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DRAFT REPORT

with recommendations to the Commission on challenges of sport events' organisers in the digital environment
(2020/2073(INL))

Committee on Legal Affairs

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(Initiative – Rule 47 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on challenges of sport events' organisers in the digital environment (2020/2073(INL))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC¹,
- having regard to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights²,
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')³,
- having regard to Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society⁴,
- having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)⁵,
- having regard to the Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online⁶ and the Communication from the Commission of 28 September 2017 to the European Parliament, the Council and the European Economic and Social Committee, entitled "Tackling Illegal Content Online: Towards an enhanced responsibility of online platforms" (COM(2017)0555),
- having regard to the Commission's Declaration on sport event organisers annexed to the European Parliament legislative resolution of 26 March 2019 on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market⁷,
- having regard to the Communication from the Commission of 29 November 2017 to the

¹ OJ L 130, 17.5.2019, p. 92.

² OJ L 157, 30.4.2004, p. 45

³ OJ L 178, 17.7.2000, p. 1.

⁴ OJ L 167 22.6.2001, p. 10.

⁵ OJ L 095 15.4.2010, p. 1.

⁶ OJ L 63, 6.3.2018, p. 50.

⁷ P8_TA(2019)0231.

European Parliament, the Council and the European Economic and Social Committee entitled “Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights” (COM(2017)0708),

- having regard to the Memorandum of Understanding of 25 June 2018 on online advertising and intellectual property rights facilitated by the European Commission and the Report of the Commission on the functioning of the Memorandum of Understanding on online advertising and intellectual property rights (SWD(2020)0167/2),
 - having regard to Rules 47 and 54 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Culture and Education,
 - having regard to the report of the Committee on Legal Affairs (A9-0000/2020),
- A. whereas the development of the digital environment has made it easier for all fans to access sport events on all kinds of devices and has boosted the development of new online business models; whereas, at the same time, it has facilitated illegal online transmission of sport broadcasts within and outside the Union;
- B. whereas the illegal transmission of sport events not only causes significant economic harm to the sector, which results in losses in subscription and advertising revenue, but is also part of the activities of criminal organisations, that are also harmful for consumers;
- C. whereas, unlike other sectors, most of the value of a sport event broadcast lies in the fact that it is live and most of that value is lost when the event ends; whereas, consequently and only in this context, a swift reaction is needed to put an end to the illegal transmission online of sport events;
- D. whereas action should focus on the root cause of illegal content streams, namely illegal website enablers and not on individuals who unwillingly and unknowingly are involved in illegal streaming;
- E. whereas the professional illegal transmission of a whole sport event should be distinguished from short sequences shared among fans and pertaining to fan culture and from content shared by journalists for the purpose of informing the general public as set out in the Audiovisual Media Services Directive;
- F. whereas sport events as such are not the subject matter of copyright protection under Union law, but the audiovisual recording and transmission of it is; whereas there is no harmonised protection in Union law for sport events’ organisers; whereas, however, specific protection for sport events’ organisers is provided in the legislation of some Member States;
- G. whereas Union law provides for a general framework for notice and action mechanisms enabling the removal or disabling of access to illegal information stored by intermediaries; whereas Union law provides for civil enforcement measures that judicial or administrative authorities can take to prevent or to block intellectual property rights infringement;

- H. whereas, however, the current legal framework does not allow for the immediate action needed to remedy the illegal broadcast of live sport events; whereas, moreover, Member States have adopted rules on notice and action mechanisms that are not harmonised;

Introduction and general remarks

1. Requests that the Commission submit without undue delay a proposal for legislative acts, following the recommendations set out in the Annex hereto;

Sport events and intellectual property rights

2. Acknowledges that intellectual property rights are important for sport events' organisers, as their exploitation represents a source of income, in particular in relation to the licensing of broadcasting rights for the sport events they organise;

Online piracy of live sport events broadcasts

3. Considers that tackling online piracy of sport events that are broadcast "live" and which economic value lies in the "live" broadcast is the main challenge that sport events' organisers face;

Need for effective enforcement of rights

4. Stresses that, given the specific nature of live sport events broadcast and the fact that their value is mainly limited to the duration of the sport event in question, enforcement procedures need to be as swift as possible and to allow for immediate removal of illegal content;
5. Considers, however, that the current legal framework for injunction and for notice and take down mechanisms does not allow for an effective and timely enforcement of rights to remedy the illegal broadcast of live sport events; considers, therefore, that concrete measures, specific for live sport event broadcasts, should be adopted to adapt the current legal framework to fit these specific challenges and to allow for the prompt removal of illegal sport events broadcasts online; is of the view that real-time take down should be the objective to pursue;

Cross-border enforcement of rights

6. Underlines, also, that the general framework provided for by Union law is not applied in a similar way in national legislation and that civil procedure and notice and take down mechanisms differ from one Member State to another; is of the view that there is a lack of efficiency of enforcement tools in the cross-border context; calls for further harmonisation of the procedures and remedies in the Union in this specific context;

Notice and action procedures

7. Recalls that the Directive on electronic commerce provides that certain online service providers are to act expeditiously to remove or disable access to illegal information they store, upon obtaining actual knowledge or awareness thereof, through notices submitted to them; considers, however, that the current notice and take down procedure does not

allow for swift enforcement in a way that provides effective remedies, considering the specific characteristic of “live” sport events;

8. Calls on the Commission to propose concrete measures specifically adapted to live sport events allowing for immediate removal of, or the disabling of access to, content, including a real-time take down procedure;

Blocking injunctions

9. Notes that injunction procedures are relatively long and do not cope with the specific issue of illegal broadcasting of sport events; stresses the existence of practices developed at national level, such as live injunctions and dynamic injunctions, that have proved to be solutions to tackle piracy of sport events broadcasts more efficiently; calls for the introduction in Union law of injunction procedures aimed at allowing real-time blocking of access to or removal of illegal online live sport content based on the model of “live” blocking orders and “dynamic injunctions”;

Safeguards

10. Emphasises the need for safeguards to ensure that the legal framework strikes the right balance between the need for efficiency of enforcement measures and the need to protect third party rights;

Neighbouring right and sui generis right for sport events’ organisers

11. Notes that Union law does not provide for a neighbouring right to copyright for sport event’s organisers but that some Member States have introduced specific rights for sport events’ organisers in their legislation, including a new “neighbouring right” to copyright;
12. Considers that the creation in Union law of a new right for sport events’ organisers will not provide a solution to the challenge they face of a lack of effective and timely enforcement of their existing rights; considers therefore that the proposal should not seek to establish such a new right;

Other measures

13. Calls for cooperation between Member States authorities and between rightholders and intermediaries to be enhanced; further calls on the Commission, within its remit, to support Member States in their endeavours to improve existing infrastructure;

Final aspects

14. Considers that the requested proposal does not have financial implications;
15. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council.

ANNEX TO THE MOTION FOR A RESOLUTION: RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

A. PRINCIPLES AND AIMS OF THE PROPOSAL REQUESTED

In order to provide appropriate and effective legal protection of rights regarding live sport events, the current Union legal framework should be amended. This shall be achieved taking into account the following aims and principles:

- to improve and make the current legal framework on enforcement of intellectual property rights regarding live sport events effective, considering the specific nature of live sport events and in particular its short-time value;
- to clarify the existing legislation and adopt concrete measures to ensure the immediate removal or disabling of online access to illegal live sport events content to tackle efficiently illegal broadcast of live sport events;
- to further harmonise, without prejudice to the general Union framework to be defined in a Digital Services Act, procedures and remedies in the Union to boost the efficiency of enforcement tools, including in the cross-border context;
- to improve enforcement tools to allow for real-time take down of illegal live sport content, considering their need for effective notice and take down mechanisms which imply immediate measures to be taken;
- to harmonise the use of swift and adaptable blocking procedures in the event of repeated violations already established allowing for real-time blocking of access to illegal online transmissions of live sport events , based on the model of “live” blocking orders and “dynamic injunctions”;
- to ensure that the measures take into account the scope, magnitude and recurrence of the infringement and to target professional illegal transmissions, excluding the recording and posting of illegal amateur footage of sport events;
- to ensure that the measures to be proposed are proportionate and keep the right balance between the need for the enforcement measures to be efficient and the need to protect third party rights;
- to complement the adaptation of the legislative framework with non-legislative measures, including enhanced cooperation between Member States authorities and between rightholders and intermediaries;

B. ACTION TO PROPOSE

Without prejudice to the modification, in the framework of a future Digital Services Act, of the general rules regarding the manner in which illegal online content is tackled by online intermediaries , Directive 2000/31/EC (the Directive on electronic commerce) should be amended or specific provisions regarding the rights of sport events organisers should be introduced in Union legislation, in order to:

- clarify the concept behind the phrase “acts expeditiously” set out in Article 14 of the Directive on electronic commerce in relation to an online intermediary, such that “expeditiously” is considered to mean “immediately from the notification of the infringement by rightholders and no later than 30 minutes after the start of the sport event”.
- allow for real-time take down procedures targeting illegal live sport content, provided that there are no doubts about the ownership of the right and the fact that the transmission was not authorised;
- ensure that the measures to be taken by intermediaries are effective, justified, proportionate, adequate, taking into account the seriousness and the scale of the infringement; make sure, for example, that the blocking of access to, or removal of, illegal content does not require the blocking of an entire platform containing services that are legal, which would be disproportionate, unless the proportion of illegal services on a specific server demonstrates that the availability of legal services is only incidental;
- provide for support for enforcement solutions, such as private agreements among stakeholders; in this respect, the Commission should report on and assess the appropriateness and impact of creating an obligation on streaming providers to perform real-time take downs;

Directive 2004/48/EC (IPRED) should be amended in order to:

- introduce the possibility for the relevant judicial or administrative authority to issue injunctions requesting the real-time blocking of access to, or removal of, illegal online live sport content;
- allow the use of blocking injunctions that run during the entire live broadcast of a sport event, but are limited to the duration of the live broadcast, thus blocking the infringing website only for the duration of the event; such injunctions should be temporary;
- harmonise legislation allowing, where live sport events are concerned, for the use of injunctions that should have the effect of blocking the access not only to the infringing website, but to any other website that contains the same infringement, regardless of the domain name or IP address used, and without the need for a new injunction to be issued;
- specify that the removal of the illegal content should take place immediately after reception of the notice and no later than 30 minutes after the event started, provided that there is no doubt about who owns the content and whether any direct or indirect consent was given by the rightholders to make the content available to the public; strong indication should be put on the rightholders to prevent any removal of legal content; to that end, blocking access to or removing illegal content should in principle not require blocking the access to a server that hosts legal services and content;
- enhance cooperation between Member States’ authorities, including by way of exchange of data and best practices and creating a network of national authorities; the

Commission should assess the added-value of appointing an independent administrative authority in each Member State that would have a role to play in the enforcement system, especially in the case of swift enforcement, such as for online piracy of live sport content;

- enhance the cooperation between intermediaries and rightholders, including by promoting the conclusion of Memoranda of Understanding that could provide for a specific notice and action procedure;

EXPLANATORY STATEMENT

Introduction

Sport plays an important role in society. The exploitation of sport events could participate in the financing of other activities that benefit to all and include for example tax income for States. Today, the most important part of rightowners' revenues (80%) comes from broadcast rights, which suffers from illegal exploitation of sport events' broadcast.

The problem of digital piracy of sport events' broadcast is constantly evolving in terms of scale and technology involved, ways and tactics used by infringers to capture legal signal and modes of transmission of the information and signals. There are different sources and forms of piracy (downloading, streaming, IPTV¹) which lead to different possible solutions. For example, in-venue footage and live streaming by individuals in the audience is different from those taken from live TV broadcast communicated online (in the former example broadcasting right is not infringed, thus IPR enforcement rules do not apply and enforcement of contract law could be favoured).

This is a complex issue and your rapporteur would like to focus on the main problem which comes from dedicated professional websites with a business model funded on fees or on advertising that give access to illegal sport content - an activity that is mainly fulfilled by crime organisations, and should be differentiated from fans sharing photos. The fact that free broadcasts are also highly touched by piracy indicates that piracy of sport events' broadcast is not an altruistic activity and might not be only the response to the high subscription fees to pay for watching sport events. It is an illegal business, with different ways of generating revenues (direct - e.g. subscription fees - or indirect e.g. advertising, spreading malware) and run to make large profits from the exploitation of rights that they have not acquired legally and that will not be reinvested. Your rapporteur does not want to target individuals - fans - who may not even realize they are watching illegal content, but those professional pirates who undertake infringement at large scale.

Also, as pointed out in a recent study² and by Europol, the risk for consumers is real for consumers: exposition to free app malware, steal of credential credit card, etc.

Considering the above, your rapporteur considers that unauthorised distribution of sport event broadcast should be tackled.

In this context, it is necessary to understand what are the main challenges, to determine whether there are already legal tools available to tackle the problem, and what are the shortcomings in the legal framework that need to be addressed, and finally what are the possible solutions.

Problem at stake

The main problem for sport events' organisers concerns piracy of sport events that are broadcast "live" and which economic value lies in the "live" broadcast. This is the case for

¹ For details on how infringing IPTV operates see European Union Intellectual Property Office (2019), *Illegal IPTV in the European Union, Research on online business models infringing intellectual property rights* – Report, November 2019

² EUIPO – EUROPOL (2019), *Intellectual Property Crime Threat Assessment*

example of football matches, boxing or cycling race. Unlike other content, such as films, series or books (and possibly some sport events such as ice dance competitions based on choreography which is of interest and that still has value years after the event ends) the main harm is caused during the event and the window for relevant action against piracy is short and is, basically, the duration of the event. Given the specificity of “live” sport event broadcast, the relevant remedy should be the immediate termination of the unauthorised broadcast, before it has lost its value.

Usually the problem with the current enforcement measures is that enforcement arrive too late: civil enforcement measures, such as notice and take down mechanisms and injunctions are relatively long and the actual removal of or the disabling access to content arrives too late.

Your rapporteur considers that a solution should be found to enable the immediate termination of the infringement; however, it should be emphasised that this solution should remain limited to live sport events broadcast and only justified by their specific character mentioned above and should be accompanied by adequate and effective safeguards.

Existing Union legal framework

Availability of rights to be enforced

Sport event *per se* does not qualify for copyright protection as it is not a “work” qualified for protection under copyright law³; however, the ECJ ruled in Premier League case⁴ that “[n]one the less, sporting events, as such, have a unique and, to that extent, original character which can transform them into subject-matter that is worthy of protection comparable to the protection of works, and that protection can be granted, where appropriate, by the various domestic legal orders.” In other words, Member States can adopt national rules to offer legal protection to sport events comparable to copyright. Some Member states have introduced specific rules. Italy has introduced in its legislation a new “neighbouring right” to copyright which provides protection of sport audio-visual rights that sport events’ organisers can benefit from. In France, a special protection was established in the French Sports Code⁵ (outside the copyright legislation) that provides sport events’ organisers with an “exploitation right” of the events they organise. This *sui generis* right gives a monopoly over the right to broadcast their event. This specific right can be used for direct actions against the infringing website. However, the question of the efficiency of actions based on the ordinary law is raised. Portugal provides for special rule protecting the organisers of sport events.

In addition, while sport event in itself cannot be protected under any IPR⁶, the recording of a sport event or its broadcast is protectable under Union law. Provided that the recording meets

³ See Joined Cases C- 403/08 and 429/08 Football Association Premier League Ltd and others v QC Leisure and others and Karen Murphy v Media Protection Services Ltd (2011) ECR-I-9083. The ECJ ruled in *Premier League* case (C-403/08) that “*sporting events cannot be regarded as intellectual creations classifiable as works within the meaning of the Copyright Directive. That applies in particular to football matches, which are subject to rules of the game, leaving no room for creative freedom for the purposes of copyright. Accordingly, those events cannot be protected under copyright.*”

⁴ See case C-403/08

⁵ Article L 333-1 paragraph 1 of the French Sports Code

⁶ Confirmed by ECJ in case C403/08: “*European Union law does not protect [sporting events] on any other basis in the field of intellectual property*”

the level of originality (which seems to usually be the case⁷), the audio-visual recording of sport events is protected by copyright. A neighbouring right is granted to producers of audio-visual works for the first fixation of their audio-visual works and to the broadcasters on the broadcast signal⁸. Sport events' organisers, if they act as producers of the audio-visual coverage of the event or as broadcaster or if they acquire the right by contract will hold the right. A major source of revenue to sport events' organisers comes from the sale of broadcasting rights.

Therefore, sport events' organisers have rights to be enforced on which they can initiate an action against the unauthorised transmission of the sport event they organise, including "live" events. Legal instruments of protection exist and the legal protection of sport events' organisers is sufficient and does not request the creation of a new right.

Enforcement of rights is not effective for "live" events

Union legislation already provides for a general framework allowing enforcement measures to be used by rightholders, including out of court mechanisms. The Directive on electronic commerce⁹ provides an horizontal tool under which certain online service providers are to act expeditiously to remove or disable access to illegal information they store upon notices submitted to them ("notice and take down" mechanism)¹⁰; in the specific case of intellectual property rights infringements, Article 11 of the 2004 Directive on the enforcement of IPR (IPRED)¹¹ provides that competent judicial authorities can issue injunctions prohibiting the continuation of an infringement on the basis of a judicial decision finding an infringement against direct infringers but also against intermediaries whose services are being used by a third party to infringe rights. Article 9 IPRED provides for interlocutory injunctions to prevent imminent infringement or forbid the continuation of alleged infringement. Article 8 of the Infosoc Directive¹² provides for injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.

Despite the existence of this framework, the notice and take down mechanisms and injunctions mechanisms have limits, especially when it comes to "live" events. Notice and actions procedures can be rendered ineffective by the infringing websites by delaying their response to the take down notices. Injunction mechanisms, given the length of the procedure, are not compatible with the timely remedy needed in the case of live sport.

Solutions developed at national level

In the UK and Ireland, the practice of "live blocking orders" has developed, which is of immediate application but limited in time (for the duration of the live sport event). It does not target individual websites but servers from which the illegal streaming of content comes

⁷ See *Study on sports organisers' rights in the European Union*, T.M.C. Asser Instituut / Asser International Sports Law Centre and Institute for Information Law - University of Amsterdam, February 2014, p. 53

⁸ See Articles 2 and 3 of Infosoc Directive and Article 9 of Rental Directive

⁹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

¹⁰ Article 14(1)b

¹¹ Directive (EU) 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights

¹² Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

covering several IP addresses. Focussing on the point of distribution of the illegal streaming, i.e. at the streaming servers makes the enforcement procedure more effective but may not be proportionate and may be prejudicial to third party rights as any blocking of a server would potentially block also legal content hosted in the server.

In other Member States, administrative proceedings and voluntary measures have developed. Italy and Greece adopted an administrative blocking system. In Portugal, a voluntary agreement between stakeholders and involving the administration allow for real-time blocking of streaming. In Denmark, a Code of Conduct for handlings decisions on blocking access to services infringing intellectual property rights and concluded between the Telecom Industry Association and the Danish Rights Alliance revised in May 2020 aims to implement blocking in a simplified way.

The Commission guidelines on IPRED¹³ recognises the admissibility of injunctions specifically aimed at preventing mirroring, the dynamic (blocking) injunctions. A number of dynamic injunctions have already been issued in several Member States, although with different scope and target. The possibility to use such injunctions in all Member States should be reinforced and harmonised.

The set up of measures to ensure immediate action and the immediate removal of content must be accompanied by adequate safeguards including transparency requirements.

Conclusion

Your Rapporteur considers that piracy of live sport events content is a real problem with significant consequences that will not decrease in the future and that should be tackled. Your rapporteur is of the view that the current legal framework does not sufficiently allow for the effective protection of “live” sport events. He is however convinced that the solution does not lie in the creation of a new right for sport events’ organisers but in the improvement of the enforcement of the existing rights in order to get an effective and full enforcement thereof.

Consequently, your rapporteur is of the view that Parliament should call the Commission to clarify and adapt the existing legislation to enable an immediate enforcement of rights for live sport events, including the possibility to issue injunctions requesting the real-time blocking of access to or removal of unauthorised online live sport content. Also, he proposes to call for measures supporting the development of voluntary agreements between stakeholders and the cooperation between national authorities.

¹³ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee entitled “Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights” (COM(2017) 708) of 29 November 2017