



WE CARE ABOUT FOOTBALL



Union des associations européennes de football

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Audiovisual and Media Policies Unit
Directorate-General for Information Society
and Media
European Commission

Your reference	Your correspondence of	Our reference	Date
		LDIR/inf/dra/lap	13.10.2006

Dear Sirs,

Public Consultation on Content Online in the Single Market

UEFA welcomes the opportunity to contribute to the Public Consultation on Content Online in the Single Market. Whilst we understand this Consultation has a focus on certain types of content (film, music and games were mentioned by the Commission when it announced the start of it) we also believe that the distribution of sports content online may be considered in the course of the inquiry. Indeed "sports online" is given as an example of creative content at the start of the Commission's Questionnaire.

As sport is not central to the Consultation many of the questions raised by the Commission are not directly relevant to UEFA and, in the circumstances, we think the most helpful way to proceed is to refer to the matters that we consider most pertinent to our activities and to the healthy development of our content online services. We will refer to some of the specific questions contained in the Questionnaire and hope that our contribution in this manner will be useful for the purposes of the Commission's examination.

Firstly, and as you are no doubt aware, UEFA is the governing body for European football and the organiser of many international competitions. The most prestigious of these are the UEFA European Football Championships (played once every four years between national teams) and the UEFA Champions League (the premier international club competition played every year). Whilst these are our best known events, UEFA also organises many other competitions, at both national team and club level. These include the European Under-21 Championship, the European Under-18 Championship, the European Under-16 Championship, the European Women's Championship and the European Women's Under-18 Championship (all national team competitions) as well as the UEFA Cup and the UEFA Intertoto Cup (both international club competitions).

It is, of course, the most famous of these competitions (namely the UEFA European Football Championships and the UEFA Champions League) which provide the income streams for UEFA to organise the lesser known events and which also allow us to finance the

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development of European football from the grass roots upwards. Thus, in the case of the UEFA Champions League, a percentage of the overall revenue derived from the competition is re-distributed to smaller clubs across Europe who have not played in this event themselves. Indeed, in the last six years approximately EURO 215 million has been earmarked from UEFA Champions League commercial income and has been spent funding youth development in small and medium sized professional clubs throughout Europe. Concretely, this money has been spent on many valuable projects, such as football coaches (and coach education), stadium facilities, equipment, school coaching programmes, medical staff, participation in tournaments and travel costs. For some of the smaller member associations of UEFA (such as Armenia, Cyprus, Estonia, Georgia, Lithuania and Wales) this system is actually funding well over half of the youth development budget of the clubs receiving the money.

In the case of the UEFA European Football Championships, an even greater proportion of the revenue generated by the competition flows back to the grass roots for football development (predominantly through the UEFA "HatTrick" programme). Thus, following UEFA EURO 2004, a sum of CHF 490 million was set aside to finance the "HatTrick" scheme and money has been allocated to each and every one of UEFA's 52 national associations for spending on both physical and/or so-called intellectual football infrastructure projects. This includes the construction and/or renovation of stadiums, training centres and pitches, improving training for players, coaches and administrative personnel, referee training, the fight against doping and the development of women's football.

This is just a brief overview of the broad and diverse football development activities that UEFA is able to finance as a result of organising major football competitions and exploiting the commercial rights to them. In today's environment, it is clear that the commercialisation of new media rights (such as internet rights) will become an ever more important part of the landscape and so it is vital that UEFA is able to grasp the opportunities offered by the online environment to bring new and innovative services to football fans around Europe whilst at the same time protecting its ability to support vital football development activities with all the important social and sporting benefits these entail.

Turning to the Content Online Consultation, it deserves to be mentioned that UEFA was one of the first (if not the first) sports governing body in Europe to investigate and develop the opportunities offered by new media distribution channels. Thus, in 2001, UEFA established a separate company (now known as UEFA Media Technologies S.A.) with the express objective of developing new media services in European football and offering these services both to the European football "family" and to the European public directly.

Naturally enough, it may be a delicate exercise to find the right combination of methods to optimise the value of sports rights while at the same time developing new media platforms. In addition, these matters are related since any overall drop in income is likely to have an adverse impact on the ability of rights holders to invest in the development of new technologies (and also to finance their sport). In any event, despite the difficulties, UEFA has faced these challenge and in the first leading decision of its kind (Commission Decision of 23 July 2003: UEFA Champions League) both UEFA and the European Commission managed to reach a satisfactory solution with regard to the commercialisation of television, internet and



wireless (3G) rights for the UEFA Champions League. In essence, that Decision provided that both UEFA and the participating football clubs would have the right to provide video content on the Internet one and a half hours after the match finishes (that is to say, as from midnight CET on the evening of the match).

However, as a result of technical developments in the Internet (which now permits improved quality visual images) UEFA has again moved forward and in the most recent round of UEFA Champions League commercial contracts (for 2006-2009) it is provided that broadcast partners will have a right and an obligation to simultaneously stream live matches online. Moreover, in the event that a broadcast partner does not have the ability to meet this obligation UEFA will itself provide on behalf of the broadcast partner the functionality to ensure that the matches are available live over the Internet. In addition, broadcast partners are now able to deliver their live UEFA Champions League matches as part of a simulcast of their channels by DVB-H and similar technologies. This increasingly sophisticated and innovative rights model will also apply for the UEFA European Football Championships in 2008 and for the latter stages of the UEFA Cup during 2006-2009 (since the UEFA Cup is now marketed by UEFA on a centralised basis from the quarter-final stage onwards).

Against this background, our view is that the "self-regulatory" approach is functioning rather well: UEFA itself has seized the opportunity to deliver new online services to consumers and is encouraging its commercial partners to do so as well. Having said this, we can see some potential threats to the development of the sector and in our experience these are presented by factors such as internet piracy and perhaps also certain unintended consequences of inappropriate regulatory or legislative intervention.

The issue of piracy is mentioned in questions 21-23 of the Commission's Questionnaire. As to this matter, it needs to be borne in mind that the technical developments that have allowed UEFA to licence the streaming of UEFA Champions League matches have also meant that anyone minded to do so can illegally copy these broadcast streams. Pirates may own or operate websites charging subscribers for access to the stream and it should be noted that the development of "peer-to-peer" technology is improving the quality of pictures on pirate sites all the time. The number of websites offering or threatening to offer streamed broadcasts has increased dramatically in the last three years and peer-to-peer networks are also increasing in size and number.

Of course, much of the value in the rights sold by UEFA depends on the ability to guarantee exclusivity in a specific territory. This applies as much to the Internet as it does to television. Consequently, unless it is effectively addressed, piracy will undermine the exclusivity granted to UEFA's legitimate broadcast partners, reducing the value of the rights sold and adversely affecting the development of the distribution medium. This will, in turn, also have negative consequences for the ability of UEFA to re-distribute income to finance the further development of football.

UEFA retains a company specifically to monitor illicit piracy of our competitions and experience shows that there are certain countries which are particularly prevalent in this activity, including the UK and China. Nevertheless, the issue affects UEFA (and other rights holders) both across Europe and globally. Those involved in the activity of streaming, or



granting access to the stream, and/or those Internet Service Providers whose webspace is being used in the process may be based in any jurisdiction, and often in several different jurisdictions.

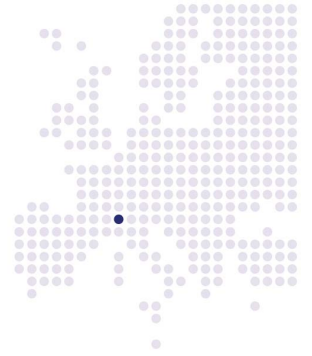
The fact that possible infringers (or facilitators of infringement) are based in different jurisdictions and that aspects of copyright law are not harmonized across the EC makes prosecution of these matters a complex business. For example, if several individuals are involved in a single streaming website and are based in different jurisdictions it may be necessary to obtain court orders against all of them from courts in different jurisdictions based on differing rights and remedies and with differing means of enforcement. Against this background, UEFA considers that there are several measures that might usefully be considered as a means to prevent piracy, including the following:

- the creation of a European wide copyright (similar to a European Trade Mark) enforceable across the EC;
- the creation of a pan-European injunction, possibly along the lines of the *kort geding* proceedings previously granted by the Dutch Courts, enforceable in any jurisdiction within the EU, with provision for enforcement against Internet Service Providers;
- the development of an enforcement protocol or agreement with the courts in China, where peer-to-peer networks proliferate;
- legislation requiring Internet Service Providers to verify the name and contact details of persons or entities leasing space from them, as currently it is common for information provided by pirates to be incomplete or false.

In summary, we believe that effective intellectual property rights protection is essential to protect and encourage the development of the content online industry in Europe and therefore we would strongly recommend that the Commission give close consideration to this issue as a priority matter in this Consultation.

Turning to the issue of regulatory intervention, we would be troubled by any move towards pan-European licensing requirements (question 14) as this does not correspond to our rights marketing system and is ill-suited to the environment in Europe from a sporting perspective (and from a wider cultural perspective as well). In this respect, we believe that the current system of granting exclusive licences to commercial partners on a national territorial basis is the model best suited to the effective commercialisation of sports rights and, as explained, our present system is already delivering cutting edge services to the public and helping to develop the content online industry in Europe as a whole. Furthermore, it has long been recognised that in this particular sphere the relevant markets are national in character, not least as a result of different regulatory regimes, language issues and other cultural factors. These considerations apply also to new media services.

Question 17 asks whether there are any legal or regulatory barriers to the development of creative online services. In this respect, we have already mentioned the problems posed by piracy and the need to secure and enforce an effective intellectual property rights regime. However, we should mention that there are other legislative initiatives in the pipeline which could possibly hamper the development of this sector unless they are given further consideration. As to this subject, we have in mind the draft Audio Visual Media Service



Directive and particularly those provisions of it concerning so-called "news access". As matters stand, the current draft of the Directive proposes the creation of a pan-European news access right, essentially granting third parties a mandatory right to obtain clips of material for supposed "news reporting" purposes. At the moment, news access law is governing by national copyright or neighbouring rights legislation and/or voluntary codes and, in the first instance, we see no reason for seeking to harmonise this matter at a European level. Indeed, the European Commission has never explained how the present system regarding news access in Europe constitutes any barrier to the functioning of the internal market.

More importantly, however, the draft Directive fails to make it clear that any pan-European "news access" right (if created) would be confined to traditional television and would not be extended to new media platforms, such as the Internet and 3G mobile phones. In this respect, both UEFA (and many other sports governing bodies) firmly believe that if legislation in this field is to be adopted it should leave no doubt that news access does not apply to material received either over the Internet or on 3G phones. It is the case (and this may well continue) that sports "clips" carried on these new media platforms will typically be of a considerably shorter duration and, accordingly, any news access right obtained by unlicensed third parties would erode the value of exclusivity granted to legitimate commercial partners and therefore serve to undermine investment in Internet related services by these entities. To be complete, we should also point out that enshrining such an unlimited news access right in Community law would be inconsistent with the EU's own Copyright Directive and also with its international treaty obligations resulting from the Berne Convention. For the purpose of the present exercise, however, we would also urge the Commission to consider the potentially damaging effect of this proposed legislation on the content online industry in Europe.

As mentioned at the beginning of our submission, we have focused on the issues that we perceive as most relevant to the interests of European football and also to the healthy development of the content online industry in Europe. We hope the Commission will find our contribution to the Consultation to be helpful and if you have any further questions please let us know.

Yours sincerely,

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A handwritten signature in black ink, appearing to be 'Gianni Infantino', written in a cursive style.

Gianni Infantino
Director Legal Affairs

