

## **Right to information and right to short reporting**

### **Introduction**

Protection of an effective exercise of the right to information inside the European Union, and also safeguarding of pluralism of the sources of information are of great significance to the society. It is advisable to take appropriate and commensurate steps with a view to protecting consumer interests in this regard, out of concern about a balanced development of the European audiovisual market.

### **Issue I: Events of major importance**

(i) We believe that the provisions of Art. 3a of the "Television Without Frontiers" Directive are appropriate and commensurate.

(ii) It does not seem advisable to introduce a provision that the European Commission should endorse the national provisions setting out rules for the broadcasting of events of major importance to society, as notified by the Member States, by a formal decision. It should be noticed that national regulations transposing the provisions of the directive so that they comply with the internal legal order have to be notified to the European Commission anyway and that the latter has an opportunity to comment on them. We see no need to change this situation and to lay down a separate procedure to be able to determine whether such transposition is correct with regard to one Article of the directive.

(iii) The criterion of „a substantial proportion of the public“ referred to in Art. 3a is indeed all-embracing and its interpretation has so far been left to individual Member States. Speaking in favor of this approach is the argument that it is necessary to take into account cultural and social diversity of individual Member States. It seems that such solution is particularly valid in the context of national services referred to in Art. 3a Par. 1 of the Directive.

However, to ensure a coherent interpretation and proper application of the provisions of Art. 3a Par. 3 of the Directive, in the transfrontier context, and mindful of the diversity of measures taken by individual Member States to implement the provisions of the Directive, it seems to be advisable to list recommended criteria allowing to use this notion in the transfrontier context in a more precise way in one of the recitals of the directive's preamble.

Should the lists of major events of which the Member States are to notify be comprehensive and should this general notion of „a substantial proportion of the public“ referred to in Art. 3a Par. 3 be literally transposed into national legal systems, the interpretation of this term may give rise to doubts among the broadcasters of other Member States.

In order to enable an unhampered provision of services in television broadcasting within the Internal Market, it seems to be advisable to formulate some point of reference that will allow to arrive at a common understanding of that criterion.

### **Issue 2: Right to information**

It is the right solution for the future directive to lay down the right to transfrontier access to program extracts to be used in information programs along with a list of specific preconditions to its exercise, such as the events this right covers, its beneficiaries duration of extracts and their intended use.

Faced with the growing commercialization of rights to major events it is difficult to for the public to exercise its right to information. Creation of real barriers to transfrontier access to the so-called short reports (usually of no more than 90 seconds) which could be used in information programs may have a negative impact on the exercise of the right to information, and also on the pluralism of means and sources of information, as many broadcasters in the European Union are short of sufficient technical means or financial resources to be able to cover the cost of systematic marketing of exclusive broadcasting rights to major events.

It is therefore advisable to lay down at the European level minimal rules of access to events which are of great public interest and which are covered by exclusive rights, in order to be able to present short reports in information programs.

It is obvious that the public's right to information about major events should be balanced against the rights to intellectual property as well as other rights of broadcasters and event organizers.

The basic regulation safeguarding a minimal right of the society to information in the form of the so-called short reports should be so devised that it would permit the existence of other provisions laid down in self-regulatory codes which would properly safeguard the public's right to information.

It may be therefore argued that should one state effectively apply means to safeguard the public's right to information, e.g. in the form of self-regulatory codes, the Member States could refrain from such statutory regulation. Such approach would be possible owing to the „where necessary“ formula.