



International Cricket Council



Website: www.sroc.info

E-mail: sportsrights@sroc.info



DEUTSCHER FUSSBALL-BUND



LaLiga



The Sports Rights Owners Coalition (EU Transparency register number 422544515758-37) is an informal group of representatives of international, European and national sports bodies, operating as a forum through which different sports can share information and experiences. Individually and collectively, we represent a majority of European and international sports and competitions. Our members attract millions of spectators and our events are available to consumers across a growing variety of broadcast platforms in Europe.

SROC members seek to engage sports fans across multiple technological platforms and ensure that they can access the content of their choice and benefit from the highest quality on offer. Sports offerings are continuing to expand, much faster than the pace of regulatory change, with an increasing number of European citizens accessing an increasing number of services.

SROC is pleased to provide the European Commission with its perspective on the preliminary results of the E-commerce inquiry and more specifically on territorial exclusivity, geo-filtering, payment structures and bundling of rights.

1. Why territorial exclusivity is important for the sport ecosystem?

SROC members are all eager to deliver their competitions to as many fans as possible. However, sport is territorial by nature as not all citizens want to access all kind of sports competitions. For example, UK citizens are more likely to watch football, rugby or cricket, rather than winter sports, ice hockey or handball. In fact, there is almost no demand from broadcasters for the delivery of sports content on a pan European basis.

For very popular sport competition, there is no significant cross-border demand as broadcasts are tailored to specific national audiences. For example, the UEFA Champions League is tailored to specific consumer demands in each of the 28 Member States. Therefore, organisers tend to sell on a country basis because the content demanded is different country by country. For less popular sports, there is no significant cross-border demand because of a lack of cross-border interest. For instance, ice-hockey in southern Europe or rugby in Scandinavia. Such sports tend to sell in their home market and then try to find new platforms to increase their visibility outside. So even among sports, there is no one single model to deliver content to the consumers. The most important thing for our members is to maintain the flexibility and the contractual freedom provided by the current legal framework.

It is important to remind that SROC members usually sell the rights to broadcast their competitions to licensees (and not directly to consumers). The main reason is that sport competitions are attractive for national broadcasters and online platforms which are best placed to provide quality offers which can respond to local needs e.g. providing sports commentaries in the local language. Indeed, most football fans living in France prefer to watch Bundesliga or Serie A matches in French.

Selling on the basis of territorial exclusivity also enables stronger and fairer competition between broadcasters. Indeed, should licenses be granted on a pan-European basis exclusively, only the largest media corporations in Europe could afford to bid for and subsequently exploit the rights. It could give disproportionate levels of market power to such corporations within the EU, possibly resulting in increased prices for consumers, and eventually leaving smaller territories in which these large organisations do not operate, to not be able to offer any sport coverage at all. This could significantly reduce Europe's sporting and cultural diversity as demonstrated by several recent studies¹.

2. Why geo-filtering tools are used?

Televised sporting events, just like other audio-visual works, are conceived, created and marketed to respond to specific linguistic and cultural markets and tastes. As previously mentioned, sport is particularly representative of this trend due its territorial nature. In this regard, specific license/contract terms or geo-filtering tools can help to ensure that the principle of territorial exclusivity is respected when rights to lawful content have been sold according to this model in one particular country.

The principle of territoriality of IP rights has been acknowledged by the European Commission, together with the national nature of the markets (both upstream and downstream) to which such sports relate². It is essential to help creative industries flourish, ensure fair competition in the broadcast market, offer the best choice to consumers and enable technological innovation.

However, it is important to note that geo-blocking tools are mainly used when there is another exclusive broadcaster³. For example, a British football fan who wants to watch Premier League matches in Belgium can perfectly do so via the local broadcaster. When SROC members do not manage to sell exclusive rights in a territory, the geo-filtering tools usually do not apply in this territory. SROC members also sometimes offer content directly to fans via their own dedicated platforms when broadcasters are not willing to buy their rights or screen their content.

¹ Study on the potential impact of the Digital Single Market on the sports audio-visual ecosystem in Europe, June 2016

http://www.analysismason.com/About-Us/News/Press-releases/Cross-border-access-to-online-sports-content-services-is-a-high-risk-option/?_sm_au=iVVq15nMTZZD5Q1H

The impact of cross-border access to audiovisual content on EU consumers, Oxera and O&O, May 2016

http://crossborderaccessreport.eu/report/?_sm_au=iVVq15nMTZZD5Q1H

Study on territoriality and its impact on the financing of audiovisual works, European Audiovisual

Observatory, September 2015

http://www.obs.coe.int/documents/205595/8261963/IRIS+plus+2015en2.pdf/ad5c5a8f-4e85-4e3c-b763-9c763895da1e?_sm_au=iVVq15nMTZZD5Q1H

² See COMP/C.2-37.398, paragraphs 88 and 90.

³ The Preliminary Report on the E-commerce Sector Inquiry indicates that 63% of the contracts dealing with sport content received by the Commission contain geo-blocking clauses (p.238). Given that the Commission is likely to have requested information from the most popular sporting competitions, the overall figure in the sport content sector is probably much lower.

The situation is therefore very different between very popular sporting competitions which would be broadcasted on exclusive basis in all EU member states and sporting competitions which do not manage to attract broadcasters' interests in all the countries. For the latter, the pay-per-view model is developing fast in order to make sporting content available to consumers who want to have access to sport competitions that are less popular in their countries or when they are travelling. For sports such as rugby, cricket, handball, basketball, tennis etc. streaming service is available live and 'near live' in countries where there is no interest from traditional broadcasters.

Removing the ability to use geo-filtering, contract and other tools to control the use of content within the EU would inevitably lead to the establishment of a one-size-fits-all model which does not fit the cultural diversity in Europe and would be totally inappropriate for our sector.

3. Payment structures

Sport remains territorial by nature and national matches and competitions are more popular in the hosting or participating countries. This can be seen at a glance from the national lists of designated "events of major importance" which can be safeguarded by Member States 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 Vier Chances ski jump 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.

Consequently, whether our members' content is fully available everywhere in Europe or not depends very much on the consumers' demand and the situation in each market. The same applies to the pricing of the content. The same sporting competition has very different value according to the different countries.

Pricing in sports content also depends on commercial agreements between rights owners and local/national broadcasters. Our sector is fully supportive of a strong and fair competition between broadcasters, which we believe is in the best interest of all consumers. In the sport sector, rights are usually awarded following transparent and open bidding processes, fully compliant with national and EU competition law. Without the possibility of having prices differentiation, there is no point using the auction process.

Prices charged for sports content in a particular market depends both on the market conditions in that market and on the intrinsic appeal of this content to the consumers. In this context, making Bundesliga matches available in Germany will require a different approach than making these matches available in Portugal, where there are fewer fans.

There is no such thing as one single demand across the EU (even for the same sporting competition) and therefore it is very difficult to understand the rationale behind the imposition of a digital single offer at a digital single price. SROC believes that any regulation that would limit the ability for each market to price sports content according to the local business and market realities would be detrimental to professional and grassroots sports.

The Preliminary report seems to question the use of advance payments, minimum guarantees and fixed/flat fees. According to the report, it would be an obstacle for new entrants. The analysis of SROC members is different. The advance payments are needed in order for the organisers to recoup their investment in organising the competition. Without advance payments, it would be very difficult for instance for football clubs participating in a specific league to pay their staff, the players and coaches, it would be impossible to cover for the production costs etc.

Moreover, the system does not prevent new entrants to regularly upset incumbents in the auctions processes. For instance, Altice secured the rights of the Premier League in France for the seasons 2016-19 and Perform managed to buy the Premier League rights in Germany for the same period whereas Canal + and Sky Germany were the incumbents respectively.

4. Bundling of rights

SROC members are constantly striving to bring consumers the widest-range of choice of coverage that present technology permits. SROC members normally sell the broadcasting rights to their events using a platform-neutral approach, which includes traditional but also online/digital platforms to make sure that major events can be directly and legally accessed live via the Internet. The Preliminary report seems to question the bundling of rights and especially of online rights as if it would be an obstacle for new entrants.

SROC member would respond that nowadays consumers expect to be able to access content they have purchased on all of their devices. For example, consumers who subscribed to Sky Sports expect to be able to watch it on their television via satellite and via their tablet, rather than potentially having to obtain two subscriptions.

Requiring content to be sold separately on an unbundled basis would either force broadcasters to pay more to be assured of obtaining rights for traditional broadcast and Internet (which would be likely to be passed on to consumers), or would force consumers to buy two subscriptions to get in-home and portable access.

As well as forcing consumers to get two subscriptions, if broadcast and online rights are sold separately to different broadcasters, this erodes massively the exclusivity. This would undermine any incentive to invest and innovate, particularly in the case of traditional broadcasters.

Moreover, it seems that the Commission does not take into account the fact that traditional broadcasters are also innovators. The fact that rights may be sold on a bundled basis does not mean internet-only services are not available (such as NOW TV for instance). The EU has some of the most innovative services in the world and there is no evidence that we are lagging behind. SROC members would actually argue that the innovation (in the EU and elsewhere) is a result of exclusive territorial licensing and is not held back because of it.

18 November 2016