
We are writing in response to your invitation to interested parties to participate in the public consultation on the Directive.

UEFA is the governing body for European football and organises certain competitions (including the European Championships and the UEFA Champions League) which are potentially affected by the provisions of the Directive. As such, we have a clear interest in the outcome of this consultation and request that you take our comments fully into account. We would mention the fact that we have recently submitted comments of a similar nature to the Council of Europe in relation to its proposed adoption of a draft Recommendation aimed at broadening the scope of Recommendation No. R(91)5 concerning the European Convention on Transfrontier Television.

Our comments relate particularly to "Theme 6", regarding the potential inclusion in the Directive of provisions on access to "short extracts" of events subject to exclusive rights.

We would, however, also make a short comment in relation to "Theme 1" which concerns the listed events provisions set out in Article 3a of the Directive. As a general question, the Discussion Paper on "Theme 1" inquires whether parties consider Article 3a to be an "appropriate tool" to balance the different interests involved.

Whilst UEFA is broadly sympathetic to the aims of Article 3a we have always taken the view that sports bodies can and should be responsible for the manner in which they sell their rights. In this context, UEFA considers that it is for sports bodies themselves to find the right balance between "free" and pay-television and therefore we do not consider it either appropriate or necessary for the EU to enact legislative measures which favour one type of broadcaster over another. This remains the firm view of UEFA.

Turning then, to the issues raised in "Theme 6", we would comment as follows:
The Discussion Paper on "Theme 6" refers to Article 9 of the Council of Europe Convention on Transfrontier Television, which states that:

"Each Party shall examine and, where necessary, take legal measures such as introducing the right to short reporting on events of high interest for the public to avoid the right of the public to information being undermined due to the exercise by a broadcaster within its jurisdiction of exclusive rights for the transmission or retransmission, within the meaning of Article 3, of such an event."

UEFA fully supports the right of the public to information. In fact, as you may be aware, the television policy of UEFA has consistently been to ensure that important sporting events which we organise (such as the European Championships and the UEFA Champions League) are largely available on free television, and this policy obviously maximises their availability to the public.

Nevertheless, we also believe that, as a matter of principle, it is important to strike the correct balance between the right to freedom of information and the opportunity to commercialise sports rights on an exclusive basis. As regards this latter element, both the European Commission and the European Court of Justice have repeatedly recognised that the sale of exclusive broadcasting rights to sports events is an established and accepted commercial practice which does not, in itself, raise legal concerns.

We assume, therefore, that in the context of any revision to this Directive, the Commission would not propose the introduction of any amendments which might jeopardise these accepted practices and, in so doing, prejudice the legitimate interests of both rights holders and their licensees.

It is also important to appreciate the distinction between the public right to information and the desire of third parties to obtain access to images which may then be exploited for commercial gain. In this connection, it should be borne in mind that the so-called "news access" defence to copyright infringement is not intended to offer third parties a right to exploit (for free) images of an event and make a profit from that event, to the detriment of the rights holder and its legitimate licensees. This would go beyond protecting the public's right to information and would instead risk allowing third parties to "free ride" on the investment made by others. For example, if a news-agency obtains short extracts of football matches and then wholesales the pictures to broadcasters this represents a pure commercial transaction which is driven by profit related considerations, not by a desire to protect a "fundamental right" to information.

We believe it would be inappropriate to create a right which goes beyond reporting on the factual outcome of an event (i.e. the "news", as normally understood) and which could instead be viewed as a mandate for secondary information providers to use images, video and other content in all media. In this connection, it should be appreciated that merely because a report or news "clip" is short does not necessarily mean that it does not have commercial value. Indeed, in certain media (for example, mobile telephony) the only commercial value is in short extracts or clips.
4. We would also draw your attention to the provisions of the European Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society ("the Copyright Directive"), which includes a right (but not an obligation) for Member States to provide for an exception to copyright infringement for:

"use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informative purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible"

The Copyright Directive provides that Member States can only introduce exceptions to copyright protection (i) in certain special cases, (ii) which do not conflict with a normal exploitation of the copyright work, and (iii) which do not unreasonably prejudice the legitimate interests of the rightholder (the Berne "Three-Step" Test).

In our view, the Copyright Directive already deals with the issues being considered under this limb of the consultation and should therefore be a key reference point when considering the issue of "news access". We also understand that a similar view was expressed by various broadcasters during the hearing in Brussels on 4 April 2003.

It follows that the EU has, in the context of the Copyright Directive, recently recognised and preserved the authority of Member States to govern the area of news access rights. The Copyright Directive provides an EU regulatory framework to address this matter, on condition that any exceptions granted by Member States do not "unreasonably prejudice the legitimate interests of the rightholder".

We note also that the Copyright Directive harmonised such measures as were considered necessary for the proper functioning of the internal market. Notably, these measures did not include provisions relating to news access and these were kept in the national domain. We do not see any evidence to suggest that the existing regulatory system impairs the functioning of the internal market and, consequently, doubt the need for EU legislation creating a "harmonised" news access right in Europe.

5. The Commission's Discussion Paper on "Theme 6" refers to large-scale events tending to produce general interest news stories as well as sports news stories, e.g., terrorist incidents, disorder, injury to spectators, attendance by public figures etc. The Paper also refers to a risk of general news items not being reported unless "Independent media and news agencies are allowed access".

It is not clear exactly what kind of "access" is envisaged here. It seems that certain news agencies consider that they should have a legal right, e.g. to enter a football stadium in order to televise the match and report on "newsworthy" matters which occur around the match. For the avoidance of doubt, UEFA firmly rejects any such notion. We also question how the "creation" of such a right of physical access could be reconciled with Article 295 of the EC Treaty which explicitly preserves national rules regarding systems of property ownership.
The issue of physical access does not relate to "news access" or "fair dealing" for the purposes of copyright law. This is rather about granting a broadcaster or agency a legal right to enter property (such as a football ground) so that if an "unusual" event takes place its reporters are on the ground to cover it. We do not see how this is a matter for the EU legislature.

As an organiser of important sporting events, UEFA already tries to ensure that as many reporters as possible have access. However, we would experience severe security problems if we were legally obliged to admit each and every news reporter to, for example, every UEFA Champions League fixture. We strongly believe this is a matter best left to private regulation between the affected parties. It is not, in our view, a matter which can or should call for pan-European legislative intervention.

6. For the sake of completeness, we should add that, so far as we are aware, there are few examples (if any) of newsworthy events occurring at UEFA matches which have not been adequately reported to the public. UEFA has no wish to prevent the public being properly informed about the competitions we organise or newsworthy events which occur at or around these events. The issue which mainly concerns us in the context of this consultation is rather the prospect of third parties obtaining "news reporting" rights which may then be converted into a commercial commodity to the detriment of our legitimate licensees.

7. A good example of this phenomenon was the recent case in Italy relating to the use of "news reporting" rights in the context of information disseminated via wireless technology (to mobile phones). In that case, two Italian football clubs (AC Milan and Juventus) sued Telecom Italia (TIM) after it transmitted data, photos and images of their matches to mobile phones without a licence. In its defence, TIM claimed that it was "exercising a right of commentary" and "providing information" on the matches. TIM argued that the images did not represent the "sporting spectacle" but only constituted "news commentary" which was protected by news access rights under the Italian constitution.

The Court rejected these arguments, pointing out that legitimate commentary should offer "news as spectacle and not spectacle as news". Essentially, the Court held that a right to information should be confined to that, i.e. the right to report on facts relating to an event and not to exploit entertaining parts of it without a licence.

8. As we understand it, the purpose of the Television Without Frontiers Directive is to ensure the free movement of television broadcasts within the EU whilst safeguarding certain objectives such as cultural diversity, the right of reply, consumer protection and the protection of minors. It is not clear to us how the introduction of a harmonised "news access" right would actually fall within the legitimate scope of this Directive. As mentioned before, the Copyright Directive already contains provisions concerning "news access" exceptions and defines the possibility for Member States to regulate this particular matter. We do not see any present need for pan-European regulation of "news access". However, if this matter is to continue to be discussed we would suggest that the logical place for that discussion would be in the context of future revision to the Copyright Directive, not the Television Without Frontiers Directive.
9. In summary, whilst UEFA fully supports the dissemination of information to the public, we think that existing legal instruments are sufficient to achieve this and we do not believe a case to be made out for extending present EU legislation to regulate the issue of "news access". In particular, we do not see any distortion to the functioning of the internal market, nor are we aware of the public being deprived of information on newsworthy matters which occur at sports events. We urge the Commission to consider very carefully before proposing to create any enlarged "news access" right which allows third parties to benefit commercially at the expense of right holders and their legitimate licensees. The TIM example in Italy is most pertinent in this respect.

We trust our comments on this matter are clear and we would be grateful if you keep us informed on the progress of the consultation.

UEFA

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