



August 2005

ENPA response to the Issue Paper for audiovisual conference in Liverpool:
Right to information and right to short reporting

Also enclosed from page 3 onwards: Annex of country examples.

ENPA is a non-profit organisation of 5100 titles from 24 European countries (plus one observer member), representing the interests of newspaper publishers to the European Institutions. More than 120 million copies of newspapers are sold each day and read by over 235 million people in Europe.

ENPA is glad to have the chance to respond to the Issues Papers on the Television without Frontiers Directive 89/552/EEC). It is essential that newspapers' voice is heard during this consultation. We have replied separately to the Commission questionnaire inquiring about the potential economic impact of this Directive on newspapers. We hope that the Commission services will take all of ENPA's responses collectively into consideration (also in consideration of our letter of 10 May 2005 on the subject of commercial communications in this Directive) when managing the draft final text for the revised Directive).

ENPA fully supports that the Television without Frontiers Directive should address the issue of short reports. It should ideally address the right of the public to information where exclusive rights have been acquired, in order to enhance public access of information to newsworthy events. Up to present, the current regulation at European level, in Article 3a(1) of the Television without Frontiers Directive, allowing Member States to take national level measures to protect events regarded as being of major importance to society is not sufficient. This is because it does nothing to prevent certain rights' holders extending their exclusive rights to restrictive conditions for press journalists, even though the exclusive contract is only meant for the medium (television broadcasting) which has competed for the exclusive rights.

ENPA reminds the Commission that newspapers are not expected to be included in exclusive rights' tender processes because their coverage is automatically expected to report the event as "news", yet somehow they are increasingly subjected to the same heavy restrictions as broadcasters not enjoying exclusive rights. Therefore, it is the reality that if there is not sufficient competition for broadcasters, then the knock-on effect is that newspaper reporters are also denied competitive access.

Local contracts which are now being developed between broadcasters and rights' holders contain unreasonable terms which exclude other media. In some cases, broadcasters are using all means within their exclusive rights to prevent or attempt to prevent coverage by making it

very difficult and enormously costly for press publishers to provide a useful information service to their readership.

We are moving towards an age where sports clubs or entities with an international appeal (e.g. Manchester United, Real Madrid, Wimbledon) are increasingly deciding to establish their own television channels or online exclusive audiovisual services e.g. online audiovisual archives¹, full match replays and player interviews and therefore they will want to keep audiovisual material for themselves to make a profit with advertisers they attract to their channels or services. The clubs and other entities' interests are therefore in the restriction of any other publicly available service which has the smallest possibility to reduce web traffic to their website and they are willing to impose high prices to shut other media out of the market. The issue is that the existing terms do not suffice to guarantee fair competition in the eyes of newspaper publishers.

ENPA proposal:

In order to create legal certainty for the right of short reporting, a definition of what short reporting consists of must be included in the Television without Frontiers Directive. This must allow other forms of media to provide services in the interests of guaranteeing the public's right to information.

“Short reporting refers to the supply by a content provider of information and/or images where another content provider has acquired the exclusive or priority rights, which provides for an adequate provision to the public of reports, image display or textual analysis for the full and uncensored understanding of events”.

We believe that the exercise of these exclusive rights should not introduce a blanket ban on the use of all information related to that event in other media – the public has a right to be informed of current events, no matter of which channel they choose – and a certain amount of information should therefore be available and journalistic freedoms should not be infringed within such reasonable terms. It follows that the right to disseminate the content in the chosen form and format is an essential part of the publishers' editorial right. Also, national arrangements must not restrict the ability of the media to report events on a pan-European basis.

Considering the options proposed by the Commission:

“Non-discrimination”

ENPA supports the Commission option to specify in the future Directive that “transfrontier access to short reports should be non-discriminatory”.

“Substantial proportion of the public”

ENPA does not deem that this term needs to be harmonised, seeing as “a substantial proportion” may vary in size depending on the type of event and which country the event is being held in.

Provisions of the Copyright Directive

¹ For example : The Wimbledon Archive.
<http://www.twiarchive.com/clients/clientDetails/tennis/wimbledon.shtml>

A compromise solution put forward to experts at the Commission Focus Group on this issue, which proposed to include the exceptions under Directive 2001/29/EC is not sufficient to guarantee the public's right to information because it does nothing to guarantee the reporter's access to a venue.

Conclusion:

ENPA would also like to make it clear that we are not proposing that the Television without Frontiers Directive should be revised to include specific provisions outlining new rights for the written press. That is not our aim. We remain strongly opposed to any Directive at EU level which tries to address press editorial content issues, on or offline. We retain our long-established position that there is no EU competence to regulate the content of the written press.

However, we strongly advocate that the right to short reporting be recognised in the Television without Frontiers Directive. Reporters from all media need access to report, and this is especially relevant for newspapers who are not implicated in exclusive rights deals in the first place. The Commission must take into account the impact that not taking any action in the Television without Frontiers Directive will have on the diminishing rights of the media in general to provide the public with information. As we have highlighted in other position papers on other aspects of this Directive, rules applied to the television medium undoubtedly have an impact on the publishing medium too. Our annex of examples from a variety of countries of existing and continuing problems in this domain proves this.

We hope that the European Commission will take our position carefully into consideration and we remain at its disposal for any further information that it may require.

ENPA, Brussels, August 2005.

Also enclosed: Annex of country-by-country examples – see following pages 4-6.



ANNEX to ENPA response to Issue Paper 2: **Right to information and right to short reporting – case studies**

SWEDEN

The Swedish newspapers' have an on-line-service "Matchen Direkt" (=The Matches Directly), where they make short reports from the Swedish Football Premier League. However, the Swedish Football Association has made an exclusivity agreement with the TV-company ISPR and therefore, from time to time, threatens to sue the newspapers or refuses entrance/throws out reporters from the football arenas if they make short reports. But the newspapers keep reporting anyway because of their belief in the public's right to information. Note that "short reports" in this case refer to messages like "5th minute: corner kick for Team A", "10th minute: Team B takes the lead after a goal by player C" and so on – this is not therefore "live" reporting and publishers argue that there is therefore no reason for the restriction by rights' holders.

DENMARK

When newspaper editorial staff want to obtain pictures of Danish players who are playing for a team in the UK Premier League, there are high and unreasonable costs involved to obtain these pictures. The Premier League insists that the Danish Press must pay a substantial annual fee to the Premier League giving the each individual newspaper the permission to take pictures of the player/match throughout that year.

Formula One access is also sometimes made overly burdensome for the press.

In the last two years, a ruling by the Danish Courts on the case between the Danish public broadcasters and other media, ruled in favour of the other media, which is an interesting positive case for the European Commission to look at.

The ruling concerned the question on whether the rightholders of a sports tournament (the Danish soccer union as the event organisers) could prohibit other media than the exclusive rights holder from publishing results from ongoing soccer matches. The conflict did not involve newspapers but was between the right holders of the sports tournament and an internet company, who published the temporary results online as well as information regarding penalties etc. The rights holders held that the internet company was not allowed to publish the results until after the soccer match was concluded - despite the fact that the information had already been made public by others (with permission). In view of the fact that the temporary results had already been made public by the union or by others with the union's permission - the court ruled that the right to free news coverage must prevail and that the publishing of temporary results was not an infringement of the event organisers' rights.

IRELAND

Newspaper publishers' rights are limited in terms of the method used to publish the pictures in Ireland. When a photograph is taken, it can be published in the paper once, but it cannot be used for further purposes, such as in a promotional calendar which is offered with the newspaper, or used to feature in competitions. i.e. the copyright is heavily restricted. Discussions are currently ongoing at national level.

UK

The Premier League, Football Association and individual football clubs use the ability to control access into their grounds and accreditation of newspapers' reporters and photographers as means of imposing restrictions upon the newspapers' use of the material generated by the newspapers' own staff (or their freelance representatives). This includes restrictions upon both the newspaper companies' advertising or other commercial marketing use and newspapers' editorial use of such material in their print and online publications and services, including websites. These include, but are certainly not limited to, 'live reports'.

The national newspapers have now chosen to enter into formal agreements. The regional newspaper industry considers that regional press accreditation and access to report matches and clubs' activities should not be dependent upon regional newspapers' agreement to restrictions upon the use of their reporters' and photographers' material. There is therefore no central regional press agreement, nor are they signatories to the national press agreements. In certain circumstances, a regional newspaper may be prepared to enter into individual negotiations and agreements on beneficial joint initiatives with their local clubs. However, regional newspapers are still asked by the football authorities and clubs to sign up to the same terms as the national press on editorial, advertising or other commercial use of the material produced by their journalists, under threat of clubs' refusing accreditation or entry to matches.

GERMANY

In January 2005, the Bundesliga (German Football League) committed itself to a Commission Decision (therefore legally binding) which obliges the football league to sell rights to its matches in a number of specifically tailored packages to ensure optimum public reception of the matches and its highlights/ results. Nevertheless, press publishers are still finding difficulties with being able to print match results when broadcasters who hold the exclusive rights are pushing the kick-off time for the matches later into the evening to 2100h following a pre-match warm-up programme which the exclusive rights' broadcasters like to add, meaning that the results cannot be published in the next day's paper as print deadlines cannot be met by the time the match has finished. Broadcasters do not realise that the success of starting late has diminished attention amongst young people who are prevented from watching on school nights. The public misses out on essential information which is of public interest and after all is news above entertainment.

In the case of the German Football League ("Deutsche Fussball-Liga"), a two-tier system has been created which shows increasing signs of preventing the public's access to information. A "Flash-Zone" grants special privileges to the holders of the exclusive rights, including live-delivery of images and text to the public through selected channels and priority access for interviews. A second "Mixed-Zone" allows those reporters not privileged with exclusive rights to gather match material and interviews with players 10 minutes after the match has ended. Whilst this on the surface seems reasonable to allow the broadcaster/media provider with exclusive rights to extract the value of his investment, the deal actually excludes other media to an unreasonable extent. Those media in the "Mixed-Zone" are excluded altogether from the interviews with players, since the players are encouraged not to interview for long

after the game has ended and therefore the exclusive rights owner has almost the only chance to disseminate match material. Journalists in the “mixed-zone” also have to work outside the premises until their access time has arrived (i.e. 10 minutes after the match).

It can be argued that the deal could also affect people wanting to keep up to date on the action who are living abroad, effectively preventing them from receiving such information, particularly if they are not able to receive the exclusively-won broadcast. It is also reported that for FIFA championships, FIFA even includes in its regulation the fact that newspapers cannot print the cup or the FIFA logo on their front pages.

In Germany, two years ago the soccer league established a database which they controlled all of their match information through – no outside interests anywhere in the media would be allowed to get their information from other sources – a newspaper would be obliged to buy the results if they wanted to print them. The newspapers won the fight that time but the pressures to enter into similar agreements placing serious barriers to freedom of expression persist.

NETHERLANDS

The legal dispute between the Dutch football-clubs (united in and represented by the 'Eredivisie') and journalists, publishers, chief-editors and photographers, has recently been solved. The dispute was about making photos by journalists during the soccer game in the stadium. The 'Eredivisie' wanted to introduce some unfavourable conditions under which journalists/photographers were allowed to enter the stadium and to report about the game. The journalists and publishers took this matter into court. The judge decided that the parties involved should try to come to a settlement of the dispute with the help of a mediator. The mediator (the president judge of the court of Amsterdam) talked with both parties and proposed a compromise, which was accepted. This compromise contains the condition that photographers will not be obstructed in their activities. The (photo)journalists retain at all times the freedom of journalism in football stadiums during the competition matches. The photographers, press agencies and publishers accepted one restriction with regard to the publishing of photos of the soccer game: this restriction means that they (journalists/publishers) will not introduce a separate service that provides soccer fans (against payment) during the soccer game (and a half hour after the game) with pictures of important moments (like 'goal alerts') by way of mobile phone. This is because the Eredivisie has sold the rights for such a service ('Match Alert') to a company called 'Infostrada Sports'. Infostrada Sports will soon start with this service. The agreement between Eredivisie and journalists/publishers will be operative until mid-2007.

FINLAND

The right to report where exclusive rights have been allocated is not in itself restricted in Finland – generally all professional media have the right to obtain media accreditation at events.

The problem arises at rallies, ice-hockey games and other large events where the reporters who have gained accreditation are subject to restriction according to the (exclusive) rights' holder orders.

GENERALLY

Though these obstacles are predominant in sport, where there is some clarity about the securing of exclusive rights, there are other areas of public life such as entertainment including music concerts and fashion shows where restrictive terms exist as a precaution by event organisers who may wish to sell rights at some point.