



FOCUS GROUP NO 3

The right to information and the right to short extracts

Article 6 of the Treaty on European Union stipulates that the Union will respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms¹. One of these fundamental rights is freedom of expression, which is provided for in Article 10(1) of the Convention. It is specifically referred to in the eighth recital of the "Television without Frontiers" Directive as the basis of the freedom to provide services involving the broadcasting and distribution of television programmes.

In 2003, as part of the efforts to re-examine the Directive, the Member States and the interested parties were consulted on two aspects of the way in which the right to information was being implemented: the suitability and appropriateness of the provisions of Article 3a of the Directive concerning events of major importance to society, and the merits of introducing a right to transmit short extracts of events worthy of media interest which are subject to exclusive rights and require "access" to be provided to them. In its Communication on the future of the European audiovisual regulatory policy², the Commission concluded that these two issues should be examined in greater depth. This is the task of Focus Group 3.

1. Short extracts of events which are of considerable public interest

1.1. The concept of short extracts

The concept of short extracts of events worthy of media interest has not been defined in Community law. However, Article 9 of the European Convention on Transfrontier Television stipulates that the parties to the Convention can adopt measures "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 within its jurisdiction of exclusive rights"³.

In practice, a distinction can be made between events which are of considerable public interest, depending on whether or not they are subject to exclusive broadcasting rights. If they are subject to these rights, the application of a right to short extracts will have implications for the exercise of the exclusive rights concerned. If not, the more specific question to be addressed will be a general one

¹ Convention signed in Rome on 4 November 1950.

² COM(2003)784 final

³ European Convention on Transfrontier Television of 5 May 1989.

concerning access to events for the purpose of providing the public with information.

1.2. Short extracts which are subject to exclusive broadcasting rights

When events which are of considerable public interest are subject to exclusive broadcasting rights, the authorisation to broadcast short extracts limits the exercise of these rights. In order to clarify this matter, mention has been made of the possibility of implementing the exceptions set out in Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

- Can the exceptions to the exclusive right of broadcasters to authorise or prohibit the reproduction and communication to the public of their audiovisual works and programmes under this Directive be applied to the creation of short extracts of events which are of considerable public interest and can they therefore provide a practical solution for coverage of these events by providers of information services, particularly information agencies?
- As far as they can be applied, do exceptions allow setting some limits to those using short reports concerning duration or possible exploitation of the material?

1.3. Short extracts of events which are not subject to exclusive broadcasting rights

If no "primary" broadcaster exists, the rules on short extracts of events which are of considerable public interest should deal with physical access to the event and technical coverage of it.

- When applied to events which are of considerable public interest, should the rights on short extracts relate solely to coverage of the event or to side events? Should limits be imposed on the duration of these extracts and on the way in which they are used by the beneficiaries?

1.4. The advisability of Community action

The advisability of action by the EU depends to a large extent on the answers provided to the two questions above. If the existing provisions are judged not to be sufficient, steps will have to be taken to determine whether the freedom to communicate and receive information would be better ensured by adopting a specific Community instrument guaranteeing the right to broadcast short extracts of events which are of considerable public interest.

- Is freedom of information put at risk by the lack of a specific Community instrument which guarantees the right to short extracts of events which are of considerable public interest?

- Should the "Television without Frontiers" Directive lay down rules on the right to short extracts of events which are of considerable public interest or should it simply lay down a general principle on access and leave its application up to the Member States, or even advocate coregulation?

2. Events of major importance

During the public consultation in 2003, the Commission asked whether Article 3a of the "Television without Frontiers" Directive should make provision for a positive decision by the Commission concerning measures about which it is notified by the Member States as regards events which are of major importance to society. Unlike Article 2a(2) of the TWF Directive, Article 3a(2) currently makes no mention of a "decision" to be taken by the Commission. The Commission's role is simply to carry out a preliminary check as to whether the measures about which it is notified are compatible with Community law. If, on the basis of the information available to the Commission, the measures do not appear to violate Community law, the Commission informs the Member State concerned (after the Contact Committee has adopted its opinion) that it does not intend to oppose the measures taken. The measures are then published in the Official Journal and thus brought to the attention of third parties.

There have been problems with the interpretation of this provision of the Directive. Public consultations have not provided a clear signal on this matter and the Commission's role in the procedure laid down in Article 3a(2) of the Directive is being examined in connection with a case which is pending before the Court of First Instance. In view of these discussions on the interpretation of the current text of the Directive, the Commission feels that it would be worthwhile discussing the question of what the law ought to be in greater depth.