

Modernising the TV Without Frontiers Directive: Implications for Sport

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Amendments to the TV Without Frontiers Directive (the 'TVWF') have recently been tabled by the European Commission. The proposals seek to expand the remit of TVWF to the new media sector. This could have significant consequences for the transmission of sports content over new media technologies, particularly with regard to news access to sports clips.

The Current Law

TVWF has been the main piece of legislation in the field of pan-European broadcast regulation since its implementation in 1989. It was designed to harmonise certain aspects of the regulation of broadcasting services and thereby prevent content being subject to double regulation as it is transmitted across the EU.

Seventeen years ago however, the transmission of a TV signal to a mobile phone device or over the internet to a personal computer was not even contemplated. It is with such technological advances in mind that the Commission has reviewed TVWF and proposed the following changes to the broadcast regulatory regime, published in December 2005.

The Proposed Changes

The amendments to TVWF are intended to modernise the legislation so that it keeps pace with rapid technological and market developments in Europe's audiovisual sector. In addition to promoting a strong and creative European content industry, the changes will encourage harmonisation through the acceleration towards a seamless single market for TV and TV-like services.

In an age of real convergence, the Commission believes that new media audiovisual service providers and TV broadcasters that offer the same content should, to a certain extent, be regulated in the same way. Under the Commission proposal, the modernised TVWF would govern, and thus create a level playing field for companies offering, TV and TV-like services irrespective of the technology used to deliver them (e.g. broadcast, high-speed broadband, third generation mobiles). Therefore, to a degree, TVWF will be technologically agnostic, subject to the key distinction between linear and non-linear services.

Linear/Non-Linear Services

'Linear' services (e.g. scheduled broadcasting via traditional TV, broadband or mobile phones, which 'pushes' content to viewers) will be subject to a modernised, more flexible form of the current broadcasting regime.

'Non-linear' services are any audiovisual media services where the user decides upon the moment in time when a specific programme is transmitted on the basis of a choice of content selected by the media service producer. Such non-linear services (e.g. on-demand films, video-on-demand or web-based news, which the viewer 'pulls' from a network) will be subject only to a basic set of minimum principles. This basic tier of regulation covers the protection of minors, preventing incitement to racial hatred, identification of the media service provider and commercial communications, a prohibition on surreptitious advertising and clear rules governing product placement and sponsorship.

Objections to the Commission's proposals have been raised concerning the impact that the revised TVWF will have on non-linear services. Some internet service providers are of the view that the distinction between linear and non-linear services is uncertain and could lead to confusion over when, how and to whom the more prescriptive rules apply. The rapid pace of technological development could blur the boundaries between linear and non-linear services and thereby subject an essentially non-linear service to the higher level of regulation originally intended for linear services. One area in which such an objection is relevant to the sports market is with regard to the provisions on news access.

News Access

The current Sports News Access Code of Practice was agreed between UK broadcasters in November 2003. It lays down limits and guidelines on the use of clips in news bulletins, covering the amount of footage which may be used, the period during which it may be used and requiring that the original source of the extract be acknowledged. Importantly, the Code only applies to its signatories (i.e. TV broadcasters) and not the new media environment.

However, amongst the proposed changes to TVWF is a new Article 3b:

- '1. *Member States shall ensure that, for the purposes of short news reports, broadcasters established in other Member States are not deprived of access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted by a broadcaster under their jurisdiction.*
2. *Short news reports may be chosen freely by the broadcasters from the transmitting broadcaster's signal with at least the identification of their service.'*

The proposal has caused considerable concern amongst rights owners and service providers alike. Additionally, the news access provisions are stated to apply to linear services only, but there is still uncertainty over whether or not short clips provided to mobile users during sports events would qualify as non-linear, and therefore escape the proposed news access obligations.

For example, UEFA's Champions League mobile service typically consists of six or seven short clips per match, covering the kick-off, final whistle, goals and a post-match highlights round-up. The clips are on-demand in that the user must seek out the service, sign up and pay to receive them, but they are scheduled, in the sense that the user has no control over the time at which each clip is transmitted once he has subscribed to the service.

If the provision of such short clips is caught by the news access obligations, the fear is that other mobile operators, under certain Member State jurisdictions, would have the right to show short clips of the events in linear 'news' programming or services without the need to pay a rights fee. Therefore, the coverage which could be shown by the licensee of the rights and a party who would be entitled to show clips by virtue of the news access provisions, would not be dissimilar. This could effectively destroy the value of rights for sports clips shown on the internet and mobile phones due to the fact that coverage on these platforms is, by its very nature, much shorter.

Conclusion

James Purnell, the UK broadcasting minister, will reportedly lobby other European Union member states in a bid to gain support for the UK's opposition to the planned extension of TVWF to new media.

In the meantime, sports rights holders are hoping that their ability to raise revenue by granting attractive packages of new media clip rights is not restricted by the new regime. Mobile operators and ISPs will also be keeping a watchful eye on developments to ascertain whether the value of rights acquired will be undermined by the news access provisions. Industry players will remain anxious as regards the scope and application of the proposed legislation until the position with regard to news access to sports clips on new media platforms is clarified.

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