

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2023/1018

of 4 May 2023

on combating online piracy of sports and other live events

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Sports and other live events such as concerts contribute to fostering a diverse European cultural scene. They also play an important role in bringing citizens together and in providing a sense of community. The organisation of such events as well as their live transmission and retransmission require substantial investments and contribute to economic growth and job creation in the Union.
- (2) As stated in the European Parliament resolution of 19 May 2021 on the challenges of sports event organisers in the digital environment ⁽¹⁾ and as evidenced by recent studies ⁽²⁾, the main value of most live sports events lies in the exploitation during the live transmission and ends when the event ends. Therefore, unauthorised retransmissions of live sports events can cause significant loss in revenue for both sports event organisers and broadcasters and thus undermine the viability of the services they offer. The need for efficient remedies for live sports events was highlighted by the European Parliament, which also noted that at the same time sports events organisers should contribute to a European sports model that contributes to the development of sport and is in line with social and educational objectives. This Recommendation is a follow-up to that resolution and recommends measures that Member States and market players are encouraged to take.
- (3) Similar considerations apply to live transmissions of other events which, due to their specificity, trigger the most interest from the audience and generate most of their value during their live transmission. This concerns for instance live transmissions of cultural events such as concerts, opera, musicals, theatre performances, or game shows. Economic harm caused by live event piracy includes the loss of users' subscription fees, entrance ticket sales and advertising revenues, thereby affecting all the stakeholders contributing to the live event value chain.
- (4) Piracy takes place through increasingly sophisticated means to make unauthorised retransmissions of live events available to online users through different services, such as illegal IPTV, apps or websites. Revenues deriving from online piracy of sports events have been estimated to amount to EUR 522 million in 2019, considering only illegal business models relying on users' subscription fees ⁽³⁾. It is a global phenomenon, with pirate services streaming live events increasingly using 'offshore' hosting companies to reach users in the Union while minimising the exposure to copyright or criminal law ⁽⁴⁾. In recent years, a new type of service supporting piracy has been developed, referred to as 'Piracy-as-a-Service' which provides a suite of off-the-shelf services that make it easy to create, operate, and

⁽¹⁾ P9_TA(2021)0236.

⁽²⁾ Challenges facing sports event organisers in the digital environment. European added value assessment, European Parliamentary Research Service, December 2020. Illegal IPTV in the European Union. Economic, Legal and Technical analysis Report, EUIPO, July 2019. Live event piracy. Challenges and best practices from online intermediaries to prevent the use of their services for live event piracy, EUIPO, March 2023.

⁽³⁾ Challenges facing sports event organisers in the digital environment. European added value assessment, European Parliamentary Research Service, December 2020.

⁽⁴⁾ Live event piracy. Challenges and best practices from online intermediaries to prevent the use of their services for live event piracy, EUIPO, March 2023.

monetise a fully functioning pirate operation. In some cases, those infringing services mirror legitimate streaming services. Furthermore, operators making unauthorised retransmissions available have developed resilience strategies to circumvent enforcement measures. It is therefore necessary to carefully monitor the development of new forms of piracy and resilience strategies, which may also impact other types of content and affect the ability of holders of rights to enforce their rights effectively, taking into account in particular the technological changes and new business models.

- (5) Unauthorised online retransmissions of live events begin with the illicit interception and capture of the pre-broadcast or the broadcast signal which is then passed through various providers of intermediary services to be delivered to end users via different interfaces (websites, apps, IPTV). Services of providers offering high-performance solutions can be used for unauthorised retransmissions, like for example dedicated server providers. In addition, services upstream in the transmission chain such as content delivery networks or reverse proxies may be misused by operators of unauthorised retransmission to deliver such retransmissions or obfuscate the source of unauthorised retransmissions. Furthermore, downstream, internet access providers provide internet connectivity to end users and serve as a gateway to all content available online.
- (6) Considering the structure of the internet, the respective roles of different types of intermediary services, as well as the technological means available to them, providers of such services can have a crucial role in assisting holders of rights and national authorities to remove or disable access to unauthorised retransmissions of live events. It is therefore necessary to identify effective solutions adapted to the respective functions of the different types of intermediary service providers, in accordance with Union law, in particular with the different obligations applicable to providers of intermediary services under Regulation (EU) 2022/2065 of the European Parliament and of the Council ⁽⁵⁾, in order to allow them to expeditiously remove or disable access to unauthorised retransmissions of live events.
- (7) Various tools to combat the unauthorised retransmissions of content protected by copyright and related rights are already provided for in Union law. In particular, pursuant to Article 8(3) of Directive 2001/29/EC of the European Parliament and of the Council ⁽⁶⁾ and Articles 9 and 11 of Directive 2004/48/EC of the European Parliament and of the Council ⁽⁷⁾, holders of rights can request injunctions against infringers or against intermediaries whose services are used by a third party to infringe a copyright or related right. In addition, Regulation (EU) 2022/2065 provides a general framework to ensure a safe, predictable and trusted online environment, addressing the dissemination of illegal content online. It harmonises the rules on notice and action mechanisms and streamlines the processing of notices sent to providers of hosting services. In practice, the implementation of available remedies depends on the nature of the providers of intermediary services. Certain intermediary services, such as providers of hosting services, are able to take action to remove or disable access to the illegal content hosted by them upon the receipt of a notice, while others, such as internet access providers, without prejudice to any further voluntary action, are only obliged to act on the basis of an injunction granted by a judicial or administrative authority to prevent access of end users to infringing content.
- (8) Sports events are not, as such, protected by copyright and related rights. Sports event organisers are not recognised as holders of rights under Union copyright law and accordingly, in principle, they could not avail themselves of the rights and remedies existing under the Union intellectual property law, in particular under Directive 2004/48/EC, unless they hold the rights on a contractual basis from other holders of rights or they benefit from an intellectual property right granted under national law.

⁽⁵⁾ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

⁽⁶⁾ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

⁽⁷⁾ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45).

- (9) Sports event organisers may benefit from specific protection granted under national law in certain Member States. The possibility for Member States to protect sports events at national level, where appropriate by virtue of protection of intellectual property has been recognised in the case-law of the Court of Justice of the European Union. In certain Member States, sports event organisers, alongside broadcasting organisations, have access to remedies which allow them to take action in relation to unauthorised retransmissions of live sports events.
- (10) In addition, broadcasting organisations enjoy different rights under Union law which may allow them to take action against unauthorised retransmission of live sports events.
- (11) In the absence of specific rights and remedies at Union level which apply to sports events, it is often difficult for sports event organisers to act in a timely manner against unauthorised retransmissions of live sports events. In order to prevent the loss of value from the live transmission of sports events, Member States should be encouraged to ensure that sports event organisers have access to remedies allowing them to request disabling access to the unauthorised retransmissions in a very fast manner. However, in some cases sport event organisers also benefit from the rights and remedies laid down in Directive 2004/48/EC as they have been granted intellectual property rights under national law. In such cases Member States are encouraged to consider whether and to what extent the recommendations concerning unauthorised retransmissions of live sports events should also apply to those sports event organisers.
- (12) Live transmission of events other than sports is generally protected by copyright and related rights granted under Union law to authors, performers, phonogram producers, film producers and broadcasting organisations. In the case of those rights, holders of rights can rely on the remedies provided in Directive 2001/29/EC, Directive 2004/48/EC and Regulation (EU) 2022/2065. This also applies to sports event organisers that are granted intellectual property rights under national law. It is important to ensure that remedies available to holders of rights allow prompt action, which takes into account the specific nature of the live transmission of an event, in particular its time sensitive element.
- (13) The purpose of this Recommendation is to combat online piracy of sports and other live events. Therefore, as regards sports live events, it is necessary to encourage Member States and all relevant stakeholders to take effective measures against unauthorised retransmission of live sports events, while guaranteeing the necessary safeguards to protect fundamental rights.
- (14) As regards other live events, Member States and stakeholders should be encouraged to apply the existing remedies against copyright infringements in a manner that takes account of the specificity of live transmissions.
- (15) It is necessary to foster collaboration between sports event organisers, holders of rights, providers of intermediary services and public authorities.
- (16) This Recommendation should not apply to any legitimate use of content. In particular, the unauthorised retransmission of live events should be distinguished from any use of content protected by copyright and related rights in accordance with any limitations or exceptions provided for under Directive 2001/29/EC or Directive (EU) 2019/790 of the European Parliament and of the Council ⁽⁸⁾, such as audio clips or videos shared among and by persons in the audience of a live event or shared by journalists for the purpose of informing the general public, including in real time. In addition, this Recommendation does not apply to the short news reports prepared by broadcasting organisations in accordance with Article 15 of the Directive 2010/13/EU of the European Parliament and of the Council ⁽⁹⁾, for instance by relying on short extracts chosen from the signal of a broadcasting organisation transmitting on an exclusive basis.

⁽⁸⁾ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market (OJ L 130, 17.5.2019, p. 92).

⁽⁹⁾ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

- (17) Regulation (EU) 2022/2065 includes rules applicable to intermediary services in the internal market which are relevant in the case of unauthorised retransmission of live events. In particular, Article 16 of Regulation (EU) 2022/2065 introduces harmonised rules on 'notice and action' for providers of hosting services to provide for timely and diligent processing of notices related to illegal content. Recital 52 of that Regulation states that providers of hosting services should act upon notices in a timely manner, in particular by taking into account the type of illegal content being notified and the urgency of taking action.
- (18) Given the specific nature of live events, urgent action from providers of hosting services upon receipt of a notice is essential in order to minimise the harm caused by unauthorised retransmissions of live events.
- (19) Regulation (EU) 2022/2065 also imposes additional obligations on online platforms to take the necessary technical and organisational measures to ensure that notices submitted by trusted flaggers are given priority and are processed and decided upon without undue delay. Other providers of hosting service are not covered by those obligations; however, this mechanism is useful to accelerate the processing of notices concerning live events. Therefore, it is appropriate to recommend that providers of hosting services, other than online platforms, give priority to notices submitted by trusted flaggers in order to take urgent action during the transmission of a live event. The specific situation of micro or small enterprises should be taken into account in this context.
- (20) Additionally, certain providers of hosting services have been developing technical solutions which allow holders of rights, through a dedicated application programming interface, to notify, including in real-time, unauthorised uses of their content and further speed up the processing of those notices. Regulation (EU) 2022/2065 calls upon the Commission to support and promote the development and implementation of voluntary standards in respect of the electronic submission of notices by trusted flaggers, including through application programming interfaces. The development and use of such technical solutions by intermediaries other than online platforms should also be encouraged, provided that a redress mechanism is incorporated therein.
- (21) There are different ways to encrypt or mark the broadcast signal, including forensic watermarking, in order to protect it from unauthorised uses. Holders of rights should make the best use of these solutions which can help identify the source of unauthorised retransmissions rapidly and precisely.
- (22) Providers of intermediary services upstream in the internet infrastructure such as content delivery networks or reverse proxies can often be the only services identified by holders of rights when they detect unauthorised retransmission of live events. To the extent that they do not provide hosting services, rules on notices are not applicable to them. However, some providers do allow for notices and contribute to the identification of the IP addresses used by rogue operators, thereby playing an important role in combating unauthorised retransmissions of live events. They should therefore be encouraged to support and share information with holders of rights and hosting service providers on the identification of the sources of the unauthorised retransmissions, including, when appropriate, the origin IP address of the servers. They should also put in place a robust policy against misuse of their services, for example by providing in their terms and conditions the possibility to suspend their services to rogue operators that frequently make unauthorised retransmission available. These practices should also apply to services offering high-performance solutions, in particular dedicated server providers which are typically misused to deliver unauthorised retransmissions.
- (23) Directive 2001/29/EC and Directive 2004/48/EC grant the holders of rights the possibility to seek an injunction against a provider of intermediary service whose services are being used by a third party to infringe their intellectual property rights. In 2017, the Commission issued the Communication 'Guidance on certain aspects of Directive 2004/48/EC' ⁽¹⁰⁾ stating that in certain cases it may be appropriate for such injunction to require the provider of intermediary service to take down or disable access to illegal content. In cases of large-scale infringements or infringements occurring in a structural manner, the guidance indicates that it could be

⁽¹⁰⁾ COM (2017) 708 final (the 'Guidance').

proportionate, based on a case-by-case analysis, to require that access to an entire website is blocked. In line with the case law of the Court of Justice of the European Union, the guidance underlines that, subject to certain safeguards, the injunction does not have to explicitly describe the measures that the providers need to take to achieve the result sought. However, Union law does not provide for rules on the specific features of an injunction nor are there explicit rules pertaining to live transmissions.

- (24) Different technical measures may be used to implement blocking injunctions and prevent access of end users to the unauthorised retransmission, for example through Domain Name System (DNS) or IP blocking.
- (25) In addition, in line with the Guidance, dynamic injunctions which cover new internet locations where the unauthorised retransmission becomes available immediately after issuing the injunction, can be an effective means to prevent the continuation of unauthorised retransmission under the condition that necessary safeguards are provided. Such injunctions are a useful remedy to tackle the resilience strategies developed by pirate services, for example setting up mirror sites under different domain names or switching to different IP addresses to circumvent blocking measures.
- (26) Dynamic injunctions have so far been available only in a few Member States ⁽¹¹⁾. They are granted either by the courts or by certain administrative authorities empowered to order blocking or removal measures ex officio or following complaints. This type of injunctions is particularly adapted to address unauthorised retransmissions of live events.
- (27) It is essential that sports event organisers, even if they are not recognised as rightholders under Union law, are able to seek injunctions to prevent unauthorised retransmission of a live sports event and to prohibit the continuation of such unauthorised retransmission, in accordance with national law. It is also important that injunctions addressing live sports events are dynamic, in order to cover, with sufficient rapidity, the additional pirate services, unidentified at the time of the proceedings, which give access to the unauthorised retransmission of the same live sports event, provided the necessary safeguards are applied.
- (28) Since the loss of value for other types of live events is often higher during the live transmission, it is equally important to encourage a wider availability of dynamic injunctions to prevent unauthorised retransmission of such events.
- (29) In order to prevent over blocking, the additional internet locations to which dynamic injunctions apply should be correctly identified. Several possibilities could be envisaged to update the list of internet locations covered by an injunction, such as agreeing on a methodology as part of the injunction, including for the cooperation between holders of rights and addressees of the injunctions, subject to control by a judicial authority.
- (30) An injunction is usually addressed to internet access providers, as those are well placed to prevent the access of end users to a specific service which offers unauthorised retransmissions of live events. However, other providers of intermediary services may be misused to facilitate unauthorised retransmissions or to circumvent blocking injunctions. For instance, content delivery networks and reverse proxies may be used to obfuscate the origin of the unauthorised retransmission, while alternative DNS resolvers and proxy services such as Virtual Private Networks (VPNs) may be used to facilitate access to services that have been blocked. Providers of intermediary services should consider whether they could take further voluntary measures to prevent their services from being misused. Such own initiative measures could be discussed in particular in the context of the monitoring of this Recommendation that the Commission will undertake with the support of the European Observatory on Infringements of Intellectual Property Rights hosted by the European Union Intellectual Property Office ('EUIPO Observatory').

⁽¹¹⁾ Study on dynamic blocking injunctions in the European Union, EUIPO, March 2021; Mapping report on national remedies against online piracy of sports content, European Audiovisual Observatory, December 2021; Live event piracy. Challenges and best practices from online intermediaries to prevent the use of their services for live event piracy, EUIPO, March 2023.

- (31) Other market players such as providers of advertising, as well as payment services providers, through their obligations under the EU anti-money laundering framework and voluntary actions, can also contribute to the fight against online piracy. To demonetise piracy services, the Commission is facilitating a memorandum of understanding on online advertising and intellectual property rights. Signatories of that memorandum voluntarily commit to minimise the placement of advertising on websites and mobile applications that infringe intellectual property rights, including copyright. Such cooperation should be further encouraged to make sure that such services do not facilitate the promotion and functioning of operators giving access to unauthorised retransmission of live events.
- (32) In order to address piracy in a holistic manner, it is important to increase the availability, affordability, and attractiveness of commercial offers for end users to access transmission or retransmissions of live events. As concerns events of major importance for society such as Olympic Games, the Football World Cup or the European Football Championship, Member States may ensure wide access by the public to television coverage in line with Article 14 of the Directive 2010/13/EU.
- (33) Furthermore, according to a recent study, the accessibility and availability of competitively priced legal offers has resulted in a slight decrease in the number of users consuming pirated content ⁽¹²⁾. It is therefore important to raise end users' awareness about the availability of legal offer. For example, certain Member States ensure that when a website is blocked pursuant to an injunction, users that try to access it are informed about the blocking and are given information on the sources where the content can be accessed legally. This can be done for instance by referring to the European online content portal, Agorateka, developed by the EUIPO Observatory, which links to existing national portals.
- (34) Cross-border cooperation between Member States is important to better tackle the phenomenon of unauthorised retransmissions of live events, which by nature take place across borders. The exchange of information on services that are subject to an injunction in one Member State can be helpful to inform the enforcement authorities in other Member States where the same services are available.
- (35) The EUIPO Observatory is entrusted by Regulation (EU) No 386/2012 of the European Parliament and of the Council ⁽¹³⁾ to provide mechanisms which help to improve the exchange of information on enforcement of intellectual property rights between Member States authorities and to foster cooperation with and between those authorities. The existing cooperation facilitated by the EUIPO Observatory on these matters should develop into a dedicated network for Member States to structurally exchange information on measures, procedures and remedies applied to unauthorised retransmissions of sports and other live events, including on the impact and efficiency of those enforcement tools, and on the challenges and good practices in that field. The network should allow the dialogue across all Member States and include the administrative authorities with specific powers in relation to enforcement of intellectual property rights that exist in certain Member States. The information gathered under the network should contribute to the monitoring of the effects of the recommendation.
- (36) Enhancing the expertise of persons involved in the enforcement of rights against unauthorised retransmissions of live events by appropriate training measures constitutes another way to achieve more efficient enforcement. The EUIPO Observatory should be encouraged to develop and organise knowledge building activities for national judges and national authorities in this specific area.
- (37) The Commission will closely monitor the actions taken in light of this Recommendation, with the support of the EUIPO Observatory, which should provide technical expertise and organisational support as well as monitor the evolution of unauthorised retransmission of live events in Member States. In order to carry out this task, it is essential that Member States and stakeholders share relevant information about the follow-up given to this

⁽¹²⁾ Intellectual Property Crime Threat Assessment, EUIPO and Europol, March 2022.

⁽¹³⁾ Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012, p. 1).

Recommendation and the volume of unauthorised retransmissions of live events. Stakeholders should also provide information on the evolution of legal offers of the content covered by this Recommendation. On this basis, the Commission will assess the effects given to this Recommendation and determine whether additional steps are required, including to prevent the illegal dissemination of other types of copyright-protected content.

- (38) Recourse to remedies under this Recommendation requires the proper balancing of rights and interests of persons concerned by the measures taking into account the different fundamental rights and of the proportionality of such measures in any individual case. The application of such measures should be strictly targeted and not impose excessive obligations on intermediaries. Such measures should not lead to general monitoring.
- (39) In order to ensure respect for the fundamental right to the protection of natural persons in relation to the processing of personal data, as well as the free movement of personal data, the processing of personal data in the context of any measures taken to give effect to this Recommendation should be in full compliance with the rules on data protection, in particular with Regulation (EU) 2016/679 ⁽¹⁴⁾ and Directive (EU) 2016/680 of the European Parliament and of the Council ⁽¹⁵⁾, and should be monitored by the competent supervisory authorities.
- (40) This Recommendation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Recommendation seeks to ensure full respect for Articles 8, 11, 16, 17 and 47 of the Charter.
- (41) By reason of the complementarity between this Recommendation and Regulation (EU) 2022/2065, the effects of the Recommendation on unauthorised retransmissions of live sports and other live events, should be assessed, taking due account of the findings of the EUIPO Observatory, in conjunction with the effects of that Regulation, that is, by no later than 17 November 2025.

HAS ADOPTED THIS RECOMMENDATION:

PURPOSE

- (1) This Recommendation encourages Member States, national authorities, holders of rights and providers of intermediary services to take effective, appropriate, and proportionate measures to combat unauthorised retransmissions of live sports events and other live events in accordance with the principles set out in this Recommendation and in full compliance with Union law, including the Charter of Fundamental Rights of the European Union.
- (2) This Recommendation recalls the obligations of Member States, holders of rights, providers of intermediary services and recipients of their services in accordance with the binding provisions of Union law, in particular Directive 2000/31/EC of the European Parliament and of the Council ⁽¹⁶⁾, Directive 2001/29/EC, Directive 2002/58/EC of the European Parliament and of the Council ⁽¹⁷⁾, Regulation (EU) 2022/2065, Directive

⁽¹⁴⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽¹⁵⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

⁽¹⁶⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

⁽¹⁷⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).

(EU) 2019/790 and Directive 2004/48/EC. The Recommendation does not apply to any legitimate use of content, such as use of copyright-protected content under limitations and exceptions and the use of short extracts in line with Article 15 of Directive 2010/13/EU.

DEFINITIONS

- (3) For the purposes of this Recommendation the following definitions apply:
- (a) 'sports event organiser' means any natural or legal person undertaking the responsibility for the organisation of a sports event which is accessible to the public;
 - (b) 'live transmission of an event' means a transmission in real time, by any means, including by wire or wireless means, of an event to a public which is not present at the place where the event takes place in real time;
 - (c) 'live transmission of a sports event' means a transmission in real time, by any means, including by wire or wireless means, of a sports event to a public which is not present at the place where the event takes place in real time;
 - (d) 'holder of rights in live transmission of sports events' means any natural or legal person that holds rights in the live transmission of a sports event, irrespective of whether these are intellectual property rights, and who is legally entitled to enforce those rights;
 - (e) 'holder of rights in the live transmission of an event' means any natural or legal person that holds copyright or related rights in the live transmission of works and other subject matter;
 - (f) 'unauthorised retransmission' means a simultaneous transmission or retransmission intended for reception by the public of an initial live transmission of an event or of a live transmission of a sports event, and which has not been authorised by the holder of the rights.

UNAUTHORISED RETRANSMISSION OF LIVE SPORTS EVENTS

Ensuring the prompt treatment of notices related to unauthorised retransmissions of live sports events

Prompt treatment of notices

- (4) When processing the notices related to unauthorised retransmissions of live sports events, providers of hosting services should take into consideration the specific nature of live transmissions of sports event in order to aim at minimising the harm caused during the unauthorised retransmission of such an event.
- (5) In order to ensure that the notice is processed and a decision is taken during the live transmission of a sports event, providers of hosting services, other than online platforms, are encouraged to cooperate with holders of rights in live transmission of sports events, in particular by:
- (a) effectively engaging with trusted flaggers for the purposes of this Recommendation;
 - (b) developing and using technical solutions aimed at facilitating the processing of notices, such as application programming interfaces.

Cooperation between holders of rights and providers of intermediary services

- (6) In order to protect the live transmission of sports events, holders of rights in live transmission of sports events should be encouraged to use the best available technical solutions to facilitate identification of the source of unauthorised retransmission.

- (7) Providers of intermediary services, in particular those which are able to identify and locate the source of unauthorised retransmissions of live sports events, are encouraged to:
 - (a) cooperate, including with providers of hosting services and holders of rights in live transmission of sports events, to facilitate the identification of the source of unauthorised retransmissions and;
 - (b) put in place specific measures against repeated misuse of their services.

Injunctions addressing unauthorised retransmission of live sports events

- (8) Member States are encouraged to assess whether, in their jurisdiction, sports event organisers are entitled to take legal action to prevent, or to prohibit the unauthorised retransmission of a live sports event. Where this is not the case, Member States are encouraged to grant legal standing to sports event organisers to seek an injunction in order to prevent imminent unauthorised retransmission of live sports events or to prohibit the continuation of the unauthorised retransmission.

Addressees of the injunctions

- (9) Member States are encouraged to provide for injunctions against operators of unauthorised retransmissions of live sports events, as well as against providers of intermediary services whose services are misused by a third party for unauthorised retransmissions of live sports events, regardless of the intermediary's lack of liability, in order to terminate or prevent such unauthorised retransmission of live sports events. Such injunction may consist in blocking access to unauthorised retransmissions of live sports events.
- (10) Member States are encouraged to provide for the possibility to apply those injunctions to providers of intermediary services which target their activities to recipients of the services in Member States.
- (11) Member States are encouraged to enable holders of rights in live transmission of sports events to apply for an injunction before the start of the sports event, including by submitting evidence before the competent authority showing that the operator in question has already provided access to unauthorised retransmission of similar sports events for which they hold the rights.

Dynamic nature of the injunctions

- (12) Member States are encouraged to provide for the possibility to seek injunctions imposed on a given intermediary service provider, that can be extended to enable the blocking of pirate services which carry out unauthorised retransmissions of live sports event even if they were unidentified at the time of the application for an injunction, but where they concern the same sports event, in line with their national procedural rules.
- (13) In order to identify those pirate services in an appropriate manner after the issuance of an injunction, Member States should encourage the use of a case-by-case methodology for updating the list of internet locations covered by the injunction (identified for instance via a domain name, IP address or URL), including through the cooperation between the holders of rights and the addressees of the injunction, subject to control by a judicial authority. Member States may consider whether an independent national authority should certify the list of internet locations covered by an injunction.
- (14) Where Member States empower an independent administrative authority to issue injunctions or update the list of internet locations covered by the injunction, such decisions should be subject to the right of appeal to the courts.

Safeguards

- (15) When introducing or applying rules on injunctions related to unauthorised retransmission of live sports events, Member States are encouraged to take into consideration that the measures set out in the injunction should not be unreasonably burdensome for the addressees. They should be strictly targeted and should not unnecessarily deprive users of the possibility of lawfully accessing the information available.

- (16) Where the injunction takes the form of a blocking measure, care should be taken to ensure that it targets pirate services identified by internet locations which are mainly dedicated to providing access to unauthorised retransmissions or other types of unauthorised content.
- (17) The technical measures applied for the implementation of such injunctions should be adequate to prevent or, at least, make difficult, the access to the unauthorised retransmission of live sports events, and seriously discourage end users from accessing those unauthorised retransmissions.
- (18) Member States are encouraged to ensure that holders of rights in live transmission of sports events regularly update the information on the internet locations which are no longer used for unauthorised retransmission of sports events, so that the restrictions on these internet locations may be removed.
- (19) Member States are encouraged to provide that the duration of the injunction should not go beyond what is necessary to ensure the effective protection of the holders of rights in the live transmission of sports events. Member States are encouraged to provide that the blocking measures applied in this context take effect only when the live transmission of the sports event occurs.

Voluntary cooperation

- (20) Providers of intermediary services should be encouraged to consider appropriate and proportionate voluntary initiatives to prevent their services from being misused for unauthorised retransmission of live sports events.
- (21) Other market players such as advertising and payment services should be encouraged to ensure that their services do not facilitate the promotion and functioning of operators giving access to unauthorised retransmission of live sports events.

UNAUTHORISED RETRANSMISSIONS OF OTHER LIVE EVENTS

Ensuring the prompt treatment of notices related to unauthorised retransmissions of other live events

Prompt treatment of notices

- (22) When processing the notices related to unauthorised retransmissions of other live events, providers of hosting services should take into consideration the specific nature of live transmissions in order to aim at minimising the harm caused during the unauthorised retransmission of such an event.
- (23) In order to ensure that the notice is processed and a decision is taken during the live transmission of an event, providers of hosting services, other than online platforms, are encouraged to cooperate with holders of rights, in particular by:
 - (a) effectively engaging with trusted flaggers for the purposes of this Recommendation;
 - (b) developing and using technical solutions aimed at facilitating the processing of notices, such as application programming interfaces.

Cooperation between holders of rights and providers of intermediary services

- (24) In order to protect the live transmission of an event, holders of rights in live transmission of an event should be encouraged to use the best available technical solutions to facilitate identification of the source of unauthorised retransmission.
- (25) Providers of intermediary services, in particular those which are able to identify and locate the source of unauthorised retransmission of live events, are encouraged to:
 - (a) cooperate, including with holders of rights to facilitate the identification of the source of unauthorised retransmission of live events;
 - (b) put in place specific measures against repeated misuse of their services.

Injunctions addressing unauthorised retransmissions of other live events

Dynamic nature of injunctions

- (26) Member States are encouraged to provide for the possibility to seek injunctions imposed on a given intermediary service provider, that can be extended to enable the blocking of pirate services which carry out unauthorised retransmission, even if they were unidentified at the time of the application for an injunction, but where they concern the same live event, in line with their national procedural rules and in compliance with the applicable provisions of Union law, including the Charter, in particular, the right to freedom of expression and information and the right to protection of personal data.
- (27) In order to identify those pirate services in an appropriate manner after the issuance of an injunction Member States should encourage the use of a case-by-case methodology for updating the list of internet locations covered by the injunction (identified for instance via a domain name, IP address or URL), including through the cooperation between the holders of rights and the addressees of an injunction, subject to control by a judicial authority.
- (28) Where Member States empower an independent administrative authority to issue injunctions or update the list of internet locations covered by the injunction, such decisions should be subject to the right of appeal to the courts.

Safeguards

- (29) When introducing or applying rules on injunctions related to unauthorised retransmission of live events, Member States are encouraged to take into consideration that the measures set out in the injunction should not be unreasonably burdensome for the addressees. They should be strictly targeted and should not unnecessarily deprive users of the possibility of lawfully accessing the information available.
- (30) Member States are encouraged to ensure that holders of rights in live transmission of an event regularly update the information on the internet locations which are no longer used for unauthorised retransmission of live events, so that the restrictions on these internet locations may be removed.

Voluntary cooperation

- (31) Providers of intermediary services should be encouraged to consider appropriate and proportionate voluntary initiatives to prevent their services from being misused for unauthorised retransmission of live events.
- (32) Other market players such as advertising and payment services should be encouraged to ensure that their services do not facilitate the promotion and functioning of operators giving access to unauthorised retransmission of live event.

RAISING AWARENESS AND VOLUNTARY COOPERATION BETWEEN PUBLIC AUTHORITIES

Commercial offers and awareness

- (33) Holders of rights in live transmissions of sports and other events should be encouraged to increase the availability, affordability, and attractiveness of their commercial offers to end users across the Union.
- (34) Member States are encouraged to raise users' awareness on legal offers of live sports and other events. Member States are also invited to inform users who try to access services offering unauthorised retransmission of live sports and other live events, which had been blocked pursuant to an injunction, about the reasons for the blocking and provide them with information about the legal offers available for watching such events.

- (35) Member States are encouraged to raise awareness of the issues covered by this Recommendation with national law enforcement authorities and build capacity to facilitate investigation and to take appropriate action against operators of unauthorised retransmission of live sports and other live events on a commercial scale, including through participation in existing cross-border law enforcement operations.

Cooperation between public authorities

- (36) Member States are encouraged to proactively exchange information on the services access to which access has been blocked on their territory on the basis of an injunction granted by a national authority.
- (37) The Commission invites the EUIPO Observatory to establish a dedicated network of administrative authorities to regularly exchange information on the measures applied, the challenges and good practices in addressing the issues covered in this Recommendation. Member States that do not have specialised administrative authorities, including those which have developed other relevant initiatives in relation to piracy, are also encouraged to take part in these exchanges. The network should, in particular, aim at assessing opportunities for further cross-border cooperation.
- (38) The EUIPO Observatory is encouraged to make available knowledge building activities for national judges and authorities on existing rules and practices regarding the enforcement of rights against unauthorised retransmissions of live sports and other live events.

FOLLOW-UP AND MONITORING

- (39) The Commission invites the EUIPO Observatory to support it in the identification of indicators, in cooperation with stakeholders, in order to monitor the implementation and effects of this Recommendation.
- (40) Member States and stakeholders are encouraged to submit to the EUIPO Observatory and the Commission all relevant information regarding such measures and actions. Additionally, Member States and stakeholders are invited to submit available information and data on the volume of unauthorised retransmissions of live sports and other live events. Stakeholders are also encouraged to submit data on the availability and discoverability of legal offers of the content covered by this Recommendation.
- (41) On this basis and other relevant sources, the Commission invites the EUIPO Observatory to support it in monitoring the effects of this Recommendation on online piracy of sports and other live events.
- (42) The Commission will assess the effects of this Recommendation on unauthorised retransmissions of live sports and other live events, taking due account of the findings of the EUIPO Observatory, by not later than 17 November 2025. On this basis, the Commission will assess whether additional measures are needed at Union level, including to prevent the illegal dissemination of other types of copyright-protected content, taking account of technological developments, the evolution of distribution channels and consumption patterns, and any impact that the implementation of Regulation (EU) 2022/2065 may have had on the unauthorised retransmissions of live sports and other live events.

Done at Brussels, 4 May 2023.

For the Commission
Thierry BRETON
Member of the Commission
