



International Cricket Council



Fédération Française de Tennis



International Tennis Federation



Website: www.sroc.info

E-mail: sportsrights@sroc.info

Paper of the Sports Rights Owners Coalition (SROC) on the territoriality, cross-border access to content and portability issues

Beyond their historical roots going back centuries, Europe has played a fundamental role in the development of modern sports competitions worldwide for well over 150 years. Many of the world’s most popular sports originated in Europe, where the rules were codified and the games taken out to new participants over the world. Today, many world-class and iconic sports competitions continue to be developed and hosted in Europe and they draw in millions of spectators and broadcast audiences from around the world and reinforce growth. Sports are a real European success story.

When accounting for all the neighbouring sectors that benefit from professional sports and hosting major competition, sport in Europe accounts for 2% of the EU global GDP¹. As recognised by the European Commission, “*sport represents a large and fast-growing sector of the economy and makes an important contribution to growth and jobs, with value added and employment effects exceeding average growth rates*”². The professional and elite layers of sport in Europe are essential for both driving and supporting sports participation across Europe, which takes place in hundreds of thousands of non-profit structures based on voluntary activity. This “pyramid” is the central characteristic of the organisation of most sports in Europe and is highly dependent on financial solidarity between the tip of the pyramid right through to its broad base.

The Sports Rights Owners Coalition (SROC) gathers more than 50 international, European and national sports bodies³. Individually and collectively, we represent a majority of European and international sports and competitions. Our members attract millions of spectators and 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. Our services are continuing to expand, much faster than the pace of regulatory change in this area.

The concepts of territorial licencing, access to content on a cross-border basis and portability of the content are currently being discussed at EU level, notably as part of the ongoing discussion on the Digital Single Market and the present document aims at clarifying these concepts from the perspective of our members. While our sector is fully supportive of creation, innovation and economic growth in Europe, our view is that any potential reform should be carefully thought of. A general ban on any kind of access restrictions would inevitably lead to a ‘one-size-fits-all’ model for licensing in Europe which would negatively affect our sector’s activities. SROC members strongly advocate for a legal framework which respects contractual freedom and which remains as flexible as it is today in order for us to keep developing innovative offers we make available to our customers and broadcast partners around Europe.

¹ http://europa.eu/rapid/press-release_MEMO-14-432_en.htm

² “Developing the European Dimension in Sport”, COM (2011) 12 final, 18 January 2011. Page 8.

³ More information available on SROC’s website : <http://sroc.info/>

1. Media rights are the life-blood of sports from the elite level down to the grassroots

While attendance at sports events is essential for both atmosphere and revenues, the sale of the rights to competition is the life-blood of sports from the elite level down to the grassroots. In its 2011 Communication, the European Commission underlined that *“the exploitation of intellectual property rights in the area of sport, such as licensing of retransmission of sport events or merchandising, represents important sources of income for professional sports. Revenue derived from these sources is often partly redistributed to lower levels of the sports chain”*.

Indeed while it is obvious that professional sports benefit directly from its share of generated revenues, these revenues are equally of material significance to the amateur and grassroots levels of sports. In all EU Member States, investment in grassroots sport is directly and proportionately dependent upon the value of sports rights, notably media rights. Moreover, the international sports bodies play fundamental roles in the funding and promotion of their sports at all levels, including for example national associations and federations.

According to a 2011 study⁴, grassroots sports receive some €500 million from the selling of media rights in Europe. Therefore, *“the effective protection of these sources of revenue is important in guaranteeing independent financing of sport activities in Europe”*⁵. Securing the value of those media rights is not only important for organisers of professional sport competitions, it is also fundamental to the sustainability of grassroots sports and, ultimately, to the contribution that sport brings to European citizens' wellbeing and health.

Without the full revenue redistribution from organisers of commercially successful sporting events, the development of grassroots sports would suffer the loss of a critical source of financing.

2. Sport is territorial by nature and therefore mainly sold on territorial basis

SROC members are all eager to deliver their competitions to as many fans as possible. However, sport is territorial by nature and sports fans expect to watch competitions or matches broadcast in ways that meet their cultural preferences. This may include inter alia commentary in their own language, by well-known commentators and analysis by pundits who are often considered “house-hold” names in their home country. In team sports, they will expect after-match interviews to be conducted with the coaches/managers and players from their national or club team. In individual sports, they will again expect the focus to be players from their particular country, alongside the global superstars.

Even the same match may be covered in very different ways in neighbouring Member States. Ireland versus England in the Six Nations Rugby tournament is covered simultaneously by the Irish and British national broadcasters, RTE and BBC respectively. Each country's supporters expect the “narrative” of the match be told from their national perspective by recognised commentators, with the half-time and post-match analysis

⁴ Study on the funding of grassroots sports in the EU, 27 June 2011
http://ec.europa.eu/internal_market/top_layer/docs/Executive-summary_en.pdf

⁵ “Developing the European Dimension in Sport”, COM (2011) 12 final, 18 January 2011. Page 8.

focused on the performance of their respective “heroes” or “villains”. By definition, the same match will be viewed very differently by the two sets of supporters.

Yet not all citizens want to access all kinds of sports competitions. For example, UK citizens are more likely to watch football, rugby or cricket, rather than handball or winter sports such as ice hockey or ski jumping. This can also be seen from the national lists of designated “*events of major importance for society*” through which EU Member State governments reserve certain events for licensing/broadcast on free-to-air television⁶. While the lists commonly include major world events like the Olympics, they serve as a clear demonstration that national sports events – from the Giro d’Italia in Italy to the All-Ireland Senior Inter-County Hurling Finals in Ireland – are primarily of importance in their respective domestic markets.

For very popular competitions, there is no significant pan-European cross-border demand as broadcasts are tailored to deliver culturally and linguistically appropriate/attractive content to specific national audiences and are broadcast in every country in Europe (and most of the rest of the world). For example the UEFA Champions League is broadcast and transmitted on a tailored basis to meet specific consumer expectations in each of UEFA's 54 member association territories (including the 28 EU Member States) and in many other countries around the world. Such sports organisers tend to sell media rights on a country by country basis because broadcast partners invest heavily in developing content that is culturally appealing to local audiences, while also selling advertising that is attuned to identifiable local tastes.

For less popular sports, there is no significant cross-border demand because of a lack of fan interest outside of the particular sports “key” or “home” markets/territories. For instance, ice hockey is traditionally and culturally a Nordic/Arctic/Alpine sport and has little to no following in southern Europe. If rugby is considered as another example, whilst there is a core following/interest in Europe centred around the UK, Republic of Ireland, France and to a lesser extent Italy, there is little following outside of these countries. Such sports tend to sell in their “home” market and need therefore to maximise the value proposition to their broadcast partners who are investing in their rights. Territorial licensing will therefore often be used to ensure that value is preserved in the “home” markets. Outside of the “home” markets, such sports will often try to find new platforms to increase their profile and fan interest and may not employ territorial restrictions.

Some sports also have to sell their competitions to free-to-air broadcasters in their “home” markets (for instance Grand Slam tennis tournaments or rugby competitions) and then try to develop their revenues in other broadcasts markets by selling to pay-TV broadcasters. If restrictions such as geo-blocking were to be prohibited, there is clearly no possibility for them to monetise their competitions outside of the “home” market.

The above illustrates that even within the sports sector, there is no one-size-fits-all rights model that can deliver content to sports consumers to meet their cultural and linguistic preferences, and at the same time fully supports the various needs and responsibilities of sports bodies. The current framework affords vital flexibility and contractual freedom for sports organisers to match their rights arrangements across 28 culturally diverse Member States, some of whom have different language and coverage requirements within the same national territory.

⁶ In accordance with article 14 of the EU’s “Audiovisual Media Services Directive” (AVMS)

3. *European consumers benefit from territorial licensing*

Territorial licensing is critical to accommodate the different viewing preferences within the EU. As mentioned above, not all European citizens want to access every sport. Even for the same competition, the local component of the broadcast is very important. For example, it is fair to say that most French football fans prefer to watch Bundesliga or Serie A matches in French. It is also a fact that Belgian fans are more interested in following the Premier League's matches where Belgian players are involved. Territorial licensing currently allows the Premier League's Belgian broadcasters (there are two official licensees in Belgium, one for the French speaking community and one for the Flemish speaking community) to create ad-hoc package of the matches most relevant for the Belgian viewership in each of the Belgian language communities.

The territoriality principle enables media rights in sports competitions to be sold in a way which meets the specific cultural and linguistic demand in each Member State, at a price which reflects the popularity of the competition in that Member State.

Indeed, media rights in sports competitions have a very different value depending on the territory in which they are watched and this is even the case for popular competitions such as top-tier football leagues. The Premier League's value in the UK per season is currently around £1 billion while in the other 27 Member States the aggregated value is around €150 million. It means that the Premier League is roughly 10 times more valuable in the UK than in the 27 other Member States put together. Even greater ratios apply to the Bundesliga or the French Football League. The Bundesliga's current revenues from media rights amount to around € 560 million for the home market and around € 25 million for the rest of the EU as well as € 45 million outside Europe. The French Ligue 1 is worth €725 million in France and €7 million in the rest of the EU.

Because the value is so different in the various Member States, such sports events organisers focus on their "home" territories and then try to develop their coverage and audience in the other ones. Hence, the broadcasts arrangements such as geo-blocking which are requested and used by their licensees/official broadcasters. If these restrictions were to be prohibited, there is a risk that we would end up with only one broadcast service per competition for the whole of Europe, which would be the "home" market of the competition, available to EU consumers at the price of that "home" market rather than a locally relevant one. This would clearly represent a disadvantage to European consumers outside of the main market as they would have to use a non-tailored service at a higher price.

4. *European businesses benefit from territorial licensing*

In addition to the reasons outlined briefly above, selling on a territorial basis, in our view, also contributes to enabling and promoting stronger and fairer competition between broadcasters. It should be recognised that broadcasters who habitually operate on a broad and/or pan-European multi-national basis are not the norm within the pay TV sector. This approach is even less frequent amongst free to air television channels and certainly does not apply to public service broadcasters, who by their very nature operate on a national basis.

If licences were only able to be granted on a multi-territorial or pan-European basis, we could anticipate that either only the largest media corporations in Europe or major new entrants from outside Europe could afford to bid for and subsequently exploit the rights (whether themselves or controlling the market as gatekeepers). Furthermore the amounts that potential broadcast partners would be willing to invest would be materially and negatively affected. The former of these outcomes could result in disproportionate levels of market power being wielded by such corporations within the EU, quite possibly resulting in increased prices for consumers and slowly diluting media pluralism. Furthermore, this could leave smaller territories, in which such large organisations do not operate, being unable to offer any sport coverage at all for the local markets. Competition may not be sustained on a localised basis, leading to the disappearance of local pay-TV operators, or at least to greatly increased barriers to entry in that sector. This could significantly reduce Europe's sporting and cultural diversity as well as materially impact on the revenues sports bodies are able to generate, redistribute and invest in the further growth and development of their sports.

Territorial licensing contributes to a diverse and locally relevant media landscape across Europe, which in turn offers other consequential benefits to national and local commercial businesses. If there was one or only a few multi-territorial or pan-European TV platforms for any given sports competition, it would reduce the diversity of advertising and broadcast sponsorship opportunities, not only for the official competition sponsors but also for the other third parties and particularly local businesses, as only major multinationals would have the resources and means to acquire packages targeting over 500 million citizens. It would therefore hamper the growth of small national or even regional companies that advertise or partner with sports clubs, athletes and competitions.

The principle of territoriality of sports rights has been acknowledged by the European Commission, together with the national nature of the markets (both upstream and downstream) to which sports relate⁷. It is essential to help sports flourish, ensure fair competition in the broadcast market, offer the best choice to consumers and enable technological innovation.

5. The current legal framework is flexible enough to allow sport content to be sold all over Europe

The current legal framework is flexible enough to allow sports organisations to offer legal content to fans on local, territorial, multi territorial or even sometimes on pan European basis. Working through national or international channels offered by private and public broadcasters as well as social media platforms and new online service offerings, our members are able to provide content where a substantial market demand exists.

In practice, there is almost no demand from broadcasters for the delivery of sports content on a pan European basis. This can be seen easily using the example of one very popular competition, the English Premier League. In past rights sales processes in Europe, live audio-visual rights have been tendered on both an individual territory basis and in country groups, including a pan-European territory containing all countries in Europe (outside of the UK and Ireland). The latter did not attract a single bid.

⁷ See COMP/C.2-37.398

Sports competitions, just like creative works, are conceived, created and marketed in response to specific linguistic and cultural tastes and therefore markets. As previously mentioned, sport is particularly representative of this trend due its territorial nature. In this light, if the territorial limits are not respected, many of the benefits which the broadcast partners (in the first instance) derive from it would be lost. Essentially there would not be a maximised opportunity to realise their investment (not just licence fees but also the investment made in programming production and transmission). In this regard, specific licencing/contractual terms or geo-blocking tools are often used and can help to ensure that this need for territorial limits is in actual fact respected when rights have been acquired.

However, it is important to note that restrictions such as geo-blocking tools are mainly used when there is another exclusive broadcaster. When SROC members do not manage to sell exclusive rights in a territory, the geo-blocking tools are often not applied in that territory. This is for instance the case for the Swedish Football League which is available through the Swedish broadcaster C-More outside of Sweden.

Alternatively, SROC members also sometimes offer content directly to fans via their own authorised dedicated or other licensed platforms, when broadcasters are not willing to buy their rights or screen their content. For example European Tour TV provides live online streaming of the Ryder Cup and other events in territories where the media rights have not been sold. This ensures that golf fans in those territories are still being served. Another recent example was the initiative of the England and Wales Cricket Board (ECB) to sell its non-domestic rights to YouTube for the Ashes series of summer 2013 between England and Australia. Outside the UK (where a TV deal was in place), the ECB offered full live coverage of the matches online. Following an agreement signed between the French Football League and YouTube, the platform broadcasts a magazine programme with content including the best goals, player profiles and five-minute match highlights from "Ligue 1" games free of charge and across borders⁸. The Spanish Football League developed a similar partnership with YouTube. Rugby fans can get highlights of all 6 Nations matches on a specific YouTube channel. The recent World Rugby Women's Sevens Series in Brazil and in the US were streamed live on the World Rugby's website. The Basketball World Championship organised in Lithuania in 2014 was also available on a specific streaming website. There are many examples of non-geo-blocked competitions available on the internet and even more in development.

It is not a simple task to quantify the proportion of sport content which is controlled through contractually required geo-blocking, given that the large variety of circumstances which affect one sport or another, give rise to a very wide ranging spectrum of situations. In the vast majority of cases, sports bodies do not implement or require geo-blocking measures where there is no request or need. Again in general terms, the more in-demand the sports rights, the more there is a need and expectation to protect the commercial opportunities which have been invested in by the broadcasters. Without that protection, the incentive to invest in producing high quality innovative programming offers which consumers expect will be dramatically reduced due to the lower likelihood of an appropriate return on their investment.

⁸ Interestingly, the audience on the Ligue 1 YouTube channel outside of France represents less than 15% the total audience on this platform. This suggests once again that sport is very territorial.

6. Portability of lawfully acquired content could be looked into

It is fair to assume that mainly expatriates living abroad wish to watch sport competitions taking place in their home country. However, according to Eurostat figures⁹, EU citizens living in another EU Member State represent less than 3 % of the total EU population. Moreover, this figure only represents a “potential market” as not all expatriates are interested in watching their “home” sport competitions in their country of residence.

It seems very risky to challenge a licensing regime which works well for sports and for the broadcasting sector in order to address a potential issue for less than 3% of the EU population, as it could provoke seriously adverse effects (less offers, higher prices) for the overwhelming majority of consumers.

As illustrated in this paper, prohibiting the ability to use geo-blocking, contractual and other tools to control the use of content within the EU would inevitably lead to a variety of revenue and socio-cultural impacts. Such a prohibition would impose a "one-size-fits-all" business model for the generation of value from sports competitions. It would ignore both the commercial imperatives and the risk benefit analysis which drives investment in media rights and the development of programming innovations. Finally it would not give due consideration to the huge variation in which individual sports develop their elite competitions, their fan bases and their development of their grassroots participation.

We are nevertheless aware of the issue faced by European citizens traveling for a short period of time in another EU Member State for business trips or holidays, when the subscriptions they lawfully bought cease to function.

SROC took part in the “Licenses for Europe” consultation organised by the European Commission in 2013 and signed a Joint Statement where we signaled together with other industries our “[...] interest in the development of cross-border portability of lawfully acquired audiovisual content [...]”.

Even though this portability of lawfully acquired subscription services is not as straight forward as people might think (sporting competitions including the major international football competitions are shown on public service broadcasters for instance which may not apply user access controls and amongst other things could represent questions regarding the use of public funds/taxes revenues), nevertheless, SROC members are ready to work with the EU institutions and our broadcasters to address this issue.

SROC members urge the European Commission to dismiss any overly far-reaching initiatives, which could negatively jeopardise the financing models of sports and the ability of sports bodies to fulfil their functions as sports events organisers and guardians of our sports. This is especially true of any potential general ban on territorial restrictions which SROC members believe would be extremely detrimental to European sports, to local broadcasting businesses and to the vast majority of European consumers.

SROC members would rather recommend pursuing the portability of lawfully acquired subscription services and we would welcome a dialogue with the European Commission and our broadcasters to achieve this end.

⁹ http://ec.europa.eu/eurostat/statistics-explained/index.php/EU_citizenship_-_statistics_on_cross-border_activities