



Fédération Française de Tennis



Sports Rights Owners Coalition

Response to the Public consultation on the future of electronic commerce in the internal market and the implementation of the Directive on Electronic Commerce (2000/31/EC)

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The Sports Rights Owners Coalition (SROC) welcomes the opportunity to offer its views to the European Commission in the context of this public consultation, and share its views on a number of ecommerce issues which are critical to the European sporting economy. We will set out below our position on several issues, in general terms and also in response to specific questions within the consultation document.

Firstly, while welcoming the European Commission's role as a facilitator of cross border trade, SROC's members would like to underline that the market and citizens' demand should remain the fundamental driver behind any policy outlined by the European Commission. In line with long-established practices of technology neutrality and not picking 'market winners', we would recall that the Commission's role is to enable and facilitate electronic commerce, not to impose it. The European Parliament adopted last month the Gallo Report report on the enforcement of Intellectual Property Rights in the Internal Market, and its article 31 calls on the Commission to tackle the issue of access to the digital market without geographical borders, **taking into account of the particular features of each sector, and where there is substantial demand from consumers.**

Sport is mainly 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".

Sports organisations across Europe cater to a variety of different markets, and currently supply services on both multi territorial or territorial formats and a wide range of complementary technology platforms. **The only current barrier we face to selling across borders is the level of consumer demand**, which our members actively seek to address by providing increasingly innovative and entertaining services.

Our members are acutely aware of the specific cultural value of their competitions and events to different audiences, and the over-riding national and local interest that lies at the heart of sports' support. In order to allow a thriving market for all our members' competitions and to generate the competition needed, **we reject a one-size-fits-all model of pan-European licensing which will only serve the interests of the already dominant players in the long-term.**



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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. 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.

In response to Questions 31 and 36 of the consultation document, our members of course see an interest in offering direct on-line access to their events, and are already rolling out such services very widely, both on subscription and free-to-air formats. When we sell the rights to our events in individual territories, this is done on a platform-neutral basis, meaning the purchaser can offer the content via traditional media, online, or via a combination of both as is often the case. When our rights are not purchased by traditional media in certain Member States, we indeed explore the possibility of selling direct to customers online. Examples include World Marathons and the International Tennis Federation who offer online access to their events if no rights holders exist in a given territory. As noted above, these choices are based on the business sense of making such services available. 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 "a la carte" through the UEFA website. Six Nations Rugby Limited gives its broadcasters certain rights to exploit their broadcasting rights on the internet. Major events can nowadays be accessed legally and directly on the Internet.

Many legal offers exist and many more are in development. Nevertheless, sports events are widely pirated, contradicting increasingly heard assertions that the solution to digital piracy, be it of sport, music or film content, is to provide alternative offers. Digital Piracy is a key issue for our members. It severely undermines our legal business model, and undercuts the investments that we seek to make in developing new content and offering said content on a variety of innovative platforms. **In this respect, we take a strong interest in the clarification of the Directive's provisions on intermediary liability, as highlighted in questions 52 – 69 of the consultation document.** We feel that the provisions on intermediary liability are not sufficiently defined across the 27 Member States at this point in time. In particular, we have issues with the term "expeditious" (Articles 13 and 14 of the Directive). As the value of our content lies mainly in the live broadcast, it is absolutely crucial that intermediaries react very quickly when we inform them of illegal content being available on their platforms. In order to contact intermediaries, we also need to be able to find their details easily as imposed by Article 5 of the Directive. However, we have sometimes issues (for instance with individuals selling tickets online or providing a platform for pirate live broadcasts) and we feel this article is not properly enforced in the 27 Member States.

Regarding cooperation and codes of conducts (Article 16); in certain markets we have been able to develop a good working relationship with hosting services in order to protect our content through content recognition technologies. One excellent example of this is the agreement between the French Football League and DailyMotion. Through a close and fruitful cooperation, a 'digital imprint' technology has been developed which allows DailyMotion to automatically identify and remove any of the League's audiovisual content which is put on their website without authorization. This technology is now also being developed by other platforms and we would hope to see it rolled out more widely as soon as possible. Such an example serves to show what can be achieved through active collaboration in order to block pirated content at source. Unfortunately this is still a very isolated example of good cooperation.

In order to complement these measures, we would request greater efforts from Internet Service Providers (ISPs) and online platforms to monitor illegal activities. This need not be in breach of their individual privacy, and should of course respect all data protection requirements. We would simply ask that if illegal activities are identified, there is a possibility and a provision to warn the infringing user of the breach and potentially to take appropriate measures in case of repeated offences. Information-sharing between different stakeholders, in full respect of consumers' rights, is key to the battle against illegal online activities.

In line with the points raised above, we do not feel at this point that the Directive needs to be re-opened, and that in general it continues to be fit for purpose. It is a facilitator of ecommerce across Europe, and continues to provide the flexibility for economic operators to offer their services across borders where markets exist, and to stimulate new market demand freely. We would however call for closer attention to be paid to implementation of the Directive, specifically on questions of intermediary liability.

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