

Kluwer Copyright Blog

The Resolution of the European Parliament on protection of live sport events

Gianluca Campus (University of Milan) · Monday, June 28th, 2021

Italian case law on dynamic injunctions and the impact of piracy of live sport events

In previous posts on this Blog we have analyzed some developments in Italy with regards to private and administrative enforcement against illicit distribution of copyright content over the Internet and the use of the dynamic injunction, with special focus on the protection of live sport events.



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More in detail, in a 2019 post on this Blog ([here](#)), we analyzed the impact of illegal distribution of audiovisual content and the new wave of dynamic injunctions that the Court of Milan has adopted through orders against Internet Service Providers (ISPs) on the basis of complaints filed by the Lega Calcio with some major broadcasters.

In a 2020 post on this Blog ([here](#)), we have further updated that the Court of Milan issued similar orders against some hosting providers and the CDN operator Cloudflare Inc., whose services were used for distributing the illicit IPTV services.

Despite this new wave in the case law, the impact of illegal distribution of audiovisual contents is growing to volumes that make piracy services the first real competitors of the audiovisual industry. Just with regards to Italy, the report issued in 2019 by FAPAV ([here](#)) concludes that almost 5 million Italians have declared that in 2018 they have illegally watched live sports content, streamed on their devices (computer, tablet, smartphone, smart TV) or with friends and family. In another study of 2020 ([here](#)) FAPAV analyzes trends in audiovisual piracy in Italy over the years from 2016 to 2019, with a specific focus on piracy of sport live events, highlighting that in few years such phenomenon has more than double up its magnitude, increasing from 14.5 million to 30.9 million of piracy acts and reaching the 7% of the total piracy acts occurred in Italy in 2019 (other categories are movies, TV series and TV programs).

The new Resolution of the European Parliament on sport events: the background

The need of further legal means for combating the piracy of live sport events has recently lead the European Parliament to issue a [Resolution of 19 May 2021 with recommendations to the Commission on challenges of sports events organizers in the digital environment](#). According to the Resolution, the development of the digital environment and of new technologies has made it easier, especially during the Covid pandemic, for all fans to access sports events broadcasts on all kinds of devices, increasing potential exposure to illegal content and enlarging the number of people who can access such broadcasts. Unlike other sectors, most of the value of a sports event broadcast lies in the fact that it is *live* and most of that value is lost when the event ends, so the illegal streaming of sports event broadcasts is at its most harmful during the live broadcast of the live sport event and this requires, consequently and only in this context, an immediate reaction to put an end to the illegal transmission online of sports events.

The introduction of new technologies is, at the same time, at the root of the problem, since new multimedia channels have proliferated for the illegal distribution of live sports events, among which the illicit use of Internet Protocol Television (IPTV) stands out due to its increasing volume, but seems to offer also the possibility for a number of right holders, intermediaries and other service providers to develop software tools able to identify illegal broadcasting of live sports events with a minimum margin of error and, after the identification of the illegal broadcasting, to block the access to illegal contents by way of selective removal of illicit contents from website or by way of IP address blocking.

There are also implications which are peculiar to the legal framework of the European Union, since sports events are not the subject matter of copyright protection under Union law, even if they have a unique and original character which can transform them into subject-matter that is worthy of protection comparable to that of copyright works and given that there is no harmonized protection in Union law for sports events organizers. Union law does not provide for a neighboring right to copyright for sport event's organizers but that some Members States have introduced specific rights for sports events organizers in their legislation, including a new "neighboring right" to copyright. The Italian legislation, where it intended to protect sporting events, has focused on the television exploitation of professional league matches. In this sense, the [Legislative Decree 9/2008](#) relating to "Discipline of ownership and marketing of audiovisual sports rights and relative allocation of resources" acknowledges that the professional league and the clubs are joint owners of the audiovisual rights relating to matches. The basis of these experiences is the attention aimed at creating an exclusive position, which allows on the one hand to obtain profits through broadcasting licenses and on the other hand to protect this undoubted economic value from unauthorized forms of appropriation and exploitation. The result is that although there is no authorial work or an intangible asset in the proper sense, nonetheless some sporting events, once considered as the subject of filming and broadcasting, make use of tools typical of intellectual property.

Given this background, the European Parliament calls on the Commission to take the following measures:

- (i) enforcement procedures suitable for the specific nature of live sports event broadcasts, whereby the value is mainly limited to the duration of the sports event in question;

(ii) removal of, or the disabling of access to, infringing live sport broadcasts by online intermediaries to be immediate or as fast as possible, and in any event no later than within 30 minutes of the receipt of the notification from right-holders or from a certified trusted flagger regarding the existence of such illegal broadcast;

(iii) making it easier for consumers to find legal means of accessing sports content online (the Commission should regularly update the list of such means of access on the European online content portal Agorateka.eu).

The role of online platforms, the notice and takedown procedures and the dynamic injunctions

In the view of the European Parliament a key role for the protection of the sport event's organizers will be played by the online platforms. Accordingly, the need is highlighted of implementation of proper measures for notice and takedown as well as the introduction of effective dynamic injunctions that can fit for the purpose of protecting on line sport events.

For example, reference is made to [Directive 2000/31/EC](#) (Directive on electronic commerce), which provides that service providers must act immediately to remove the illegal information stored or disable access to it as soon as they receive notice of the illegal nature of the same, according to the "notice and take down" mechanism. More in detail, the Directive on electronic commerce provides that certain online service providers are to act expeditiously to remove or disable access to illegal information they store, upon obtaining actual knowledge or awareness thereof, through notices submitted to them; maintains that the notice and action procedure should form the basis for measures addressing illegal content in the Union; considers, however, that the current notice and take down procedure does not allow for swift enforcement in a way that provides effective remedies, considering the specific characteristic of "live" sports events. In the light of the above, providers of streaming servers and streaming platforms should implement specific take down tools or measures, in order to remove or disable access to illegal live sports event broadcasts available on their services.

[Directive 2001/29/EC](#) (InfoSoc directive) allows right holders to obtain injunctions against intermediaries whose services are used by third parties to violate copyright or related rights, through the use of judicial authority. Injunction procedures are relatively long and usually come into effect after the broadcast has ended. This is the reason of practices developed at national level, such as live injunctions and dynamic injunctions that have proved to be a means of tackling piracy of sports event broadcasts more efficiently. The European Parliament calls on the Commission to assess the impact and appropriateness of introducing injunction procedures aimed at allowing real-time disabling of access to, or removal of, illegal online live sports event content, based on the model of "live" blocking orders and "dynamic injunctions". In pursuing this goal, the Commission should ensure that the legal framework strikes the right balance between the need for efficiency of enforcement measures and the need to protect third party rights and guarantee that the new measures strictly target illegal content only and do not lead to the arbitrary and excessive blocking of legal content.

It is worth noting that with this Resolution the European Parliament has drawn the attention on a specific but core aspect of protection of online content in the digital environment, whereby the

legal means for enforcement offered under the current framework proved ineffective. Nonetheless, it seems that, save the relevant exception of the removal of illicit live sport event within 30 minutes of the receipt of the notification from right-holders, the Resolution has not touched some of the core elements that stemmed from the national experiences on dynamic injunctions, namely: (i) the need to involve the technical intermediaries which are on top of the distribution chain, such as the CDN operators; (ii) the need to introduce a double level of protection also via fast administrative procedures, such as those attributed to AGCOM in Italy; (iii) the clear reference to the IP address blocking as more effective tool for avoiding the access to the illicit content and the reiteration of its distribution.

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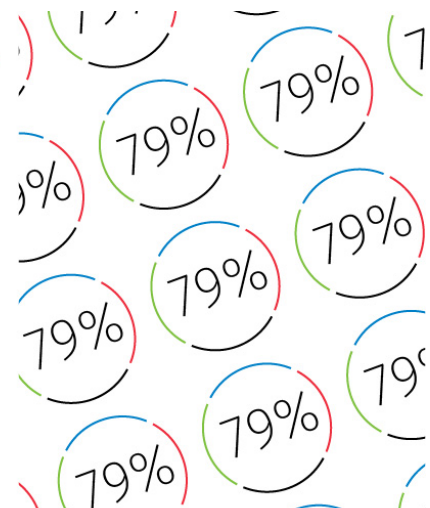
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