

## DISCUSSION PAPER

### REVIEW OF THE TELEVISION WITHOUT FRONTIERS DIRECTIVE

#### THEME 6: ACCESS TO SHORT EXTRACTS OF EVENTS SUBJECT TO EXCLUSIVE RIGHTS

In the Work Program annexed to the Commission's Fourth Application Report on the Directive "Television without Frontiers", the Commission has announced its intention to reflect on the question of whether there are grounds for introducing, in future, provisions on access to short extracts of events subject to exclusive rights.

At this stage of development of Community law, it is up to the Member States to regulate the access to news, taking into account the relevant Community law instruments on intellectual property (which in turn take into account the fundamental right of freedom of expression as laid down by Art. 11 of the EU Charter of Fundamental Rights).<sup>1</sup>

In this context it is important to **understand the distinction** between news highlight reporting and broadcasting of a given event. Legislation and industry practice limits highlights news coverage to approximately 90 seconds for transmission in a scheduled news bulletin within 24-36 hours after the event has ended. By contrast, broadcast rights comprise the right to broadcast an entire event live as entertainment. There is a decisive difference between broadcasting an entire event live for **entertainment** and compiling short extracts to report on it. For this reason, news reporting and broadcast rights can co-exist and in fact do co-exist in relation to the vast majority of sporting and other newsworthy events organised around the world.

The increasing monetization of public events and the proliferation of exclusive broadcast deals for all kinds of public events threatens the ability of non-right holders, adequately to cover certain newsworthy events. These developments are of concern for mainly two reasons:

By excluding other media than those the organisers are able to **control** (*i.e.* censor) the coverage of the event with the result that unfavourable incidents may not be reported.

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<sup>1</sup> Article 11 of the EU Charter of Fundamental Rights reads as follows:

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
- 2. The freedom and pluralism of the media shall be respected.

<sup>2</sup> Fourth Report on the Application of Directive 89/552/EEC "Television without Frontiers", COM (2002) 778 final, [http://europa.eu.int/comm/avpolicy/regul/twf/applica/comm2002\\_778final\\_en.pdf](http://europa.eu.int/comm/avpolicy/regul/twf/applica/comm2002_778final_en.pdf).

Large-scale events of this kind tend to produce general interest news stories in addition to sports news items, *e.g.*, terrorist incidents, disorder, injury to spectators, attendance by public figures etc. These general news items risk not being reported unless independent media and news agencies are allowed access.

The exclusion of independent media and news agencies from events of public interest in addition has a negative effect on **choice and plurality**. It limits the collection and dissemination of news to the largest broadcasters to the detriment both of their smaller competitors and the viewing public.

Article 9 of the European Convention on Transfrontier Television echoes this fundamental rights considerations when it asks parties to the Convention to take legal measures - where necessary - "such as introducing the right to short reporting on events of high interest for the public to avoid the right of the public to information being undermined due to the exercise by a broadcaster" of exclusive rights. The Explanatory Report on the Convention<sup>2</sup> specifies that this right is based on the **right of the public to receive information**. Another objective of this provision also is to guarantee, through access to events of high public interest, the **plurality of information sources** in transfrontier television.

The concept of news access is not a new one; there are specific examples at an international and national level of rights that are guaranteed.<sup>3</sup> A number of Member States also have recognised a right to short news report coverage. However, the first impression seems to be that there is little consistency between the measures and in many cases such rights are of limited use both in terms of their scope (many restrict the events which can be covered) and their depth (many are limited to broadcasters by their terms, others include news agencies who supply footage to broadcasters but are not broadcasters themselves).

**Do you think that there is a lack of consistency and that the absence of a harmonised right to access newsworthy events restricts the free movement of independent media and especially news agencies services since gaining access to an event in one Member State does not necessarily mean that news coverage of that event may be included in the service being sold<sup>4</sup> in other Member States?**

**If such harmonised right should be deemed to be necessary to which extent should it be granted (ex. 90 seconds per event or day of competition) and for which kind of use (ex in regularly scheduled general news bulletins or in regularly scheduled sports news programmes of dedicated sports news channels) and under which conditions (financial compensation)?**

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<sup>2</sup> DH-MM (98)8

<sup>3</sup> See above: Article 9 of the European Convention on Transfrontier Television of 5 May 1989 (amended 1 October 1998); Council of Europe Recommendation No. R(91)5 (which sets out the Members' view that any secondary broadcaster should be entitled to provide information on a major event by means of a short report either by using the host broadcaster's signal or by having access to the site)

<sup>4</sup> The news agency for instance may need to obtain additional clearances from right holders in each of the other Member States.

The European Commission's White Paper on Governance sets the conditions for the use of co-regulation. Co-regulation implies that a framework of overall objectives, basic rights, enforcement and appeal mechanisms is set in the legislation<sup>5</sup>. According to this criteria a right to short reports, which defines the exercise of basic rights, should be established by legislation.

**Do you think that a right to short reports should be established by legislation or by means of co- and/or self-regulation?**

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<sup>5</sup> COM (2001) 428 final, p 21.