subscription/pay-TV, Internet and mobile phones, in all languages across 50 countries and territories in Europe, with the exception of Russia.
- <sup>10</sup> For more details on events of major importance for society, see the section on 'Limitations to exclusive media rights'.
- <sup>11</sup> All major US sport leagues have started 24-hour cable TV channels devoted to their respective competitions.
- <sup>12</sup> Broadcasters aspire to 'technology neutral' protection that would cover new technologies, such as digital programme recording devices, on-demand video services and internet protocol television, which can transmit programmes not only to televisions but also to computers and mobile phones. However, some countries and civil society groups fear that restrictions may affect internet transmissions. Critics [argue](#) that delimiting content by type of equipment can inhibit technological innovation and lead to the blocking of legal uses of TV broadcasts, such as recording programmes for personal or educational uses.
- <sup>13</sup> During the 1990s, the competition authorities of Germany, Italy, the Netherlands and the United Kingdom had [initiated actions](#) regarding the joint selling of football media rights, and found that they were anti-competitive.
- <sup>14</sup> Similar provisions are to be found in Article 9bis of the European Convention on Trans-frontier Television adopted by the Council of Europe in [1989](#), and amended according to the provisions of the Protocol (ETS No. 171) which entered into force on 1 March 2002.
- <sup>15</sup> European Commission, Working Document CC TVSF (97) 9/3, Implementation of Article 3A of Directive 89/552/EEC, as modified by Directive 97/36/EC: Evaluation of National Measures. This document was never made public by the European Commission, but was referred to and reported in full in the [judgment](#) of the EFTA Court of 3 October 2014 in the E-21/13 case, FIFA vs EFTA Surveillance Authority, concerning the adoption of the Norwegian list, paragraph 33.
- <sup>16</sup> As with events of major importance for society, similar provisions are to be found in Article 9 of the [European Convention on Trans-frontier Television](#).
- <sup>17</sup> In contrast, restrictions on exclusivity would not be justified where, for example, a broadcaster compiles a selection of highlights. Highlights are usually sold separately, as a different type of exploitation right.
- <sup>18</sup> See for instance the cases of ORF in [Austria](#), HRT in [Croatia](#), YLE in [Finland](#), Czech TV in the [Czech Republic](#), RTÉ in [Ireland](#), NOS in the [Netherlands](#), Kanal 5 in [Sweden](#), and BBC in the [United Kingdom](#).

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