

Position of the Sports Rights Owners Coalition (SROC) on the DG INFSO and DG MARKT Reflection Document Creative Content in a European Digital Single Market: Challenges for the Future

The Sports Rights Owners Coalition (“SROC”) is an informal group of representatives of international, European and national sports bodies with a particular focus on rights issues. SROC operates as a forum through which sports bodies can share information and experiences. In particular, the purpose of SROC is to enable:

- discussion and sharing of best practice on key legal, political and regulatory issues;
- raising awareness of new developments and innovation in sports rights; and
- joint action by the sports to protect and promote their rights, including the prevention of piracy of their events.

Individually and collectively, we represent a majority of European and International leading and most popular sports and competitions, attracting millions of spectators, with many of our events available across a growing variety of platforms for consumers to enjoy.

Introduction

SROC welcomes the opportunity to provide its views to the above-mentioned paper. However, we are surprised that sports content is not described individually in the section dedicated to different sectors, and that the only reference to sport (page 9) deals with the territorial nature of broadcasting of sports events and the question of consumer access.

In its 2007 White Paper on Sport¹, the European Commission (EC) recognised that the sport sector’s “importance is confirmed by studies, analyses of national accounts and the economics of large-scale sporting events [...] A study presented during the Austrian Presidency in 2006 suggested that sport in a broader sense generated value-added of €407 billion in 2004, accounting for 3.7% of EU GDP, and employment for 15 million people or 5.4% of the labour force”². According to the European Commission, “this contribution of sport should be made more visible and promoted in EU policies”.

Given the economic importance of the sport sector, SROC regrets that it has not been afforded sufficient attention as a distinct content market, or at least referred to within the audiovisual sector of the document. SROC is therefore pleased to provide below further information on (1) the sport business model, and (2) the need for a more efficient fight against digital piracy. SROC would be delighted to discuss the issue further with the Commission as appropriate, to ensure that this important economic and cultural element of the online content market is not overlooked and detrimentally impacted upon.

¹ COM(2007) 391 final, 11 July 2007, page 10 and 11.

² D. Dimitrov / C. Helmenstein / A. Kleissner / B. Moser / J. Schindler: Die makroökonomischen Effekte des Sports in Europa, Studie im Auftrag des Bundeskanzleramts, Sektion Sport, Wien, 2006



1. Information on sports' business model

1.1 Solidarity mechanisms

As acknowledged by the European Commission in its White Paper, sport is highly dependent on intellectual property rights and investment in both professional and grassroots competitions³. Sports would struggle without direct investment in grassroots competitions from commercially successful rights owners. Grassroots sport is the foundation of any professional competition, and therefore the professional game nurtures its grassroots by reinvesting a substantial part of its revenues in development programmes.

In the UK, according to the 2008 study during the French presidency of the EU, the Department for Culture, Media and Sport invests €174.8 million across all sports on behalf of the Government and taxpayer, whereas professional football organisations, of their own volition, invest €185m in grassroots football alone (through the combined contributions of the Football Association and the Premier League).

Moreover, in many European countries, investment in grassroots sport is directly and proportionately dependent upon the value of sports rights. In the UK, the major sports have signed up to a voluntary code of conduct run by the CCPR⁴ which ensures a minimum percentage of the income from TV rights is directly invested in grassroots sports. In Germany, a contract signed by the professional football league and the federation secures 3% of the league's turnover to be transferred to grassroots organisations. Another contribution is given directly by the professional football clubs. In France, a similar agreement leads to a €60m investment into grassroots sport.

Therefore, the securing of media rights is fundamental to sustainable grassroots sport and its contribution to the social wellbeing and health of European citizens.

1.2 Exclusivity: a key principle beneficial to consumers and sports endorsed by the EC

In 2003, the EC issued a Competition decision concerning UEFA's selling of media rights, which has since served as a template for the sale of rights by sports bodies across Europe. In this decision and others (e.g. Premier League and Bundesliga), the EC has explicitly endorsed the principle of exclusivity.

There are multiple benefits of this model: for the consumer who does not have to subscribe to a host of media suppliers to follow one competition; for the media supplier who can increase revenue from advertising; for the advertisers who will have a defined target demographic; and for the sport which can improve revenue through the enhanced value of this exclusive agreement. All these benefits are set out in more detail in the Commission's 2003 decision, and are fully endorsed by SROC.

While the Commission's decision supports the exclusivity model on the grounds of economic efficiency, it has also clearly recognised the benefit to grassroots sport

³ COM(2007) 391 final, 11 July 2007, page 11

⁴ Central Council of Physical Recreation, representing 300 members, 150,000 clubs and 13 million regular participants

through solidarity mechanisms. Estimates suggest that the exclusivity of media rights adds substantial value to contracts and this added-value contributes to a substantial investment in grassroots sport.

In UEFA's case, the beneficiaries of exclusivity and collective selling are often teams from smaller European countries and grassroots sport in general. 60% of the media rights from the UEFA European Championships are redistributed to the national federations, with that money specifically ring-fenced for grassroots projects.

1.3 Territoriality as a part of the sports rights business model

According to a 2009 study from RBB Economics, "the EU consists of member states with distinct cultural, linguistic and viewing preferences. The European audio-visual industry is organised to accommodate those differences and ensure that a targeted product is made available to European consumers so that stakeholders across the audio-visual industry are more able to recoup their substantial and risky investment in the production and distribution of content. Territorial exclusivity is critical to the practice of accommodating the different viewing preferences within the EU because it enables audio-visual products to be sold within member states on an exclusive basis and in a way which meets demand in each member state within the EU⁵."

Sport is territorial by nature. National matches and competitions are watched more fervently by those from hosting or participating countries. This can be seen at a glance from the national lists of designated events which can be safeguarded by Governments for free-to-air television broadcasting. While the lists of course include major world events like the Olympics, they serve as a clear demonstration that sports events – from the Giro d'Italia in Italy, the finals and semi-finals of national and international football club competitions in Germany, to the All-Ireland Senior Inter-County Hurling Finals in Ireland – are principally of importance in domestic markets; their value and appeal likewise differs across Europe.

Territoriality was also recognised by the Commission in its 2003 UEFA decision, in which it notes that "media rights to football events like the UEFA Champions League are normally sold on a national basis. This is due to the character of distribution, which is national due to national regulatory regimes, language barriers, and cultural factors. The Commission therefore considers the geographic scope of the upstream markets for the media rights to be national".

The result is that sport has a very different value depending on the territory in which it is being watched. It is important for both sport and Europe's citizens that sport is allowed to be sold to media organisations territorially. If this was not the case, only the largest media organisations in Europe would win contracts and there is the possibility that smaller territories in which these organisations did not operate would receive less choice. The impact that this could have on smaller sports and grassroots sport could potentially be devastating, harmfully reducing Europe's sporting and cultural diversity⁶.

As indicated in the Reflection Document, in recent years requests for information with regards to why sporting events are not available in some territories have been

⁵ "The benefits of territorial exclusivity in the European audio-visual industry", RBB Economics, London, February 2009

⁶ See RBB study, page 12 and 23

addressed to the European Commission and Parliament. Positively embracing this desire for greater international profiling and access, sport is addressing this issue through developing its offer to reflect a new technological era. Sports' rights contracts are becoming more and more platform-neutral, allowing operators to provide online alternatives to their traditional diffusion method (in the case of some contracts even obliging them to do so). Sports bodies are also developing alternative platforms to supply territories in which there is no media platform willing to invest in traditional deals, so as not to discriminate against the minority communities and individuals with an interest in viewing their competitions; examples of this include World Marathons, the International Tennis Federation and Cricket Australia, who now offer online access to their events if no rights holders exist in a given territory.

Other sports also provide an online platform as an alternative even though events are shown on television. For example, all UEFA Champions League games are also available to watch "à-la-carte" through the UEFA website. Six Nations Rugby Limited gives its broadcasters certain rights to exploit their broadcasting rights on the Internet, including the right to simulcast in full their television and radio broadcasts of Championship programmes. Major events can nowadays be accessed legally and watched directly on the internet. Many legal offers exist and many more are in development. Nevertheless sports events are still widely pirated, contradicting the increasingly heard assertions that the solution to digital piracy, be it of sport, music or film content, is to provide alternative legal offers.

Before trying to redefine the copyright framework at EU level, SROC urges the Commission to tackle the growing digital piracy issue, which threatens sport at all levels.

2. The digital piracy threat

2.1 Illegal downloading and streaming

Sport content has been a stimulus to new audiovisual and broadcasting technology for some time. The Olympics in 2012 will see Super HD and 3D television showing events, and live streaming of over 5000 hours of sport will be available on the internet and broadcast on digital channels. That equates to over 200 days worth of live sport content.

However, major sports events and competitions are very attractive, and in great demand, making them particularly vulnerable to attack from pirates. Football has seen an increase in the amount of sites and viewers illegally watching content. Football is not, however, the most pirated sport globally. This dubious honour belongs to cricket, which sees around 1000 different websites illegally hosting pirated coverage of its live events. Many of them are funded by advertisement and over 200 of these websites are even operating as subscription channels, with the pirates being directly remunerated, eliminating any pretence of an "open access philosophy".

The Organisation for Economic Cooperation and Development (OECD) has acknowledged the significant threat to the creation and strengthening of legitimate

services to distribute copyrighted content online caused by IP infringements,⁷ and the threat to innovation caused by IP infringement was made a top priority at the G8 Heiligendamm Summit.⁸ Moreover, the OECD has commissioned a case study of digital piracy in the sports sector as part of Phase II of its project on the Economic Impact of Counterfeiting and Piracy⁹.

It should be noted that the challenges sport is facing are not identical to those the music and film industries are trying to tackle. The value of sport content is substantially based on its 'live' broadcast status and therefore the main challenge faced is combating illegal live streaming, more than re-useable recorded media as is the case for music and film. For this reason it is crucial to include sport in the debates at EU level, and to realise the unique challenge faced. While SROC welcomes sport's inclusion in DG MARKT's series of debates on illegal uploading and downloading, we would like to call for a more systematic involvement, notably via an invitation to contribute to the work of the European Observatory for Counterfeiting and Piracy meetings and discussions.

The growing phenomena of internet streaming of live sporting events and peer-to-peer file sharing are very real examples of the need for a strong response to new trends in digital piracy which threaten to undermine the value of media rights and consequently investment in sport at every level. Technical measures such as notifications to users from their Internet Service Providers about breaches of IP rights, or the possible restriction (or in extreme cases even suspension) of services are needed. While legal action must only be taken as a very last resort, and in that instance preferably targeting the illegal websites and not the individuals using them, a credible legal threat is needed to help act against piracy. SROC welcomed former Commissioner Lord Mandelson's recent announcement that IP theft is morally and legally wrong¹⁰, and hopes that the EU institutions can help sport and other content providers to embrace new technological tools and provide concrete action to protect rights.

2.2 A strong Intellectual Property framework will allow online content to flourish

As well as its established role in traditional programming, sport contributes to the healthy growth of the online and mobile audiovisual markets worldwide. This is a testament not only to the popularity of this form of entertainment, but to the significant investments made by sports rights owners to play a substantial role in the development of online content.

However, due to its popularity across the world, sport is attractive to pirates. Commercial undertakings look to exploit sports content to create profit, without contributing to the development and advancement of sport or to jobs or to tax revenues in the area affected. For SROC, the legal certainty required to drive the development of innovative content services online can only be provided by a comprehensive regime to protect Intellectual Property Rights (IPR).

⁷ OECD Working Party on the Information Economy – Digital Broadband Content, 19 May 2006

⁸ Conclusions of G8 Summit 2007, Heiligendamm, Growth and Responsibility in the World Economy, 8 June, 2007

⁹ http://www.oecd.org/document/35/0,3343,en_2649_34223_43394531_1_1_1_1,00.html

¹⁰ Rt Hon Lord Mandelson speech to the cabinet forum, London, 28 October 2009

As the owners of significant sports content, we have a specific interest in the IPR regulatory framework, which extends to ensuring that programmes carrying signals featuring our sports rights are adequately protected against unauthorised use. In the very fast developing, globalised technological and market environment that applies to content online, the existence of a clear rights regime to protect and promote IP is even more important.

The IP framework does not “hamper” the development of online content and services. It is our view that the contrary applies. Sport content is one of the first to be available on 3G technology. Our members are the originators of economically significant content for audiovisual and audio broadcasts in their many formats, and across an ever increasing array of platforms. Our content also includes still images, text data and statistics. Our members are constantly striving to bring consumers the widest range of choice of coverage that technology allows.

Conclusion

SROC welcomes the opportunity to contribute to the current debate on the online environment in the EU. Our membership covers a wide range of sports from across the world and we are therefore in a position to offer examples of the problems faced by sport as more and more content becomes available online, of current sports industry practices, and of the way different sports are addressing the challenges they face. Sports rights can contribute to the healthy growth of the online and mobile audiovisual markets, and we look forward to enhancing the experience of the viewer.

Therefore, in conclusion, SROC calls upon the Commission to ensure that forthcoming initiatives and debates:

- No longer neglect the sport sector, but rather reflect its size, its economic importance and its popularity;
- Take due account of the exclusivity and territoriality principles which are key to redistribution mechanisms in sport at all levels
- Take due account of the importance of a robust IP framework as the basis for European content services, including sport, to flourish;
- Address the significant threat that piracy poses to the growth of legitimate online content distribution;
- Tackle the need to ensure ISPs and network intermediaries are actively involved in stopping the illegitimate use of sports content; and
- Focus on the need to increase effective enforcement – both within and outside the EU (in collaboration with WIPO).

For further information please contact SROC at sportsrights@sroc.info