

# Kluwer Copyright Blog

## The European Audiovisual Observatory publishes the Mapping report on national remedies against online piracy of sports content

Giovanni Maria Riccio (University of Salerno) and Fabiola Iraci Gambazza (E-Lex Law Firm, Rome) · Tuesday, December 28th, 2021

The European Audiovisual Observatory (“EAO”) has recently published the Mapping report on national remedies against online piracy of sports content (“Report”), conducted at the request of the European Commission.

Through a comparative perspective, the Report examines the scope of protection of audiovisual sports content in the national framework of the 27 EU member states and the UK.



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In particular, the Report relies on an extensive review of the EU law, Court of Justice of the European Union (“CJEU”) decisions and case law concerning remedies against online piracy, starting from the results of a questionnaire submitted to international experts from relevant institutions, universities and law firms.

By virtue of the 27 questionnaires, completed one per country, the Report aims at identifying the national framework on copyright applicable to audiovisual sports events and the transposition of EU regulations and directives, but especially the availability and functioning of notice and take-down procedures, removal and blocking injunctions, dynamic and live blocking injunctions, and de-indexing injunctions in relation to the sports event. Moreover, the existence of national bodies and co-regulatory initiatives to combat online piracy are taken into account in the analysis, as well as the relevant case law at the EU and national level related to the infringement of audiovisual sports content and the reports and studies concerning piracy of audiovisual sports content.

In the light of the above-mentioned results, gathered through the submission of the questionnaire and the examination of relevant studies on the national remedies against copyright infringement and the related national case-law (for instance see [Campus, G. “The Resolution of the European Parliament on protection of live sports events and Frosio, G. and Bulayenko, O., “Study on Dynamic Blocking Injunctions in the European Union\)](#), significant key findings have been reached.

The Report's main conclusion is that the overview of national remedies against online infringement of sports event broadcasting is characterised by several differences among the 27 countries. In spite of these differences, there are some relevant trends that have been detected throughout the comparative analysis.

Firstly, it is a fundamental premise that sports events as such are not protected by copyright, as pointed out by the CJEU in the famous Football Association Premier (FAPL) case. However, the recording and broadcast of a sports event may be protected by copyright when the originality and creativity requirements are met by the recording.

Regarding the entitlement to the rights, the recording and broadcast of a sports event are protected by related rights, which are respectively granted to producers of audiovisual works for the first fixation of the film and to broadcasting organisations for the transmission of broadcast signals for public reception.

On the other hand, in some countries, domiciliary rights (also called "house rights") are held by the sports event organisers. With regard to the entitlement to take action, the differences between countries show that in some the sports clubs can take legal action on the basis of the domiciliary rights in the case of unauthorised recordings made within the premises of the venue or the place of the event; in others, federations and leagues can act on the same basis in the case of illegal broadcasting or streaming of the event.

For the core topic examined in the report, namely the remedies against online piracy of sport event broadcasts and the procedural rules, despite the aforementioned differences between the countries, the approaches and solutions taken reveal some significant trends.

EU legislation (Notably Article 11 of Directive 2004/48/CE (IPRED), Article 8 of the InfoSoc Directive and Article 14(1) of the E-Commerce Directive) provides that in the case of intellectual property infringements the judicial authorities can issue injunctions against the infringers, and the rightsholders can request the application of injunctions against intermediaries whose services are used by an unauthorised third party.

The Report shows the application of different typology of injunctions, such as blocking orders, live blocking injunctions and dynamic injunctions. In any case, national courts have to make sure that the injunctions are proportionate, in order to protect fundamental rights of users and services.

In the majority of the countries, the court orders are addressed to the ISPs and not directly to the infringers, in order to block and/or to disable the access to a website or to a platform in the case of illegal content. For dynamic injunctions, the CJEU *Telekabal* case allows blanket injunctions, and in line with that, the national courts extended the blocking orders beyond the websites currently in existence (or rather the URLs), covering potential future infringements. On the other hand, only in few countries are live blocking injunctions applied, which aim at hindering the active livestreams in a very effective way.

The Report also shows five case studies, with a specific focus on the scope and criteria for issuing dynamic and live blocking orders, as well as the role of administrative enforcement procedures and technological approaches designed to block online piracy of sports content.

Having regard to the results of the Report, it must be concluded that the research stands for one of the largest recent analyses in the field of copyright protection, offering a huge overview of the

legislative national framework and the related national remedies to combat online piracy in 27 countries, as well as the most significant case law, with a specific and detailed focus on sports content.

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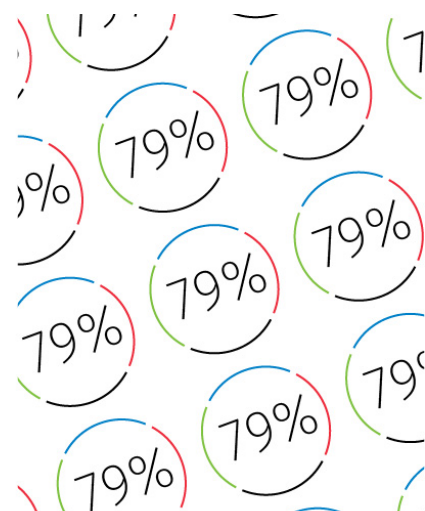
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