



The European Union IPATAIB 2009 Programme

Enhancing the administrative capacities of telecom and media authorities for efficient regulation of new digital and multiple play services

- **Workshop No18: Presentation on the implementation of the Article 14 of the AVMS Directive and principles used by other regulators for drawing up the list of events of major importance**

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The Copyright



- Protects creator's interest in certain works
- By virtue of property rights
- It is deemed to exist in the work as soon as it is created
- Exists for a certain number of years during which the owner of the copyright may bring actions for infringement.

Property right

- Prohibits any person from reproducing the copyright work without the owner's consent
- Owned by the person in a similar way to the ownership of a house or a car!



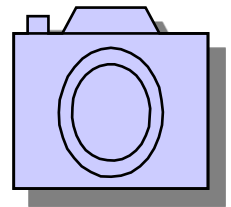
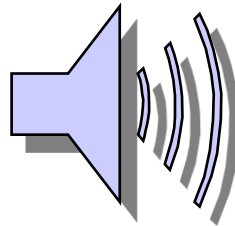
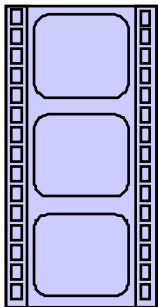
Creation of copyright work

- No registration requirements
(like for other forms of intellectual property right – trade marks & patents)
- The right automatically arise as soon as a copyright work is created
- Subsist for the prescribed duration



Copyright is usually divided in three categories:

- Original literary, dramatic, musical or artistic works
- Sound recordings, films or broadcast
- Typographical arrangements of published editions

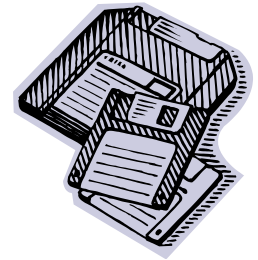


Literary, Dramatic, Musical and Artistic Works

- Literary work: Any work, other than a dramatic or music work, that is written, spoken or sung
- Dramatic work: Work of dance or mime
- Musical work: Work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music
 - = all three sorts of work have to be recorded in a material form/copyright doesn't protect the idea!
- Artistic work: graphic work, photograph, sculpture, architecture, craftsmanship



Sound Recordings, Films and Broadcasts (“derivative works”)



- **Sound recordings:** recording of sounds from which the sounds may be reproduced regardless of the medium on which the recording is made (cassettes, CDs, mini disks)

Copyright is separate from the physical item itself!

- **Film:** a recording on any medium from which a moving image may by any means be produced
- **Broadcast:** an electronic transmission of visual images, sounds or other information which is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them

or is transmitted at a time determined solely by the person making the transmission for presentation to members of the public (no Internet transmission)

Typographical Arrangement

- Typographical arrangement of published edition is a protected form of copyright.
- Published edition may be of the whole or any part of one or more literary, dramatic or musical work!



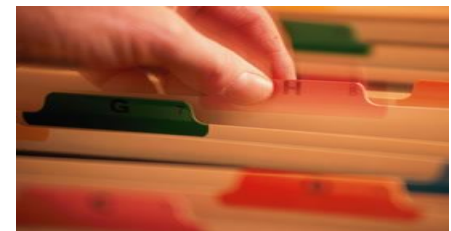
Transfer of copyright:

- **Assignment:** transfer of ownership
 - In writing
 - Signed by the owner
 - Can be arranged for certain period of time
- **Licence:** a permission to exploit a copyright
 - Contractual obligation
 - “Exclusive”/ “non-exclusive”
 - For the particular time period
 - In a certain geographic area



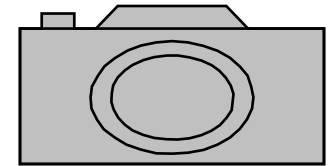
Copyright infringement:

- Copyright gives the right to the owner to prevent others from doing certain things:
 - Copying the work
 - Issuing copies of the work to the public
 - Renting or lending copies of the work to the public
 - Communicating the work to the public
 - Making an adaptation of the work



Copying

- Reproducing the work in any material form:
 - Photocopying
 - Re-writing long hand
 - Reproducing extracts
 - Photographing
 - Downloading information from a web page



Rental/Lending

- **Rental:** making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage (e.g. video/DVD hire)
- **Lending:** Making a copy of the work available for the use on the basis that it will be returned, for financial remuneration (e.g. public libraries)

Performing/Showing/Playing

- Any methods of visual or acoustic presentation of:
 - Sound recording
 - Films
 - Broadcasting



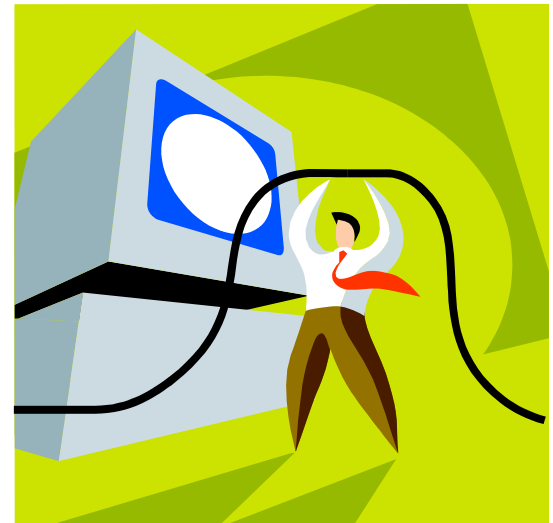
Communicating to the Public

- Infringed: In an electronic transmission
- Applies to any copyright work
- Includes both broadcasting (terrestrial, digital, satellite) and video-on-demand (linear and non-linear services)



Permitted Acts:

- Activities that are allowed in relation to copyright works without obtaining prior permission from the copyright owner:
 - Fair Dealing
 - Incidental inclusion
 - Public interest
 - Reproduction of speeches and interviews



Fair Dealing

- The most important for media!
- **Criticism or review:**
 - Allowed the freedom to copy a work for the purpose of criticism or review where such criticism or review is “fair” (need to prove the sufficient acknowledgment and the work has to be available to public)
- **Reporting on current events:**
 - Allows media to quote newspapers headlines
 - Current event = not current copyright work



Incidental inclusion

- Media broadcast/publish copyright works that are not central to the main theme of publication:
 - E.g. The inclusion of an advertisement on the side of the bus caught on camera during the interview on the street.
- *Case: Football Association Premier League Ltd v Panini UK Ltd (2003):* re collectable football stickers showing footballers wearing team strips showing the Premier League logo.

Premier League had an agreement with another sticker manufacturer.

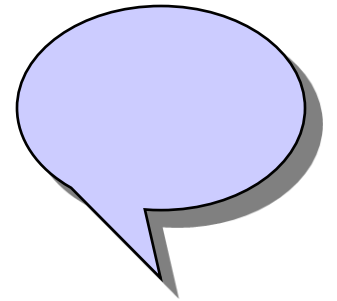
Public interest

- The most difficult to determine
- A property right
- Hard to define “prevailing public interest”



Reproduction of speeches and interviews

- Copyrights on spoken words as soon as they are recorded!
- Owner: the speaker of the words
- If in the course of employment: Employer
- No infringement of copyright:
 - When media reproduce record for purpose of reporting current events provided that:
 - Record is direct record of spoken works
 - The recording was not prohibited by speaker



Case UEFA v European Commission, (judgment of 18 July 2013)



- The Court notes that Member States **enjoy a wide discretion in the designation of sport events as being of major importance for society**. As a result of this wide discretion the European Commission's review is limited to determining manifest errors.
- A prohibition of exclusive broadcasting of sport events constitutes an obstacle to the freedom to provide services, the freedom of establishment, the freedom of competition and the right to property. However, the Court points out that **these obstacles are justified by the objective of protecting the right to information and ensuring wide public access television coverage of those events**.

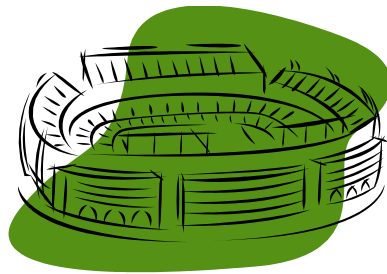
European Regulatory Framework

Access to major events

In accordance with the Audiovisual Media Service Directive (AVMSD)

Events of Major Importance for Society

- Each Member State may take measures to ensure that **broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society** in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events **by live coverage or deferred coverage on free television.**



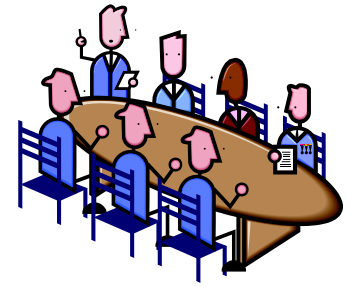
The list of major events*:



- The Member State shall **draw up a list of designated events** **national or non-national**, which it considers to be of **major importance for society**.
- It shall do so in a **clear and transparent manner in due time**.
- In so doing the Member State concerned shall also determine **whether these events should be available by whole or partial live coverage** or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage

*See more at: <http://ec.europa.eu/digital-agenda/avmsd-list-major-events>

The Contact Committee of the EU



- Member States shall immediately notify to the Commission any measures taken or to be taken relevant to events to major importance.
- Within a period of **3 months from the notification**, the Commission shall verify that such measures are compatible with Union law and communicate them to the other Member States.
- The Commission shall seek the opinion of the **Contact Committee**;
- It shall forthwith publish the measures taken in the *Official Journal of the European Union* and **at least once a year the consolidated list of the measures taken by Member States.**

The Contact Committee (Art. 29 AVMSD)

- A **Contact Committee** is established under the aegis of the Commission.
- It consists of **representatives of the competent authorities** of the Member States.
- It is chaired by a representative of the Commission and meet either on his initiative or at the request of the delegation of a Member State.

The tasks of the Contact Committee:



1. to **facilitate effective implementation** of the AVMSD through regular consultation on any practical problems arising from its application
2. to **deliver own-initiative opinions or opinions requested** by the Commission on the application by the Member States of the Directive;
3. to be **the forum for an exchange of views** on what matters should be dealt with in the reports which Member States must submit pursuant to Article 16(3) and on their methodology;
4. to **discuss the outcome of regular consultations** which the Commission holds with representatives of broadcasting organisations, producers, consumers, manufacturers, service providers and trade unions and the creative community;
5. to **facilitate the exchange of information between the Member States** and the Commission on the situation and the development of regulatory activities regarding audiovisual media services, taking account of the Union's audiovisual policy, as well as relevant developments in the technical field;
6. to **examine any development** arising in the sector on which an exchange of views appears useful.

Ban on depriving other countries from accessing the events

- Member States shall ensure, by appropriate means within the framework of their legislation, that **broadcasters under their jurisdiction do not exercise the exclusive rights** purchased by those broadcasters after 18 December 2007 **in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events** which are designated by that other Member State in accordance with paragraphs 1 and 2 by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1

Exclusivity vs. Pluralism

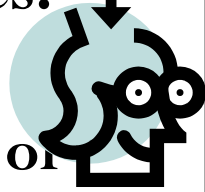
Recital 48 of the AVMSD

- Television broadcasting rights for events of high interest to the public may be acquired by broadcasters **on an exclusive basis**.
- However, it is **essential to promote pluralism through the diversity of news production and programming** across the Union and to respect the principles recognised by Article 11 of the Charter of Fundamental Rights of the European Union

Article 11 of the Charter

- Freedom of expression and information:
 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
 2. The freedom and pluralism of the media shall be respected.

Protection of Right to Information



- Member States should be able **to take the following measures:**
 - **to protect the right to information and**
 - **to ensure wide access by the public to television coverage of national or non-national events of major importance for society**, such as the Olympic Games, the football World Cup and the European football championship.
- **Member States retain the right to take measures compatible with Union law** aimed at regulating the exercise by broadcasters under their jurisdiction of exclusive broadcasting rights to such events.
- It is necessary **to avoid potential legal uncertainty and market distortions and to reconcile the free circulation of television services** with the need to prevent the possibility of circumvention of national measures protecting a legitimate general interest.

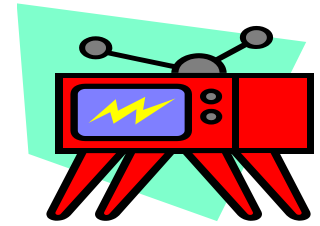
Council of Europe

European Convention on Transfrontier Television

Access of the public to events of major importance

- The country retains the right to take measures to ensure that a broadcaster within its jurisdiction **does not broadcast on an exclusive basis events which are regarded by that country as being of major importance for society** in such a way as to deprive a substantial proportion of the public in that the country of the possibility of following such events by live coverage or deferred coverage on free television.
- If it does so, the country concerned may have **recourse to the drafting of a list of designated events which it considers to be of major importance for society.**

Ban on depriving other countries from accessing the events



- Countries shall ensure by appropriate means, **that a broadcaster within their jurisdiction does not exercise the exclusive rights purchased by that broadcaster** following the date of entry into force of the Protocol amending the European Convention on Transfrontier Television **in such a way that a substantial proportion of the public in another country is deprived of the possibility of following events which are designated by that other country** , via whole or partial live coverage or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other country, respecting the following requirements:

List of events of major importance (1)

- a) the Country **shall draw up a list of national or non-national events** which are considered by that Country as **being of major importance for society**;
- b) the country shall do so **in a clear and transparent manner in due and effective time**;
- c) the country shall determine whether these events shall be **available via whole or partial live coverage**, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage;
- d) **the measures taken** by the country drawing up the list **shall be proportionate and as detailed as necessary** to enable other countries to take measures;



List of events of major importance (2)

- e) the country drawing up the list **shall notify the list and the corresponding legal measures to the Standing Committee**, the time limit for which shall be fixed by the Standing Committee;
- f) the measures taken by the country drawing up the list shall be within the limitations of the guidelines of the Standing Committee and **the Standing Committee must have given a positive opinion on the measures.**
- g) Measures shall apply **only to those events published by the Standing Committee in the annual list** and to those exclusive rights purchased after the entry into force of the amending Protocol.

Once a year, the Standing Committee shall:

- a) **publish a consolidated list of the enlisted events and corresponding legal measures;**
- b) **draw up guidelines** to be adopted by a majority of three quarters of the members - in order to avoid differences between the implementation of this article and that of corresponding European Community provisions.

Council of Europe

Recommendation No. R (91) 5 on the Right to
Short Reporting on Major Events where Exclusive
Rights For Their Television Broadcast Have Been
Acquired in a Transfrontier Context

“Major event”

- Any event in which a broadcaster holds the exclusive rights for its television broadcast and which is considered by one or more broadcaster from other countries as being of particular interest for its (their) public.
- Major event is to be understood as **comprising any event**, irrespective of whether it is organised or not, **in which exclusive television broadcasting rights are held by the primary broadcaster and which** - in the opinion of one or more broadcasters from other countries - **is of particular interest for its (their) public**. The term "from other countries" means countries other than the country in which the primary broadcaster is established.
- **The public** may be the public as a whole, or relevant sectors thereof, who have particular areas of interest, according to their professional or extra-professional activities, age, etc.
- **The fact that a broadcaster has acquired exclusive rights in an event is an indication that the particular event is major in character.**
- In practice, however, its major character will be determined by the secondary broadcaster, whose public risks being deprived of the right of access to information. The secondary broadcaster is, in the final analysis, in the best position to assess the specific expectations of its public with regard to a given event.

Major organized event:

- Any sports, cultural, social, political event which occurs as a result of the decision of an organiser and which is organised by public or private natural or legal persons. In cases where the access of the public to the venue of the event is forbidden or restricted (for example, for certain major cultural or social events), its television broadcast may be all the more important. In such cases, the exercise of exclusive rights may have important consequences for the right of the public to have access to information;

Major non-organized event:

- Topical events such as those which are normally shown in the framework of news and current affairs programmes (for example, an accident, a natural disaster, an armed conflict).
- In most cases, any broadcaster can cover this type of event, access to which is free ; for example, an oil slick.
- In some cases, access to a non-organised major event is limited because, in particular, the owner of the premises of the event has so decided (for example, the management of a mine can forbid access by more than one broadcaster to a mining disaster). Such a limitation may also be the result of a decision of the public authorities for security reasons (for example, authorisation of only one broadcaster to accompany a life-saving team), or of the authors of the event (for example, hijackers authorising only one broadcaster to enter the plane during a technical stop-over).

“Exclusive rights”

- The rights acquired contractually by a broadcaster from the organizer of a major event and/or from the owner of the premises where the event is taking place, as well as from the authors and other rights holders, with a view to the exclusive television broadcast of event by that broadcaster for a given geographical zone.
- Exclusive rights are defined as **the rights acquired contractually by a broadcaster from the organizer of a major event** and/or, as the case may be, **the owner of the premises where the event takes place, the authors and other right holders, with a view to the exclusive television broadcast of the event by that broadcaster for a given geographic zone.**
- As a general rule, any major organized event may be **the subject of an exclusive television broadcast agreement** concluded between the organizer of the event and the broadcaster of his choice in the framework of free competition between broadcasters.
- In certain European countries, **national authorities have removed certain major events from the framework of free contractual negotiations.**
- In such countries, **national authorities have drawn up a list of major organized events which may only be broadcast by a given broadcaster designated by those authorities.** The elaboration of such a list at the European level is nevertheless difficult to envisage, given the different national approaches in media policy and the diverse expectations of the different national audiences.

Broadcasters

“Primary broadcaster”

- The broadcasting organization which holds the exclusive rights for the television broadcast of a major event.
- There may be more than one primary broadcaster (for example, where several broadcasters act in association so as to acquire exclusive rights to a major sports event).
- In order to enable the public the right to information, **the property right of the primary broadcaster should be subject to certain limitations:**

“Secondary broadcaster”

- Any broadcasting organization from a country other than the primary broadcaster wishing to provide information, by means of short report, on a major event for which the primary broadcaster holds the exclusive rights.
- The secondary broadcaster benefits from limitations on the primary broadcaster's rights so as to ensure the access of its public to information.

Standing Committee on Convention on Transfrontier Television

Guidelines on the implementation of the Article 9-a:

Guidelines on the implementation of the Article 9-a:

- The Guidelines provide a test to assess whether an event may be considered of major importance to society
- Events of major importance “...should be outstanding events which are of interest to the general public or an important part of the population of a given country to the Convention”
- At least two of four criteria should be met.

Condition 1

- The event and its outcome has a **special general resonance in the relevant country**, not simply a significance to those who ordinarily follow the sport or activity concerned;



Condition 2



- The event has a generally recognized, **distinct cultural importance for the population in the country** concerned and in particular contains elements of its cultural identity;

Condition 3

- It involves **the national team or a national representative** in the sport concerned in a major international tournament;



Condition 4

- The event **has traditionally been broadcast on free television** and has commanded **large television audiences** in the country concerned.



Right to Short Reporting

EU Framework

Short news reports

- Member States shall ensure that for the purpose of short news reports, any broadcaster established in the Union **has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction.**
- If another broadcaster established in the same Member State as the broadcaster seeking access has acquired **exclusive rights to the event of high interest to the public**, access shall be sought from that broadcaster.

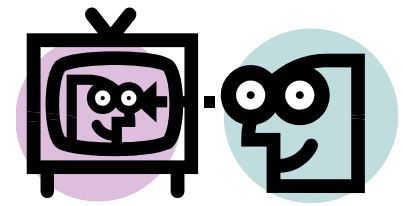


Short report

- Member States shall ensure that such **access is guaranteed by allowing broadcasters to freely choose short extracts** from the transmitting broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source. Member States may establish **an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis** through other means.
- **Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.**
- Member States shall ensure, in accordance with their legal systems and practices, that the modalities and conditions regarding the provision of such short extracts are defined, in particular, **with respect to any compensation arrangements, the maximum length of short extracts and time limits regarding their transmission.**
- Where compensation is provided for, **it shall not exceed the additional costs** directly incurred in providing access.
- The situation where the exclusivity is given *de facto* to only one broadcaster, justify other broadcasters having the possibility of informing their public by means of a short report.

Right to Short Reporting

Council of Europe framework



Short report:

- Brief sound and picture sequences about a major event as will enable the public of the secondary broadcaster to have a sufficient overview of the essential aspects of such an event.
- In order to enable the public in a given country to exercise its right to information, **the property right of the primary broadcaster should be subject to limitations**

Making of short reports:

1. Subject to other contractual agreements between the broadcasters concerned, **any secondary broadcaster should be entitled to provide information on a major event by means of a short report :**
 - a) by recording the signal of the primary broadcaster, for the purpose of producing a short report; and/or
 - b) by having access to the site to cover the major event, for the purpose of producing a short report.
2. In the implementation of the foregoing principle, the following aspects should be taken into consideration :
 - a) if a major organised event is **composed of several organisationally self-contained elements**, each self-contained element should be deemed to be a major event;
 - b) if a major organised event **takes place over several days**, it should give the right to produce at least one short report for each day;
 - c) the authorised duration of a short report should depend on the time needed to communicate the information content of the major event

Use of short reports

- When fixing the conditions for the use of short reports by the secondary broadcaster(s), the following should be taken into account :
 - a. the short report should be used **exclusively by the secondary broadcaster** and only **in regularly scheduled news bulletins**;
 - b. in the case of a major organised event, the **short report should not be broadcast before the primary broadcaster** has had the opportunity to carry out the main broadcast of the major event;
 - c. unless otherwise agreed by the broadcasters concerned, the short report **should mention the name and/or insert the logo of the primary broadcaster** as the source of the material, where the short report has been made from the signal of the primary broadcaster;
 - d. **a short report which has already been broadcast should not be reused**, unless there is a direct link between its content and another topical event;
 - e. **all original programme material within the possession of the secondary broadcaster** which has been used for the making of the short report **should be destroyed after production of the short report**, and the primary broadcaster should be informed of its destruction;
 - f. short reports **may be preserved in archives** but may not be reused except in the circumstances referred to in paragraph d.

Financial Terms



- 1. Unless otherwise agreed between them, the primary broadcaster should not be able to charge the secondary broadcaster for the short report. In any event, **no financial charge should be required of the secondary broadcaster towards the cost of television rights.**
- 2. If the secondary broadcaster is **granted access to the site**, the event organiser or site owner should be able **to charge for any necessary additional expenses** incurred.
- Where the signal of the primary broadcaster does not reach the territory of the secondary broadcaster, additional expenses incurred by the transport of the signal to that territory should not be charged to the primary broadcaster. Rather, they should be charged to the secondary broadcaster in accordance with financial terms freely negotiated between them.

Overview of procedures in other European countries

UNITED KINGDOM

Regulation

Communications Act 2003, section 299

Secretary of State for Culture, Media and Sport maintains a list of sporting and other events of national interest.

Listing ensures that rights to these events, if they are offered at all, must be offered to the main free-to-air terrestrial broadcasters on “fair and reasonable terms”.

Definition of listed event

- ‘listed event’ is...

“one which is generally felt to have special national resonance” and which contains “an element which serves to unite the nation, a shared point on the national calendar, not solely of interest to those who follow the sport in question”.

... such events are protected by law to ensure that they are available to as many viewers as possible, particularly those who cannot afford the extra cost of subscription television.

... an event may be listed because it is of ‘national’ interest within England, Scotland, Wales or Northern Ireland separately. The Act allows for those events to be shown only in the relevant part of the UK in which there is likely to be most viewer interest.

Public consultation

Before drawing up the List the Secretary of State must consult: Ofcom, the BBC, the Welsh Authority and in relation to a relevant event, the person from whom the rights to televise that event may be acquired.

The Secretary of State may add events to and delete events from the list at any time, but only after consultation with the BBC, the Welsh Authority, Ofcom and the holder of the rights for the event in question.

OFCOM's statutory duty

Ofcom's duty is to draw up a *Code giving guidance on certain matters relating to the televising of sports and other events of national interest ...* listed by the Secretary of State

This Code has been produced after consultation with broadcasters, sports bodies, the holders of sports rights and other interested parties.

Ofcom's Powers

- The Act restricts the acquisition (by television programme providers) of exclusive rights to the whole or any part of live television coverage of listed events and the broadcasting on an exclusive basis of such coverage **without the previous consent of Ofcom.**
- Ofcom has **powers to impose a financial penalty** on its licensees if the restrictions on broadcasting live coverage of listed events have not been observed, if Ofcom has been given false information or if material information has been withheld.
- In the case of the BBC and S4C, Ofcom must report the matter to the Secretary of State.

Qualifying broadcasters

Two categories of television programme services:

- TV services and EEA satellite services which satisfy the qualifying conditions ('the first category') and
- all other TV services and EEA satellite services ('the second category').

The qualifying conditions are defined as:

- (a) that the service is provided without any consideration being required for reception of the service and
- (b) that the service is received by at least 95 per cent of the population of the United Kingdom.

Qualifying broadcasters

- Channel 3 (ITV1)
- Channel 4
- BBC 1
- BBC 2
- Channel 5 (Five)

Listed Events

Two groups of events:

- Group A: events which may not be covered live on an exclusive basis *unless certain criteria are met* (set with the Ofcom Code)
- Group B: those events that may not be broadcast live on an exclusive basis *unless adequate provision has been made for secondary coverage* (set with the Ofcom Code).

List A

- The Olympic Games
- The FIFA World Cup Finals Tournament
- The FA Cup Final
- The Scottish FA Cup Final (in Scotland)
- The Grand National
- The Derby
- The Wimbledon Tennis Finals
- The European Football Championship Finals Tournament
- The Rugby League Challenge Cup Final *
- The Rugby World Cup Final *

List B

- Cricket Test Matches played in England
- Non-Finals play in the Wimbledon Tournament
- All Other Matches in the Rugby World Cup Finals Tournament *
- Six Nations Rugby Tournament Matches Involving Home Countries**
- The Commonwealth Games *
- The World Athletics Championship *
- The Cricket World Cup - the Final, Semi-finals and Matches Involving Home Nations' Teams *
- The Ryder Cup *
- The Open Golf Championship *

List A - Criteria for giving Consent

Ofcom wants to establish that the availability of the rights was generally known and no broadcaster providing a service in the other category had expressed an interest in their acquisition to the rights holder, or had not bid for the rights.

Ofcom wants to examine whether the broadcasters have had a genuine opportunity to acquire the rights on fair and reasonable terms.

List A - Criteria for giving Consent

- any invitation to express interest... (public advertisement or closed tender) in the acquisition of the rights must have been communicated openly and simultaneously to broadcasters providing services in both categories;
- at the beginning of any negotiation the documentation and/or marketing literature must set out in all material respects the process for negotiating and acquiring the rights and all material terms and conditions, including what rights were available;
- if the rights to the listed event were included in a package of rights, the package must not have been more attractive to broadcasters providing services in one of the two categories. Preferably, the rights should be capable of being purchased independently of other rights, e.g. to highlights, delayed transmissions, other events;

List A - Criteria for giving Consent

- the conditions or costs attached to the acquisition of the rights (for example, production costs) must have been clearly stated and must not be preferential to one category of service;
- the price sought for the rights must have been fair, reasonable and nondiscriminatory as between the two categories of programme service... When making its own judgment on the matter Ofcom will have regard to, inter alia:
 - previous fees for the event or similar events;
 - time of day for live coverage of the event;
 - the revenue or audience potential associated with the live transmission of the event (e.g., the opportunity to sell advertising and sponsorship; the prospects for subscription income);
 - the period for which rights are offered; and
 - competition in the market place

List B - Criteria for giving Consent

- Ofcom will give its consent to exclusive live coverage to a broadcaster from one category (the first service) if adequate provision has been made for secondary coverage by a broadcaster in the other category (the second service).
- The minimum which Ofcom will consider to be adequate is: where the second service has acquired rights for the provision of edited highlights or delayed coverage amounting to at least 10% of the scheduled duration of the event
- The second service must have editorial control over the content and scheduling of the edited highlights or delayed coverage... except that a restriction may be imposed that the second service shall not begin broadcasting the edited highlights or delayed coverage until a period has elapsed following the scheduled conclusion of the event

Procedure for giving Consent

- The request for Ofcom's consent must be made in writing
- The request must be accompanied by full reasons and justification for the request and all relevant supporting information
- Requests should be made not less than three months prior to the date of the event
- A broadcaster who is unable to meet the three month deadline should keep Ofcom informed about the progress of negotiations.
- As a first step in considering the request Ofcom will normally issue a public notice inviting broadcasters, rights holders and other interested parties to comment on the request.
- The applicant may be asked to supply additional information in writing and/or to attend a meeting with Ofcom staff.
- Ofcom will respond as quickly as possible to any request.
- It will normally publish its decisions, but having regard to the protection of confidentiality.

ITALY*

*Source: EPRA Meeting, June 5 2014, Presentation of Francesca Pellicano (AGCOM)

Regulation

Legislative Decree no.177 of 2005 (Article 32)

Legislative Decree n.44 of 2010 (Article 7)

Italian regulator - Autorita' per le Garanzie nelle Comunicazioni (AGCOM) makes a decision on compiling a list of events of major importance for society to ensure dissemination of listed events on TV channels freely available to the audience.

Definition of listed event

Events that meet at least two of the following criteria:

- A. The event and its outcomes have particular and widespread resonance within Italy **and are of interest to** people other than those who normally follow this type of event.
- B. The event is widely recognized by the population **and bears** particular cultural importance **and acts as a** catalyst for the Italian cultural identity.
- C. The event involves the national team of a specified sporting discipline in an international tournament of major importance.
- D. The event has traditionally been broadcast on free-to-air television **and has gained** a broad audience base in Italy.

Public consultation

- The approval of the list should follow after a wide public consultation process which is opened by AGCOM by approving specific resolution published in the Official Gazette.
- The responses to the public consultation must be received within thirty days from the date of publication of the document in the Official Gazette.
- The list is communicated to the European Commission in accordance with Article 14 of the AVMS Directive.

Consultation on the new list (2012)

- Public consultation for the new List (2012) launched in July 2010 with Decision no.302/10/CONS.
- Sport federations did not answer to the public consultation and were individually contacted in December 2010
- Preliminary approval by Agcom's Board
- Favourable opinion of the Contact Committee on December 2011
- Decision of the EU Commission C/2011/9488 of 21 December 2011
- Entry into force in September 2012
- No effects on contracts already concluded

Main changes from 1999 to 2012

List from 1999

- Qualified broadcasters must reach 90% of population (analogue tv)
- Mainly football
- Two lists:
 - 1st live or deferred coverage
 - 2nd includable events
- One cultural event

List from 2012

- Qualified broadcasters must reach 80% of population (DTT)
- Other sports included
- One list with new events
 - semi-finals of existing events
 - new disciplines
- Two more cultural events

Criteria satisfied by the 2011 list

EVENTS	A)	B)	C)	D)
	SPECIAL RESONANCE IMPORTANCE	CULTURAL	NATIONAL TEAM	LARGE AUDIENCE ON FREE TV
Italian MOTO GP Grand Prix - motorcycling	✓		(✓)	✓
The final and semi-finals of the World Volleyball-Basketball-Waterpolo Championships when they feature the Italian national team	✓		✓	✓
The final and semi-finals of the Rugby World Cup when they feature the Italian national team	✓		✓	
Six Nations rugby matches played by the Italian national team	✓		✓	✓
The final and semi-finals of the Davis Cup when they feature the Italian national team	✓		✓	
The final and semi-finals of the Fed Cup when they feature the Italian national team	✓		✓	
The final and semi-finals of the Internazionali d'Italia tennis tournament when they feature Italian tennis players	✓		✓	(✓)
The Road Cycling World Championships	✓		(✓)	✓
First performance of the opera season at the La Scala Theatre in Milan	✓	✓		
New Year's Concert broadcast from the La Fenice Theatre in Venice Jelena Surculija Milojevic/ Snezana Trpevska	✓	✓		✓

07th November 2014

AGCOM

NORWAY*

*Source: EPRA Meeting, June 5 2014, Presentation of Hanne Sekkelsten and Jan Anders Sæter (Medietilsynet – Norwegian Media Authority)

Jelena Surculija Milojevic/ Snezana Trpevska

07th November 2014

Regulation

Broadcasting Act (Articles 2-8)

“A broadcaster who has purchased the exclusive right to televise events of major importance for society may not exercise such exclusive right in such a way as to deprive a substantial proportion of the public of the possibility of following such events on free television.”

Where a broadcaster ... has purchased the exclusive right to televise events which ... [are designated *in another EEA country*] and which have been approved by the European Commission ... may not exercise such exclusive right in such a way as to deprive a substantial proportion of the public *in the country concerned* of the possibility of following such events on free television

Regulation

Chapter 5 of the amended Broadcasting Act (2005): **Utilisation of rights to televise events of major importance for society**

- **“Free television”** means television channels which can be received by the public without additional payment. Licence fees and annual subscription fees to a cable network ... are not regarded as additional payment. ”
- **“Substantial proportion of the viewers”** means 90 percent of the viewers.
- **“Reporting of purchase”** - A broadcaster who purchases exclusive rights to entire events or parts thereof that figure in other EEA states’ lists of important events approved by the EU Commission ... and published in the Official Journal of the European Union shall immediately report the purchase to the Norwegian Media Authority.

The list of Major events

- The Olympic Summer and Winter Games
- The Football World Cup for men, including qualifying matches involving the Norwegian national team
- European Football Championship for men, including qualifying matches involving the
- Norwegian national team
- The Handball World Cup for women
- The European Handball Championships for women
- The Norwegian Cup Final in football for men
- The World Ski Championships, Nordic disciplines
- The Alpine Skiing World Championships
- Holmenkollen FIS World Cup Nordic
- The Biathlon World Championships

Tasks of the regulator (NMA)

The amendment to the broadcasting regulations states that the NMA shall:

- Determine a remuneration (price) for the transfer of rights in individual cases. The price shall be a fair market-price.
- Produce Guidelines on how to reach a market-based price:
 - Criteria
 - Procedure
 - Pricing
 - NMA's decision
 - Sanctions
- Receive reports on acquisitions

Procedure

- A request about pricing to the NMA from one of the parties. The other country is allowed to comment on the claim.
- Both parties must document:
 - that the criteria for reviewing a case is met,
 - include an exhaustive list of the disputed television rights
 - what the country considers to be a fair market-price.
- The NMA publishes the request and give other qualified TV-channels the opportunity to show interest in the disputed rights
- The NMA will host an auction if more than one qualified TV-channel is interested in the rights.
- If no other show interest, the NMA shall set a deadline for the countries to file closing statements.

Macedonian regulatory framework

The Law on Audio and Audiovisual Media Services

Article 87 - Events with exclusive broadcasting rights

- (1) The broadcaster is obliged to broadcast events of major importance for society, on grounds of obtained exclusive rights, so as to give opportunity to at least **80% of the public** ... to follow such events by live or deferred **free-to-air television** broadcasting...

- (1) The broadcasters must not use their exclusive rights for broadcasting events of major importance for society so as to prevent the **audiences in other countries** to follow said events, which were designated as events of major importance by those countries.

Article 88 - Defining the list with events of major importance

- **The (AAAMS) Council adopts** decision on the list of events (national or international) of major importance for society and determines whether said events should be fully or partially available for live broadcasting or, where necessary ... due to the public interest and objective reasons, fully or partially available via deferred broadcasting...
- **The Agency is obliged** about the decision from paragraph (1) **to notify the European Commission and the Committee on Trans-frontier Television of the Council of Europe.**

Article 88 – The List of Events of Major Importance

- The Council is obliged to promptly adopt the decision and **in a clear and transparent way**, in line with the article 10 of this law.

- **Article 10 : Public influence**
 1. Before adopting or amending a bylaw within its scope of competence, and before adopting the Annual Operation Programme for the following year, **the Agency shall publish on its web-site the proposed bylaw**, that is, the Annual Operation Programme, **in order to allow a public debate**, that is, **to allow all interested parties to express their opinions, views and positions regarding the proposed bylaw and the proposed Annual Operation Program for the following year.**
 2. The deadline for public debate **must not be shorter than 30 days from the moment of publication of the acts**
 3. **After the deadline and before the adoption of the bylaw, the Agency shall be obliged to publish on its web-site the received opinions and comments, as well as the Agency position thereof.**

- The Agency is obliged to notify the European Commission and the Committee on Trans-frontier Television of the Council of Europe about the Decision adopted.

Macedonian regulatory framework

The Decision for Approving the List of Events of
Major Importance for the Republic of Macedonia

Criteria for defining the events of major importance

The Televised broadcasting is considered to be of major importance for the population of the Republic of Macedonia when it fulfill at least 2 (two) out of 4 (four) criteria:

1. The event and its outcome **has a special general resonance** in the Republic of Macedonia, not only for those who regularly follow the sport or the activity in question;
2. The event **has generally recognised, distinctive cultural importance for the population** in the Republic of Macedonia and for its cultural identity;
3. **It involves the national team or a national representative** in the sport concerned in a major international tournament;
4. **The event has traditionally been broadcasted on TV programme services for which no additional fee is paid**, except for the broadcasting fee or the basic fee for subscription to public communication network, and has commanded a large audience in the Republic of Macedonia

The events of major importance (1)

- Winter Olympic Games;
- Summer Olympic Games;
- Qualification matches played by the Macedonian football team, at home or abroad, for qualifying in the finals of the European Football Championship;
- The opening match at the European Football Championship, semi-final matches, the final match and the matches played by the Macedonian football team;
- Qualification matches played by the Macedonian football team, at home or abroad, for qualifying in the finals of the football World Cup;

Listed events of major importance (2)

- The opening match at the football World Cup, semi-final matches, the final match and the matches played by the Macedonian football team;
- Champions League – semi-finals, the final match and the matches played by the Macedonian teams;
- UEFA Cup - semi-finals, the final match and the matches played by the Macedonian teams;
- Other matches played by the Macedonian football team, at home or abroad;
- The final match of the Macedonian Cup in football;

Listed events of major importance (3)

- European Cups in handball, basketball and volleyball - semi-final and final matches, if Macedonian teams play in these matches, including the qualification matches;
- European and world championships in handball, basketball and volleyball - semi-final and final matches, if Macedonian teams play in these matches, including the qualification matches.

The broadcasting time of the events

- In case when major events **overlap** or the time when the event of major importance takes place falls in the period **between 24:00 and 06:00 hours**, Macedonian Time, **the qualified broadcasters will decide on their own which events will have live coverage in full, and which will have deferred coverage.**
- **The deferred coverage should not exceed 24 hours** from the time when the event happened.

Qualified broadcasters

- In order to protect the right of the public to access the events of major importance, and to prevent that a broadcaster, by acquiring exclusive rights to cover the event, deny a significant portion of the population to follow that event, the qualified broadcaster has to fulfil the following conditions:
 1. With their signal, they of the Republic of Macedonia **cover at least 80% of the total population** ia;
 2. **No additional fee is paid for their programme services**, except for the broadcasting fee or the basic fee for subscription to public communication network;
 3. They broadcast their programme service **in non - coded form**;
 4. They broadcast the events of major importance **in the language spoken by the majority in the Republic of Macedonia**.

The information and entering into force

- **The Standing Committee on Transfrontier Television of the Council of Europe** will be notified about this decision, and it will be published:
 - In the "Official Gazette of the Republic of Macedonia"
 - In the media
 - In the Bulletin
 - On the WEB site of the Broadcasting Council.
- The Decision shall enter into force the day after the date of its publication in the "Official Gazette of the Republic of Macedonia".